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## Reducing precarious work in Europe through social dialogue: the case of France

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# REDUCING PRECARIOUS WORK IN EUROPE THROUGH SOCIAL DIALOGUE: THE CASE OF FRANCE

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contribution from Valeria Insarauto

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# Introduction

The main goal of this report is twofold. In the first part (chapters 1 to 6) we provide an overview of the main gaps between the standard employment relationship and the various “precarious” contracts. In the second part (chapter 7 to 11) we discuss, from cases studies, what are the contributions and the limits of different configuration of social dialogue aiming at reduce these gaps.

The first chapter, mainly based on the scientific literature, gives an idea of the current debates in France and how scholars approach the concept of precarity.

Chapter two starts from the standard open-ended contract (OEC), which is the basic legal reference for all kinds of labour contracts in France. We try to examine the twofold erosion of this contract. Sometimes we discuss the erosion “from within”, due to changes in the legal framework, in collective bargaining, in order to show that this OEC is not necessarily the Holy Grail; and we briefly contrast the OEC with other kinds of contracts.

The subsequent chapters present the situation and the gaps for a selection of “atypical” situations in greater depth. One caveat concerns our choice of atypical situations. We are tied by the legal definitions (and often by the available statistics). Fixed-term contracts (including TAW) are numerous, with some differences between, for example, a fixed-term contract in the field of hotels and restaurants and a seasonal one in agriculture. It is not possible to enter into a more detailed analysis.

We focus first (chapter 3) on fixed-term (and TAW) contracts, which are at the heart of many debates, including the recurrent question of a unified labour contract and/or advocacy of the OEC.

We then (chapter 4) move to the subcontracting workers and to the self-employed, including the new status of “auto-entrepreneur”. They do not belong to the traditional wage-earning relationship and to the labour law. However, in the recent period, this kind of status has been increasing among the labour force; and there is considerable evidence of precarity.

Chapter 5 is on posted workers. While they are numerous (and increasing during the crisis), they are, in full-time equivalent, marginal in the labour force. However, they are also at the heart of political and economic debates.

Chapter 6 is on part-time, with many French specificities (longer than in other countries; rules within the OEC, etc.).

These choices have at least two consequences:

- We do not elaborate on other kinds of contracts which could be of interest (such as the specific labour contract in the entertainment industry, subsidised contracts).

- We do not strictly follow the grid of the common matrix defined for a comparative analysis. “Cost-driven contract” is rather difficult to follow: in some cases, TAW are more expensive for the firm than other contracts.

Moreover, and despite our attempts, starting from labour contracts does not always allow us to grasp the variety of individual situations. A fixed-term contract for a young newcomer to the labour market is not necessarily a dead-end job. By contrast, an OEC for an older (female) worker in a Taylorist industry could be described as a more precarious job position, leading to long-term unemployment.

This is why, in the conclusion, we propose a schematic reinterpretation of the various positions on the French labour market. In the recent period, increasing rotation between very short-term contracts and unemployment seems to be growing, a sign of a new kind of dualisation, a “churning effect” which seems to define a new a specific segment of the labour market.

The second part of the report is devoted to the contribution of the social dialogue. Chapter 7 briefly discusses what social dialogue in France is and presents our four case studies. Then chapters 8 to 11 present the results of the case studies.



## Part 1

# 1. What precarious work is there in France? Literature review

## 1.1. Precarity as an imprecise category depending on different national normative systems

Precarious employment (*travail précaire*) is a widespread concept in France that is extensively used in research and in policy arenas, but its definition and content remains controversial (Fagnani and Letablier, 2009). Indeed, the term “precarious” as such has been progressively extended to characterise the state of the whole of society: the notion is now very comprehensive and carries many different meanings (Barbier and Lindley, 2002; Barbier, 2005). The notion of precarity as connected to poverty first appeared in French sociology in the mid-1980s, and rapidly became the indicator of a process where the social actors see labour market developments in terms of a socially damaging growth of precarious employment. In particular, the term was soon used to relate to the employment sphere, mainly to individuals’ status in employment in terms of deviations from standard employment.

According to some scholars, when studying precarious employment understood as nonstandard employment, it is important to take into account the relative character of such notions. In fact, the definition of precarity very much depends on the criteria used to define standard employment (i.e. employment that is perceived as suitable or acceptable in terms of stability, working conditions, labour standards, and security) in a particular country (Barbier and Lindley, 2002). In other words, national realities matter when it comes to the characterisation of employment precarity (Paugam, 2000). For example, precarity is now a central notion in French Labour Law (*Code du travail*), particularly as regards exceptions to the standard employment contract and compensations that must be provided to deal with them. Nonetheless, if analysed in comparative perspective, the use of such a notion can be found to be very encompassing (ESOPE, 2005). As a consequence, the category of precarious employment can be seen as an imprecise one, whether from a statistical, analytical, political or social perspective, and needs to be disentangled according to the country analysed. This means that the established use of this category by academics, as well as by social actors such as the state and social partners, is defined under the influence of different national normative systems (Barbier, 2011). It is in the light of these arguments that the concept of precarious work in France is reviewed in the following paragraphs.

## 1.2. In search of a common definition: contributions and limitations

The most common definition – at least in statistical terms – of precarious work in France refers to the one devised by INSEE (French National Institute of Statistics), which rather uses the term “formes

particulières d'emploi" (special forms of employment status) in order to qualify it: "The term special forms of employment (or sometimes precarious employment) encompasses all employment statuses that are not OECs. These are: temporary work, fixed-term contracts, apprenticeship and subsidised contracts."<sup>1</sup> Essentially, the standard employment relationship – permanent and full-time – defines the view of what is acceptable decent work and has been elected as the social norm with which all other employment forms must be compared. Moreover, based on such a definition, precarious work can be seen as a synonym for atypical work, and the distinction between OECs and fixed-term contracts becomes the main criterion that allows the identification of precarity in employment: all forms of dependent work can be described as precarious when they are based on fixed-term employment relationships.

The notion of "formes particulières d'emploi" has enjoyed till now a very wide acceptance and is still the main official category used by the French national statistical institute as well as by the majority of scholars from different fields who are interested in the phenomenon of precarious work. Hence, it is to such a definition that one must look in order to identify the employment relationships that are nowadays most commonly associated with precarious work in France. But how was such a definition constructed?

The notion formes particulières d'emploi was first devised in the context of economic research based on American labour market segmentation theory aimed at studying the new forms of employment emerging in the 1970s. The focus was on the processes of differentiation among different categories of the workforce within firms, hence on firms' strategies. In order to construct an object for research out of the many empirical manifestations of atypical employment, researchers introduced the notion of formes particulières d'emploi. The latter was mainly meant to refer to what atypical employment is as compared to the usual norm of the open-ended full-time contract. Accordingly, such a notion was conceived as strongly based on status as a key employment characteristic, which implies that the identification of the various form of employment as atypical is based on the wage-earner nexus. This focus on the employment contract was reinforced in 1982. On the one hand the OEC was defined in the labour law as the standard one. On the other hand, in the same year, the statistical office started to publish data differentiating between the various labour contracts. The French approach, unlike for example that of the US did not widely use the "low-wage" definition.

The INSEE definition is still much in use – even if scholars have tended to add part-time work<sup>2</sup> to the list of the employment forms included in the original definition – and the great majority of analyses have tended to remain based on the elements and principles that underline such a definition. That means that research on employment precarity has very much focused on the spread of atypical forms of employment, merely in terms of employment status, in the light of labour market segmentation and flexibilisation theory (Appay, 2005).

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<sup>1</sup> See: <http://www.insee.fr/fr/methodes/default.asp?page=definitions/forme-particuliere-emploi.htm>. It must be underlined that such a definition includes only dependent employment.

<sup>2</sup> Both on a fixed-term and open-ended contract basis, since part-time work is usually perceived as automatically being precarious in France.

Nevertheless, many have argued that even when relying on a common definition such as that of INSEE, precarious work cannot be considered a homogeneous category, especially when such a definition is based on the “permanent/non-permanent divide”, which does not have a universal meaning at all. In particular, some have insisted on the fact that employment precarity as well as atypical employment are only one dimension of a multidimensional picture of fragmentation, where inequalities increase according to social protection areas, to branches in the economy, to public and private sectors, and so on (Barbier, 2011). Moreover, many scholars have also underlined the peculiarity of this definition, pointing out the fact that special form of employment status does not always necessarily mean precarious. Nicole-Drancourt (1992), studying the situation of youth, broadly discusses the concept of *précarité*. She suggests distinguishing between “youth *précarité* and that of adults, with different consequences for the individual and the family”. She identifies for young people an integrative precarity (progressive inclusion within society) and another leading to exclusion. In fact, standard employment can also fall into the trap of precarity, so that it is not possible to automatically associate precarity with the so called special forms of employment, just as it is not possible to automatically associate stability with standard employment (Kornig and Michon, 2010).

### **1.3. Beyond a common definition: the investigation of a social process and a social phenomenon**

On the whole, precarity is considered a key notion for investigating changes in labour markets and exploring the insecurity that characterises the labour market position of an increasing number of individuals. In this sense, precarity is the result of economic dynamics, together with public policy approaches that favour the deconstruction of social and employment rights (Appay, 2005). More precisely, it has been emphasised that precarity can be considered a process that deeply affects the functioning of the labour market, and that can unsettle its main forms of stability and protection (Bérourd and Bouffartigue, 2009).

This is consistent with what Castel (1995) defined as *précarisation*, through study of the interactions between economic precarity and social instability: the process through which society as a whole becomes more and more precarious and is basically destabilised. In particular, this process takes place in Fordist society where the relationship to work and employment is structured according to the wage-labour nexus as a global social relationship that is increasingly characterised by the erosion of the wage-earner condition. Precarious work is the most important feature of such erosion and new forms of employment are among the clearest manifestations of it, as they also affect the core labour force. Hence, employment precarity is embedded in the dynamics of transformation of society as a whole, and is also a consequence of the new structure of the labour market, particularly with regard to the construction of the wage-labour nexus. As a consequence, precarity can be understood only when taking into account both increasing labour flexibilisation and the social consequences that flow from it.

On this foundation, other perspectives on employment precarity imply looking at it as a possible part of a larger form of social precarity stemming from economic instability, isolation, low income, and bad living conditions (Paugam, 2005). That is despite the fact that employment precarity does not necessarily lead

to social precarity, even if the two forms of precarity can result in a cumulative effect. In depicting the profile of the precarious wage-earner (*salarié de la précarité*) a well-known sociologist has suggested that the definition of precarity should include all workers living in a household with income below the poverty threshold (Paugam, 2000). The point is to underline the varied character of precarity and its capacity to affect not only those groups excluded from the labour force who become dependent on welfare benefits, but also those on the labour market whose low wages lead to social exclusion (Fagnani and Letablier, 2009). Precarity is thus understood as a process of impoverishment of some parts of the workforce. In this sense, an extended definition of precarious employment has also been proposed by introducing an important distinction between employment precarity and work precarity: the former refers to the relationship to employment or to one's job; the latter refers to the relationship to one's labour. Accordingly, the subjective dimension (work precarity) of employment should be regarded as being as important as the objective dimension (employment precarity), since it also contributes to employment precarity in a way that goes beyond the issues related to differences in employment status (Paugam, 2000). All these arguments altogether leave room to consider precarity as a more extensive category which does not focus exclusively either on employment status or on poverty, but rather tries to take into account the complexity of these two dimensions in its construction as a social phenomenon.

Others have added a third aspect which helps to identify the variety of employment precarity. In particular, precarity in the professional sphere may develop in three main dimensions: employment precarity, when the employment contract is precarious, or when the employer is economically weak; work precarity, when work activity, with respect to work conditions and work contents, keeps worsening; precarity of collective representation and action, when union rights are questioned, and part of the workforce do not have a collective voice. In fact, beyond the diversity of forms of destabilisation as compared to employment standards, it has been pointed out that precarity seriously weakens workers' collectives, it determines a high level of uncertainty regarding the duration of employment, it increases the difficulty in building professional paths by triggering individual and collective anxiety about the future, and all in all it represents an impediment to collective action (Bouffartigue et al., 2008).

#### **1.4. More than an analytical category: social profiles and social experiences of precarious workers**

Moreover, the importance of distinguishing between precarity as an analytical category and the diversity of social experiences that such a category is supposed to grasp, as well as the social profile of people concerned by it, has also been underlined (Bérout and Boffartigue, 2009). In this sense, labour market economists have highlighted the existence of a myriad of statuses, or at least the emergence of differentiated uses of flexibility and atypical employment contracts according to workforce groups. Indeed, the focus of economic research has shifted over the last twenty years from a perspective focusing on analysis of the possible evolution of special forms of employment status according to the outcomes of collective bargaining to one based on analysis of how differentiated forms of employment correspond to different workforce groups, sectors and activities (ESOPE, 2005). This perspective shows that the social uses of the special forms of employment status also differ in relation to the socio-demographic composition of the categories of workers that are concerned by them, as well as in relation

to the economic sectors in which they are more developed, to the point that it is possible to delineate some profiles. The latter are clearly related to the use that employers make of special forms of employment status as a means to extract flexibility from their labour force, according to the specificity of their needs in terms of flexibility (Kornig and Michon, 2010). Moreover, these different profiles relate to a diversity of experiences in terms of job insecurity, employment perspectives and expectations, especially as regards the achievement of secure employment paths, as well as a variety of deviations in terms of the social profile of union members with whom they are likely to be in contact (Bouffartigue et al., 2008).

Finally, some scholars have suggested looking at precarity in a new way, particularly by focusing on the social conditions which often force people into precarity, and by looking at the experiences of those who are affected by it. The point is to highlight the diversity of realities that lie behind the terms “precarious” and “precarity”, and to develop a comprehensive approach to precarity, which should be seen through the filter of the subjective perspective of those experiencing it (Cingolani, 2005). Essentially, precarious workers may experience the insecurity linked to precarious jobs as a transitional phase through which they construct and nurture an authentic desire for individual achievement. In a kind of negotiation process engaged with the constraints that come with precarious employment and precarious work, the experience of precarity is sometimes built up with the aim of fulfilling individual aspirations much more than obtaining standard employment and the guarantees it can provide. The intrinsic reward that derives from being in a job that is in line with individual axiological and emotional needs, and whose finality and significance are of particular importance to the person holding it, relativise at least temporarily the demands related to extrinsic rewards such as an adequate wage to support everyday subsistence. This perspective highlights the change in terms of ethos that characterises precarious workers in the current labour market scenario, which itself has remained fairly unchanged: deregulation and flexibilisation continue to strongly affect managers’ practices within firms with the objective of profiting as much as possible from precarious workers. Nevertheless, this does not mean that precarious workers spontaneously adhere to the neoliberal system: their participation in it is rather marked by individual considerations and calculation with respect to the trade-off between opportunities and constraints, and not by a simple identification with the neoliberal ideology (Cingolani, 2014).

### **1.5. Summary of the different approaches to precarity and the main possible contribution to the study of the reduction of precarious work through social dialogue**

To sum up, precarity can be differently understood according to the approach that is adopted. In the literature on this theme, at least four approaches can be identified (Abattu et al., 2008).

The first one concerns employment status, particularly those statuses that diverge from standard permanent employment. Although it is to some extent reductive, since even standard permanent employment may be exposed to some forms of vulnerability, this approach is considered to be very useful when depicting evolution over time or when comparing across sectors or companies.

The second one deals with aspects related to work and its nature. In this case, precarity is related both to work contents which trigger a feeling of futility in the worker executing it (i.e. contents are uninteresting, badly paid, and unacknowledged within the company or work unit) and to job insecurity. In this case, the vulnerability that derives from such elements concerns both individuals' economic security and their access to social rights, which are in large part related to their employment situation. It has been argued that other aspects can be taken into account when following such an approach, like for example occupational health and safety, particularly for some categories of workers like the elderly.

The third one deal with difficulty in getting a decent wage that makes individual financial self-sufficiency possible without the need for any social transfer. This is the case of low-qualified jobs that, moreover, do not give access to social benefit entitlements up to adequate compensation levels, fostering the growth of the so called "working poor" category (Caroli, Gautié, 2008).

The fourth and last one deals with employment instability and its consequences for long-term employability (i.e. the difficulty of finding an equivalent position in the event of job loss). In terms of this approach it is important to distinguish between job insecurity and employment insecurity: the first term refers to the instability of the employment contract within a company; the second refers to difficulties in maintaining continuous employment trajectories on the labour market. Losing a job might not be extremely problematic if it was relatively easy to get a new one without experiencing a spell of unemployment whose duration is undetermined. Nonetheless, it seems that the French labour market has been characterised in the last thirty years by a sharp increase in employment insecurity.

In the light of what we have presented over the previous paragraphs, we can add a fifth approach, which takes account of the subjective perspective of those experiencing precarious work. In this case, the focus is on the individual experience of employment precarity and the particular meaning that it can assume in one's own professional trajectory, particularly with respect to individual aspirations and desires. The significance of this approach comes from the fact that it allows one to look at mobilisation and collective action from another perspective which cannot be grasped through the traditional categories used to analyse trade unions' action, and rather seek to focus on the social profiles and social conditions of people in precarious work. Questions that could be addressed through such an approach include: exploring potential activists and union configurations capable of gathering the sociability and solidarity patterns typical of those concerned by precarious work; investigating how the struggles of precarious workers can be articulated to a labour movement that is still focused on the specific figure of the industrial worker in the context of wage labour (Cingolani, 2014).

In fact, research has shown that in some industries the unions rely on the role of collective bargaining agreements to ensure the protection of the most vulnerable workers from precarity. However, observation of everyday situations shows that the existence of protection as set out by such agreements, although necessary, is insufficient to ensure minimum guarantees. In particular, depending on their purpose, collective agreements can become a symbol of the division within the workforce: special company agreements, which are more favourable, are meant to cover unionised employees and the less threatened; by contrast, sectoral agreements, which are less favourable, concern the most precarious non-unionised employees. Collective bargaining at the sectoral level can sometimes hide the deficiencies

of integration of precarious workers in the tenets of collective action, since in reality the autonomous collective actions undertaken by precarious workers emerge as ephemeral experiences that are difficult to transmit. For example, this is the case of temporary workers continuously switching from one sector to another (Dufour et al., 2008). The evidence underlines that these alternative forms of collective actions are frequently subject to the same difficulties as those of trade unions with respect to recruitment and sustainability commitments. Efficiency is hence hampered by multiple difficulties related to both forms and conditions of employment, and to the characteristics of the recruitment process. Eventually, such actions are usually considered as mere protests because of their lack of institutional recognition (Collovald and Mathieu, 2008).

In this regard, scholars have argued that the interests of precarious employees will be better taken into account in the framework of a reinforced local action, particularly through territorial social dialogue. Nonetheless, trade unions as well as employers' organisations fear that the development of social dialogue at the local level may potentially weaken collective bargaining and the rules established by it. As a result, territorial social dialogue is highlighted as an opportunity for internal changes for union organisations, particularly needed in order to support the interests of some groups of employees such as precarious workers and to develop their union membership (Lamotte and Massit, 2010).

## **1.6. Processes and elements that have favoured the spread of precarious work**

Like many social phenomena, the diversification and development of special forms of employment and precarious work have a variety of causes. In fact, a complex bundle of social, economic and political factors can be considered as the drive behind the development of precarious employment (Fagnani and Letablier, 2009). The French debate on the processes leading to precarity has mainly focused on five main elements: market liberalisation and increasing global economic competition; rigidity of labour market regulation and national legislation; changes that have affected the labour market equilibrium; policy measures aimed at improving flexibility in order to respond to employers' needs. (Kornig and Michon, 2010).

Changes related to the economic environment (economic structure, crisis, globalisation, financialisation, increasing competition) have led companies to seek a reduction in their costs through various means, given that companies have had to adapt their productive organisation to changes in demand. In particular, the logic of reducing the cost of labour as a way of responding to flexibility requirements – especially external flexibility based on employment status – has led companies to increase their use of particular forms of employment such as short/fixed-term contracts, temporary and part-time through various levers, particularly in the manufacturing sector, but also in the service sector (Conseil d'orientation pour l'emploi, 2014). Companies' demands for more flexibility referred mainly to external flexibility based on employment status (in contrast to internal flexibility based on flexible working time), and these aspects help to explain the increase in short/fixed-term contracts aimed at adjusting employment practices. In particular, the needs of the production process or the widening range of opening hours in services can be considered two major factors in this sense.

The rigidity of the standard labour contract, seen by companies as not flexible enough to adapt to the requirements of the new economic environment, was a further element contributing not only to the increase in the use of fixed/short-term contracts, but also to the increase in the use of subcontracting and freelance labour. Indeed, the strictness of employment protection legislation with respect to stable jobs based on the OEC has been pointed out as an explanatory factor. However other analyses do not confirm this. In the more recent period, a vigorous debate has opened up (under the pressure of the employers' organisation) about the rigidity and complexity of labour law.

The changes in the structure of employment, with respect to feminisation and the rise of the service sector, but also to the rising level of qualification and age of those in employment, have also had an impact on the progression of particular forms of employment or on the organisation of working time. For example, the growth of the service sector has contributed to the increased use of this type of contract, and this sector remains the greatest user of this type of contract. An analysis on the period 1985-2000 (Perraudin et al., 2006) showed that the structural change of the economy contributed 18.8% of the growth of fixed-term contracts. The remaining ca. 80% are due to an increase in use by firms. On top of the growth of the service sector, the feminisation of the labour market has contributed to the increase in part-time work, which is a form of work both particularly developed in the service sector and overwhelmingly female (Conseil d'orientation pour l'Emploi, 2014). In relation to these elements, labour market economists acknowledge the reorganisation of employment relationships, particularly in terms of diminished social protection, and emphasise generalised labour market flexibility as a drive behind the segmentation and plurality of statuses differently exposed to the risks. As a consequence, they propose a new distinction between groups of the workforce: workforce groups in stable but varying employment; workforce groups fully exposed to market flexibility; and highly skilled professionals. Workers concerned by special forms of employment status are most often considered part of the second group, even if their total coincidence with precarious employment is sometimes questioned (ESOPE, 2005).

The development of special forms of employment is also the result of changes in the behaviour of the actors on the labour market. For the effect of the crisis has affected the overall balance of the labour market as well. In particular, mass unemployment has changed the balance of power in the labour market, to the detriment of employees, who are increasingly forced to accept precarious jobs. Workers lose bargaining power against the threat of unemployment and competition for jobs increases, inducing a "fragmentation of employment standards", also related to the fact that workers who are affected by such dynamics are less unionised and less involved in any struggle for social welfare (Kornig, Michon, 2011). This is especially true for young employees, for whom precarious employment is increasingly becoming inevitable for labour market entry and integration (Conseil d'orientation pour l'Emploi, 2014), and in general for all situations in which there is a superimposition of forms of employment fragility and work inferiority. In fact, this superimposition can result in segmentation and strong division even between workers in the same labour collective: unskilled positions and/or subordinates and unpleasant tasks are assigned to precarious workers, skilled and/or command responsibility over the latter are assigned to permanent employees (Bouffartigue et al., 2008).

Trade unions' action may also be determinant. Research has shown that in some industries unions rely on the role of collective bargaining agreements to ensure the protection of the most vulnerable workers



from precarity. However, observation of everyday situations shows that the existence of protection as set out by such agreements, although necessary, is insufficient to provide minimum guarantees.

In this regard, scholars have argued that the interests of precarious employees will be better taken into account in the framework of a reinforced local action, particularly through territorial social dialogue. Nonetheless, trade unions as well as employers' organisations fear that the development of social dialogue at the local level may potentially weaken collective bargaining and the rules established by it. As a result, territorial social dialogue is highlighted as an opportunity for internal changes for union organisations, particularly needed in order to support the interests of some groups of employees such as precarious workers and to develop their union membership (Lamotte and Massit, 2010).

Public policies have played an important role as well. In particular, labour market flexibility has been introduced by policies aimed at allowing exceptions to the normal employment relationship, to varying degrees, with very diverse justifications and with varying outcomes. Exceptions have been often justified on account of the solidarity-based need for job creation. (ESOPE, 2005). In fact, public policies have often accompanied, or even encouraged, part of the development of special employment forms through measures intended to fight unemployment (subsidised contracts, business development, legal recognition of new forms of employment, etc.). There are debates as to whether such an effect has been involuntary, for example when targeting other public policy objectives (protection of employment, minimum wage, unemployment benefits, etc.), and looking at their action to frame specific or new forms of employment in order to secure the path of people affected by them (Conseil d'orientation pour l'Emploi, 2014). Accordingly, explanations focusing on the mechanism at work at the institutional level have underlined the ambivalence of regulations and policies (ESOPE, 2005).

For example, on one hand demand-side labour market policies have helped to create ways of dropping low-skilled labour costs, thereby favouring the development of special forms of employment. A study carried out in the late 2000s showed that exemptions from social contributions on low wages granted to employers in the early 1990s in order to reduce labour costs were still affecting almost two salaried jobs out of three in 2007. On the other hand, labour market policies aimed at reducing unemployment by subsidising jobs in the public and private sectors (*emplois aidés*), especially for the long-term unemployed. The main point of these jobs was to help people having spent too much time outside the labour market to increase their employability. Especially as regards young people, these jobs were supposed to be a stepping stone towards permanent jobs on a full-time basis, but in a context of scarcity of jobs and economic uncertainty they have rather become a lasting feature of the employment structure (Fagnani and Letablier, 2009). On the whole, the state has introduced laws and incentives to promote the employability of vulnerable groups through flexible employment, sometimes working through various actors and partners (Le Deist, 2013). Hence, inequalities have appeared, as the previous legal norm, referring to standard employment, was collectively considered unsustainable because it conflicted with labour market flexibility requirements.

In the end, there has been a tendency to develop policies and programmes intended to minimise the content (deviating from the legal norm) of the special forms of employment status which related to flexibilisation policies, but in reality policies have allowed for exceptions to the "normal legal

employment contract”, for example for labour market integration purposes, favouring the spread of poor quality and insecure jobs (ESOPE, 2005).

## 2. The standard employment relationship

The standard employment relationship was extensively analysed and defined in the 1970s and 80s, mainly by authors from the “regulation school” (Boyer, 1986). For this school, the employment/wage nexus was a kind of social compromise, linked to the Fordist system and developed during the “30 glorious years” of post-war growth. Some of the main characteristics of this standard employment relationship were:

- A full-time OEC with a high level of stability within the firm
- Pay increases linked to productivity and seniority, with a minimum wage, as a guarantee of the purchasing power of the workers in a regime of mass production
- A regime of social protection (health, maternity leave, etc.) based on social contributions paid by employers and workers, and managed by national bipartite bodies (however with a high level of state control and intervention)
- Collective bargaining at three levels (national, sectoral and firm), with binding rules from the upper to the lower level.

These analyses have been contested. On the one hand, it was said that they did not grasp the diversity of the employment relationship during the Fordist period and overestimated the weight of the large firms (Fourcade, 1992). It was also said that it was only at the beginning of the 1970s that most of these characteristics were stabilised and institutionalised. On the other hand, in the '70s and early '80s, new approaches put the emphasis on the segmentation of the labour market, for example between big and small firms.

The crisis of large-scale industry (1975, early 1980s...) was seen as a signal of a broader economic and social crisis of the regulation, including a crisis of the wage/employment nexus. More recently, the financialisation of the economy was said to bring a new model of capitalism, including a new regulation system, contributing to a strong erosion of the former wage/employment nexus.

Nevertheless, some key characteristics of the standard employment relationship have been consolidated (at the beginning of the eighties with the “Auroux laws”, and from time to time by various governments).

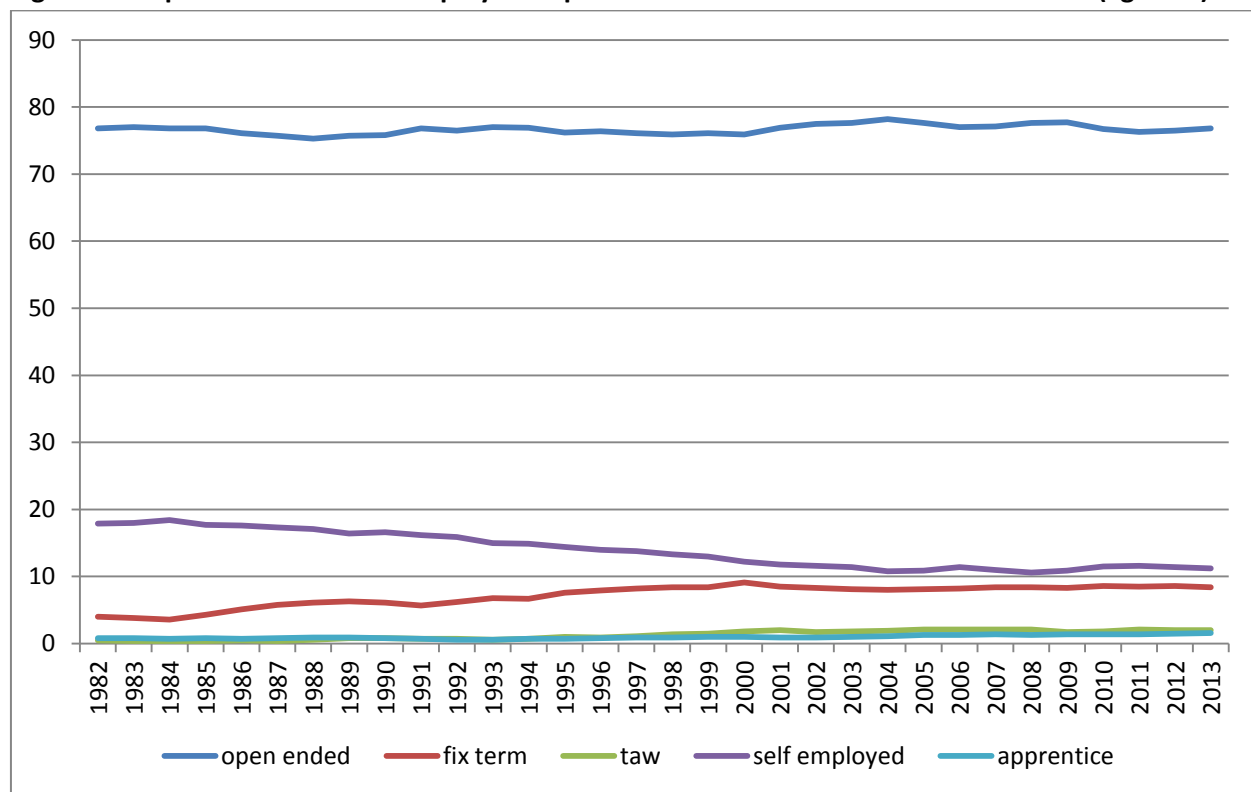
### 2.1 The open-ended contract (OEC) and its main rules

Starting with the OEC and its general rules will help us to give a kind of reference for the gaps of the other kinds of contracts. In 1982 (ordonnance Auroux 1982), it was legally defined as “the normal and general form of the work relationship” (L 1221-2 Code du Travail). The employment council, in a recent report (COE, 2014) confirmed that this type of contract was a long process of legal settlement and in the “thirty glorious” years it was not the main guarantee: the very low level of unemployment was the key factor. With the growth of unemployment, since the mid-70s, one can speak of a change in the rules. The OEC became a basic protection (against dismissal, etc.) and seems to be becoming increasingly rigid, and many atypical contracts are expanding.

However, despite this expansion, the OEC remains the dominant contractual form (around 80% in the whole labour force, 87% of total employment in the private sector). Moreover, its proportion has remained fairly stable since the beginning of the new century. According to Eurostat, France stands at the average of the Eurozone for this proportion. This must be discussed in a comparative perspective: including apprenticeship or not slightly changes the trend (as apprenticeship has been increasing in the recent years); the definition and level of protection of the OEC are not the same (see for example the UK).

Figure 1 shows that the proportion of OECs is fairly stable. Self-employment has decreased; however, this trend has been reversed since 2010. TWA fluctuate now at about 2%. Apprenticeship has also increased since 2003 to reach 2%. And fixed contracts (public and private) have quite regularly increased, reaching 8.5% in the more recent period.

**Figure 1: Proportions of various employment positions for the whole French labour force (age >15)**

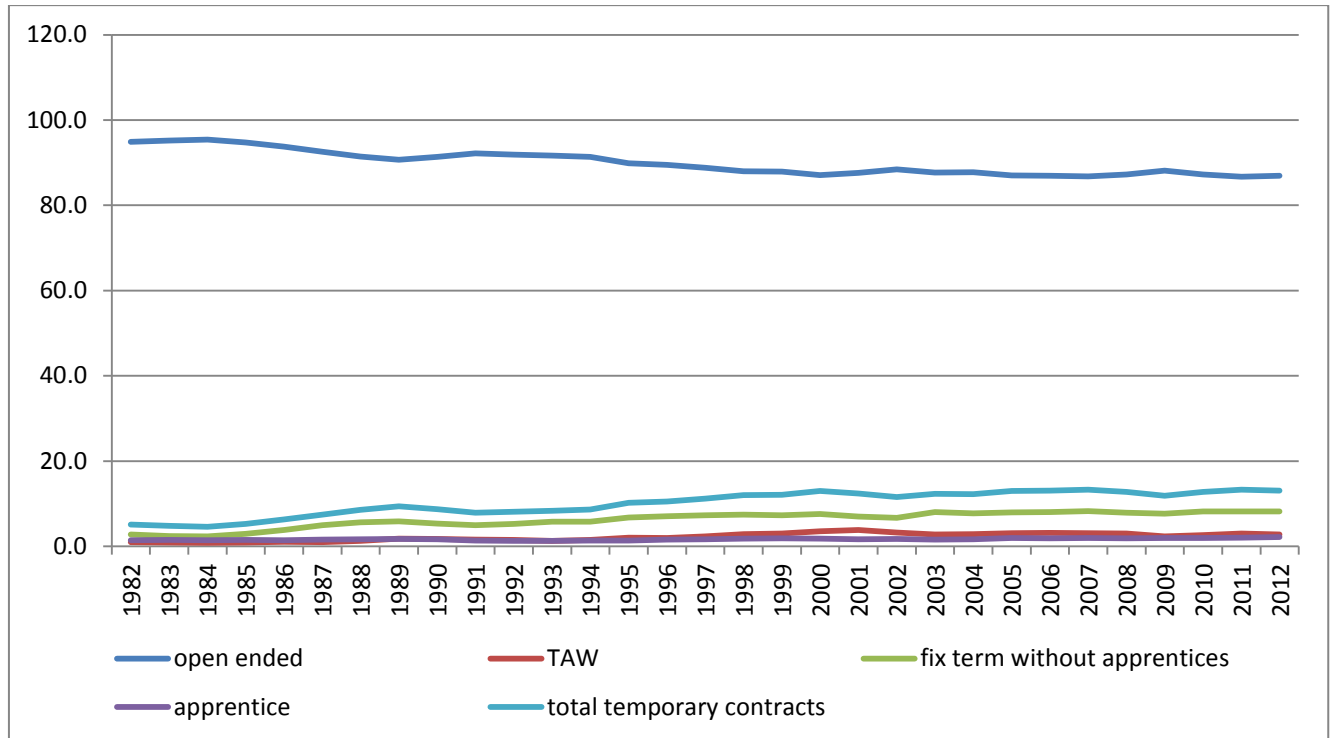


Source: INSEE

We must add also that numerous workers are civil servants (state, health sector and regional/local authorities): 3.8 million in 2010, quite stable since 2015 (slightly decreasing for state civil servants, increasing in local authorities). The civil servant status, which is governed by special laws, could be defined as an important part of the “core work force”, with permanent tenure. However, within the public services, 1.2 million workers are under other status, including OECs but also fixed-term ones (Peyrin, forthcoming).

Focusing only on employment within the private sector (and excluding self-employment) gives a quite similar picture, with a slightly greater decline of OECs.

**Figure 2: Proportions of the different work contracts, private (for profit) sector.**



Source: DARES 2013

We will see in the next sections the various forms of atypical contracts. They contribute to the process of erosion of the OEC. We focus here on the general changes affecting the standard employment relationship.

## 2.2 A sectoral and occupational perspective

As previously stated, the various types of contracts and populations are not equally distributed among sectors or among occupations. If we want to understand which (and where) are the precarious segments, we need to briefly review the sectoral and occupational distributions.

A recent study on the sectoral management of manpower, crossing many indicators (d’Agostino, 2016) provides an interesting classification.

Two families of sectors could be said to concentrate many indicators of precarity:

- The service sector, including most of the retail, hotel and restaurant industries, and some services to firms (security). It covers 17% of the labour force, with an over-representation of

young people and women. Most of the jobs are unskilled/low-skilled. While fixed contracts are not necessarily higher, part-time work, high labour turnover, low wages and low training policies are typical. However, as this group hires many young newcomers on the labour market, the high turnover could be an indicator of its role as a stepping stone towards other more stable positions.

- Home and care services (in hospitals, at home, including cleaning at home, within institutions and offices). It covers 11% of the labour force, but as it includes hospitals, retirement homes, etc. it does not concentrate small firms. Its rate of growth, like the previous one, is high. The workers are mainly women and relatively old. Labour contracts are more often fixed-term and also subsidised ones, with a high proportion of part-time. Jobs are un/low-skilled and concentrate a high proportion of workers with no or only low qualifications.
- In the core sector of traditional industry, one can find evidence of destabilisation of the low-skilled/older workers (through firing, entry in unemployment).

Moving now to an occupational perspective, Françon and Marx (2015), using the ISCO classification, examine the propensity to be atypically employed (fixed-term or TWA), and to be in low-wage jobs (on the international definition). The results seem to confirm the previous analysis. Being a service worker or in an elementary job increases the risk of a fixed-term contract as well as low-wage work. More precisely, care workers, cleaners and labourers concentrate most of the risks of precarity.

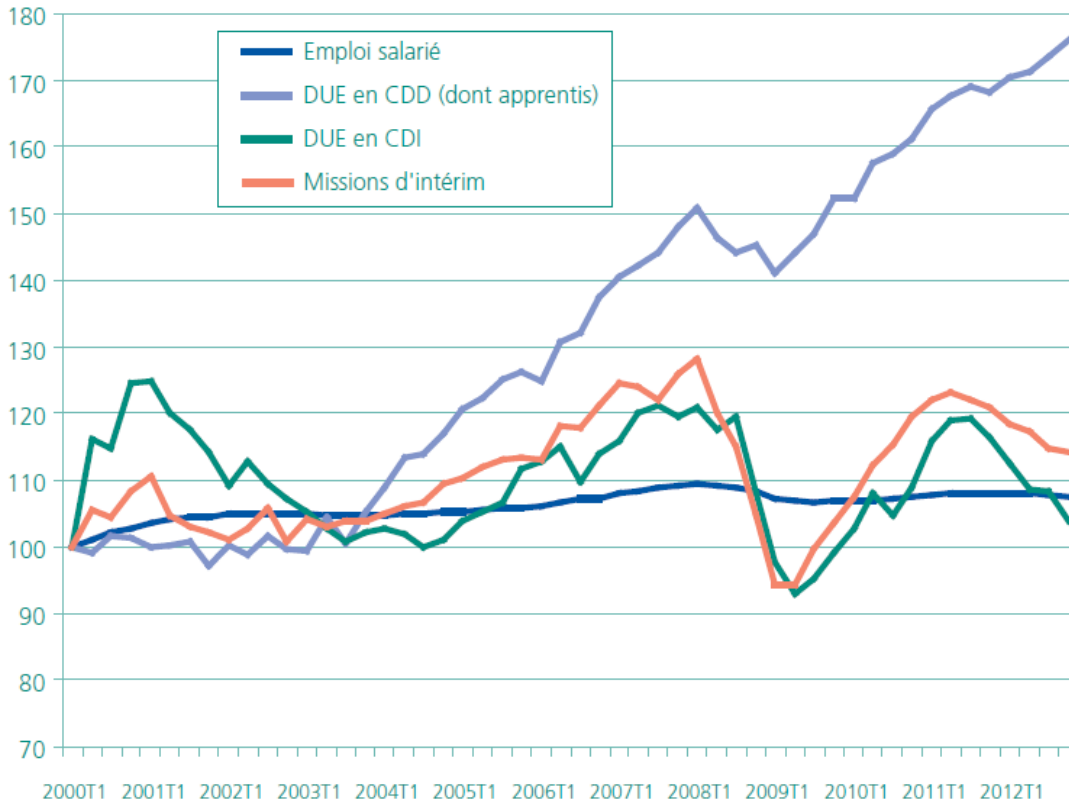
## **2.3. In-work gaps**

The two main questions at this stage are the changes in the hiring process and the wage/poverty debate. The health and safety at work divide will be developed in our final report.

### ***2.3.1. Changes in the hiring process***

One of the main questions is the changes in the hiring process. The OEC is now very marginal in the total of new hired workers: in 2012, more than 90% of hired workers were under various forms of fixed-term contracts, TAW, etc. (DARES, 2014). This change could be partly explained by the uncertainty of the economic situation. However, with some fluctuations, the trend is a regular increase from 2000 to 2012. It reveals a structural change in the hiring process. The OEC is nowadays not a gateway to the labour market. Short-term, fixed-term contracts are the general rule. Firms and employers' associations explain that the OEC is too rigid and that even with a trial period it is too risky to hire with an OEC. Examining the data more closely, it seems that two different processes are at work.

**Figure 3. Trend of number of declarations of intent to hire on FTCs and OECs and number of temp assignments in the competitive sector**



Quarterly data, CSV, base 100 for Q1 2000

Total waged employment

DIH on FTC (inc. apprentices)

DIH on OEC

Temp assignments

How to read the graph: the number of intents to hire on OECs was 3.4% higher in Q4 2012 than in Q1 2000.

Scope: employees in whole of France except agriculture and civil servants for DIH; competitive sector, mainland France, for temp assignments and waged employment

On the one hand, hiring on fixed-term contracts is a rule, before offering an OEC. We will see later that it is the case for young people coming onto the labour market. This explains why the proportion of OECs is not diminishing, but also why the age groups on fixed contracts are changing: the young, the older, but also now a growing age group of 25-50s (exit from unemployment through fixed-term contracts).

On the other hand, the growing proportion of fixed-term contracts is also partly explained by the high level of very short-term contracts (less than one month, sometimes one or two days...). The dualisation of the French labour market is increasing (Marx, 2012).

Should we say that the OEC is too rigid? That it is a brake on hiring? Focusing only on direct hiring on an OEC, the answer seems to be no (DARES 2015). One third of the new OECs in 2010 have a duration of under one year (with the highest proportion for the youngest and oldest workers).

**Table 1: Percentage of broken Open-ended contract terminated after at less than one year, by year of hiring**

		2007	2008	2009	2010
All sectors	33,6	34,0	34,3	35,4	36,1
Industry	22,6	22,6	22,6	22,1	23,3
Building	29,0	31,6	28,3	29,0	32,7
Tertiary	36,0	36,0	36,4	37,7	38,4

Scope: entries into OEC, except FTC converted to OEC; firms with one or more employees in competitive sector (except agriculture); mainland France.

The reasons are various. The commonest reason is “voluntary departure”. This is more frequent among the young, and in sectors such as the food industry, textiles, the construction industry, hotels and restaurants, services. The second reason is the end of the trial period. The “churning regime” of the new labour market is not only based on fixed-term contracts, even if voluntary departures are logically less frequent in the recent period of mass unemployment.

If we look now at entry into unemployment, it is rather difficult to know precisely what the previous situation was. In 2014, among the 6,000,000 flow of entry at the national employment agency, 24% come from a previous fixed-term contract, 5% from TAW, 11% from redundancy and other reasons for dismissal (it can be assumed that most come from OECs) and 2.6% from voluntary departures, etc. OECs are underrepresented in the flow, retaining a kind of protective form.

In the recent period, in order to increase the flexibility of the OEC, a change has been made for the reasons for quitting. In the former period, voluntary departure did not give entitlement to unemployment benefits. Dismissal (redundancy, for other reasons, etc.) was the only way for an individual (and for the firm) to end an OEC. Transactional, bilateral rupture has been added to the labour law, including a right to compensation which cannot be below the legal minimum (or the collective agreement) in case of dismissal. In that case, under conditions, it is possible to claim for unemployment benefit. This new opportunity was first introduced through national collective bargaining, then included in a law.

A recent study (Signoretto, 2015) shows the increase in this quitting process: more than 300,000 in 2013, i.e. 17% of broken OECs. While in most cases the departure is “decided” by the worker, it is ambiguous since different reasons such as bad working conditions are invoked. In many cases, economic explanations seem to be a major reason: no hiring after the firing. A look at the compensation increases the doubts. Blue collars get compensation for dismissal at the lower level. By contrast, highly skilled workers get higher compensation. The main difference is that now, most of the people under this regime (80%) receive unemployment benefits. This new flexibility opportunity (both for employers and employees) is also a kind of transfer of the burden to the unemployment agency.



**Table 2: costs of dismissal according to various types of contracts**

Type of contract		Dismissal cost		
		Unjustified dismissal		Justified dismissal
Ordinary open-ended labour contract	Employee with more than 2 years' service in a company with at least 11 employees	Unjustified dismissal Minimum last six months' wages	Irregular dismissal Maximum one month's wages	Dismissal annulled <b>At the employee's choice:</b> <b>Either</b> reemployment and damages = wages due between dismissal and reemployment – amounts received (unemployment). <b>Or</b> compensation for termination + minimum 6 months' wages (12 for redundancy, employees incurring industrial injury/occupational disease). If no more favourable collectively negotiated compensation, statutory dismissal compensation after 1 year's service with employer: 1/5 of a month's salary per year of service, plus 2/15 of a month's salary per year beyond 10 years' service. No compensation for dismissal in the case of serious misdemeanour.
	Employee with less than 2 years' service and/or in a company with less than 11 employees	Damages and interest assessed according to harm suffered.	Damages and interest assessed according to harm suffered. Exception: failure to mention in letter inviting to preliminary interview the possibility of being accompanied by an external adviser: maximum one month's salary.	
Fixed-term contract: dismissal before term		Salary due at end of contract		Nothing if serious misdemeanour by employee or termination by mutual agreement or physical incapacity of employee or <i>force majeure</i> . Exception: wages due to end of contract if <i>force majeure</i> related to a disaster.
Temp contract: dismissal before term		The temporary employment agency must offer the employee a new contract taking effect within three working days. Failing this, or if new contract shorter, salary due until end of contract.		Nothing if serious misdemeanour by employee or <i>force majeure</i> .

### **2.3.2 Wages and resources**

#### *Minimum wage*

As frequently emphasised (Caroli, Gautié, 2008), France is atypical, due to its minimum wage regulation. The level of the minimum wage is fixed at a “political” level and not by collective bargaining. The minimum wage (SMIC) applies to all kind of labour contracts, without age or regional gaps. The main exceptions are some subsidised jobs, apprenticeships (and student internships). The minimum wage is set at a relatively high level. It is at about 60% of the median full-time wage, one of the highest in OECD/EU countries. This could partly explain why the debates about “low-wage work” do not have the same intensity as in the UK or USA – but also why wage compression is so high.

From 2008 to 2015, the increase in the minimum wage was +14%, and in 2015 its level is one of the highest in EU Countries (1,458 € gross minimum wage, a bit above Germany).

To date, despite some attempts to change the rules (age rule, regional differences, etc.), there is no erosion of the SMIC.

#### *Gaps: Wages*

We must first emphasise some gaps probably due partly to discrimination. The regular rule (for all contracts including the OEC) is equal pay for equal work. This has been reinforced by recent agreements and laws, making it compulsory for firms to develop a plan for gender equality. However, women are concentrated in some low-paid occupations. Moreover, it is well known that, despite this rule, unexplained gender or other gaps remain.

Examining this question for young new entrants on the labour market, Couppié, Dupray and Moullet (2014) contrast the situation between male or female dominated occupational groups and more mixed ones. They prudently conclude that in some cases there is evidence of a residual wage gap which may indicate a gender-based discrimination.

With a similar approach, Couppié, Giret and Moullet (2010) have investigated the difference for young new entrants living in poor suburbs. The wage penalty is obvious, namely for skilled workers (for unskilled blue collars, the SMIC is the rule). However, they are also very prudent about “in-work” wage discrimination. It seems that the lower opportunities to choose the “good job” in deprived areas are one of the reasons.

More broadly (DARES 2012), for wage-earners in the private sector, in 2009 (12 million, firms >10), authors find an hourly wage penalty of 14% for women (24% if the yearly wage is considered... including the part-time effect for women). This hourly wage penalty is partly explained by women’s lower access to overtime and night bonuses. Introducing individual characteristics (age, qualification, etc.) and structural characteristics (size of the firm, sector, etc.) leaves a wage penalty of 9%.

Moving now to the gaps between atypical contracts and OECs, according to the OECD (2015), the median annual earnings for all types of atypical contracts (self-employed, temps, part-time) are about 60% of the

median for a standard worker. This wage penalty is obviously linked to the working time (higher for part-time). For wage-earners only, the hourly wage penalty is lower (about 25% for full and part-time temps and less than 10% for permanent part-timers). Can we speak of gaps? Probably yes: other things being equal (gender, skills, seniority, sector, etc.), workers under atypical contracts have a wage penalty (to be developed later). However, it seems that one of the key questions is the consequences of broken careers (the churning effect) on yearly wages and resources, leading to entry/exit to poverty.

Looking now at the overall resources of individuals (in 2010), the median is 19,270 €. 14% live below the poverty threshold. This is the case for 6.3% of wage-earners and 16.8% of the self-employed. Among the unemployed, 36% are below the threshold and 10% of retired people (Houdré et al., 2013; ONPES,2015).

### **2.3.3. Training**

Training is somewhat ambiguous. On the one hand, the general training levy, as well as the new “personal portable training portfolio”, applies to all types of firms and all categories of workers, whatever the labour contract (with some differences according to the size of the firm, sectoral agreements, etc.). On the other hand, a part of the (public) training funds for the unemployed are included in the “social protection” national accounts.

For wage-earners in the private sector, and despite the training levy and the obligation for the employer to update skills, inequalities of access are well known and a recurrent topic of debate (CÉREQ, 2014). The higher the qualification and job position, the greater the access to training. It crosses sectoral and size effects. In the private sector (>10), the yearly average of training is 17h (13h for blue collars). It is eight hours for fixed-term contracts and six hours for part-timers.

### **2.3.4 Low-wage Work and Poverty**

France was (Caroli, Gautié 2008) and still is a country with a low incidence of low-wage work. This is mainly due to the high level of the minimum wage and the strong wage compression at the bottom of the distribution: the low-wage threshold is close to the minimum wage. Françon and Marx (2015) underline that it is only ISCO 93, 91 and 51 that significantly deviate from the national incidence. Obviously, one cannot exclude the possibility that some illegal practices partly change the figure: wages paid in cash, without following the minimum wage (see the case of posted workers), unpaid overtime, etc. Here too, enforcement gaps are probably one of the key questions.

Turning now to poverty (which is a broader issue and cannot be solely linked to the in-work or social protection gaps), it must first be emphasised that at the threshold of 60% (1,000 € in 2013), the rate of poverty among the whole population is 14% in 2013 (13% in 2008, fairly stable since 2010). This rate is 6.3% among wage-earners, 37.3% among the unemployed and 7.9% among the retired (Boiron et al., 2015). What is sometimes called the French age divide is obvious on this question: the poverty rate ranges from 18.6% (age 18-29) to 9.5% (50 and over).

## **2.4 Representation gaps**

### **2.4.1 Overview**

France is well known for its low level of unionisation, which continues its long-term decline (now about 8%). However, it is also among the countries with the highest coverage by collective agreements, estimated to be more than 90% of the workforce (Trésor Eco, 2014). There is also a paradox: the unions are weak, but union representatives are widespread in firms.

The standard situation applying to all kinds of contracts (with specific rules for civil servants and for some kinds of contracts) is the right to belong to a union, to vote in all workplace, to elect and be a workers' delegate (under age and seniority conditions).

Various levels and forms of representation coexist, which are impossible to describe here (see Favennec-Héry, 2009). Let us just say briefly that:

- Three main levels (national, sectoral and firm) of representation and bargaining coexist. The high level of coverage by collective agreement is mainly due to the process of compulsory extension (by the state) of sectoral collective agreements to all the firms belonging to the sector. However, collective bargaining agreements are sometimes only the minimum floor established by law, or updated by legal provisions (ex: SMIC).
- Within the firms (and depending on the size), workers' representatives can be designated by the unions, with the right to bargain, elected by the workers as representatives of the individuals, elected and/or designated within the two main councils: the Works Council (CE) and the Health and Safety Committee).

The workers' delegates benefit from non-worked paid hours for their activity and are protected from dismissal.

The general principle for the collective agreement was a hierarchical embedded system, without opting out clause: firm and sectoral collective agreements must improve situations. However, since a 2004 law, it has been possible for a collective agreement at the firm level to introduce less favourable clauses if it is not excluded by the agreements at superior levels.

### **2.4.2 Gaps**

The two main gaps are the size of the firm and the sector.

**Table 3: Percentage of firms with workers' delegates** (Firms >11 employees in the private sector)

	Size		
	11 to 19	20 to 49	> 50
<b>Only elected</b>	27%	45%	34%
<b>Elected + union-designated delegates</b>	9%	20%	59%
<b>No delegates</b>	63%	35%	6%

Sources: DARES Enquête Réponse 2010-2011: volet "représentants de la direction"

For institutional reasons (lower legal obligations), small firms have a lower level of delegates and councils (CE). This gap has been partly reduced by the possibilities for (external) unions to send a representative and discuss some topics (introduced and used at the period of the discussion on the 35-hour week) and recently extended (Law no. 2015-994, 17 August 2015, art. 21). The size effect is not the only one. The construction industry, retail and hotel/restaurant sectors show a lower level of worker representation. As seen below, the two service sectors also make extensive use of part-time and fixed-term contracts.

From 2005 to 2011, there was a slight downward trend, partly due to a lower rate of presence of the CE and to the economic structural changes.

Two main institutional changes must also be highlighted. French unions are numerous and competing, with general unions and some only for some categories of workers. Since 2008, new rules for designating representative unions have been implemented. As a consequence, some small unions will not be allowed to sit at the table and sign agreements. Included in these new rules are the conditions by which an agreement can be made (not based solely on a minority of unions). The consequences are unclear at the time of this report. Another change was the opt-out option, on some topics (wages and working time – but not the minimum wage...) at the firm level, subject to the agreement of a majority of the unions. Will it be a significant trend? Here also, it is too early to answer. However, some recent cases in big firms of bargaining more flexible wages and working time against employment stability seem to be changing the landscape.

## **2.5 Enforcement**

### **2.5.1 Labour law in turmoil**

As previously mentioned, the labour law is the general base for all types of contracts; and it is within this labour law that exceptions are allowed (for example for posted workers). Labour law does not explicitly apply to civil servants even if most of its rules are followed.

However, in recent years, many debates about the complexity and rigidity of the labour law have opened up. One book (Badinter, Lyon Caen, 2015) calls for a new foundation. Two reports from think-tanks, one liberal, one more left-leaning, have been published. They both suggest opening up more space for collective bargaining. An official report commissioned by the government (Combrexelles, 2015) also

follows the line of collective bargaining at all levels, including exit options at the firm level. At the time of this report, a reform of the labour law has been announced by the Prime Minister for 2016.

### **2.5.2 Labour Inspectorate**

The Labour Inspectorate is under the authority of the Ministry of Labour. Labour inspectors are civil servants, usually working in local units. Since 2009 and to the present time, administrative and organisational changes have significantly modified the landscape, sometimes with severe conflicts with Labour Inspectorate representatives.

- All labour inspectors have been integrated into a “generalist” organisation, for all activity sectors (with some exceptions, and excluding the public – civil service – sector).
- Due to the global decentralisation process and the reorganisation of the state with regional authorities, the regional head of labour inspectorate has changed.
- More recently, a plan aims to integrate the sub-inspectors (with a lower level of competencies and power restricted to firms with < 50 employees) into the group of inspectors (which could be an upgrading process).

A new local organisation of the units is also planned, with sometimes more specialised units according to the sector and/or topic (irregular work at the regional level as an example).

The French labour inspectorate is a generalist one: checks can cover health and safety, employment, wages, restructuring measures, etc. Among our countries under review, it shares this generalist competence only with Spain, and sharply contrasts with the UK or Germany (EPSU, 2012).

Despite the crisis and the budget pressure on civil servants, the total number of labour inspectors and sub-inspectors is rather stable after a significant increase between 2005 and 2009 (2,236 in 2012). According to the ILO threshold of one per 10,000 workers, France is now under this threshold with roughly one per 8,500. Each year 160,000 checks are performed. On average, eight offences are counted at each inspection, from very minor ones (no compliance with some obligation to inform about the working time rules) to major ones. 72% are in the field of health and safety. Most of these checks lead only to remarks and requests for compliance (Ministère du Travail, 2013).

**Table 4: Labour inspectorate**

<b>2013</b>	
Number of firms subject to checks (in millions)	1.80
Number of labour inspectorate sections	790
Number of establishments per section	2,278
Number of inspectors responsible for checking firms	2,101
Ratio: number of employees per inspector	8,710
Interventions	294,000 of which 87% are followed up (and of these 78% lead to observation of an offence)

*Source of data: L'inspection du travail en France en 2013, Ministère du travail, de l'emploi, de la formation professionnelle et du dialogue social, 2014.*

However, according to the Ministry of Labour (and the unions), the labour inspectorate is still in difficulties, with more complex tasks and a higher degree of opposition from employers. In 2004, a labour inspector was murdered, and the number of assaults is increasing.

But key questions arise from the changing economic and labour market environment.

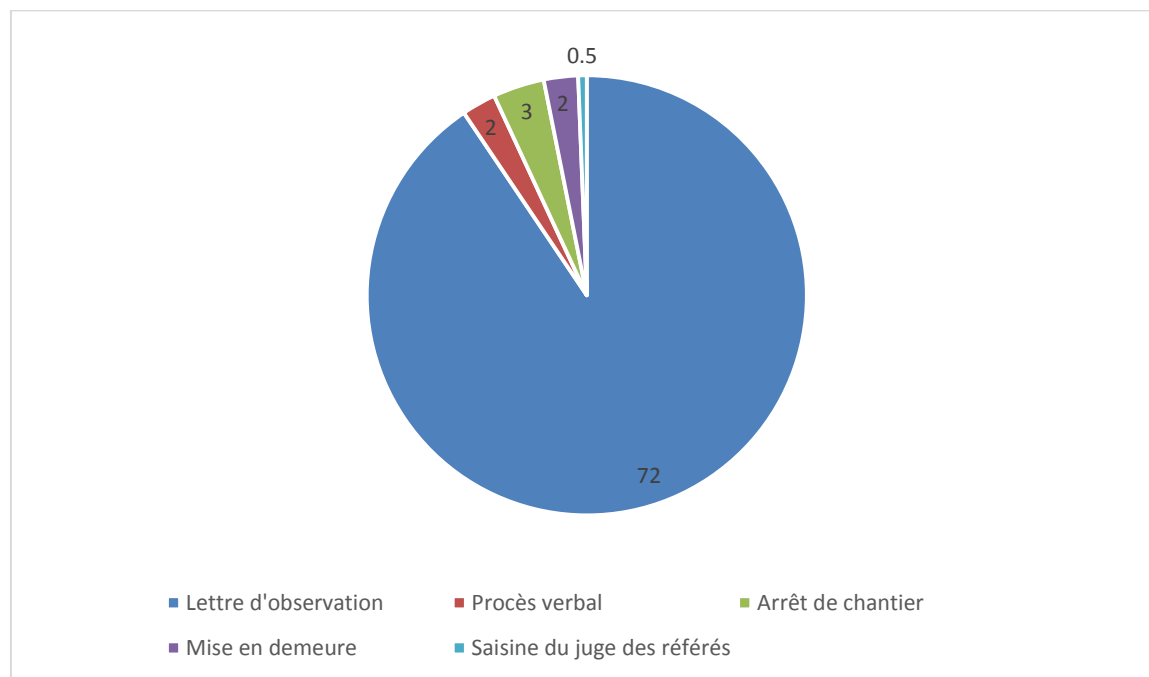
In big firms, along the supply chain, for posted workers, it is increasingly difficult to identify who is the employer, who is responsible for working conditions, health and safety, etc.

Very short-term contracts are increasing and a snap check cannot be effective for this kind of contracts.

And last but not least, the weak rate of unionisation, and the French tradition of state-led policies sometimes make it difficult to have a more “bottom-up” process in the checking policy.

A new law (August 2015) announced further measures (in 2016) to facilitate the work of the labour inspectorate.

**Figure 4: Follow-up of inspections giving rise to observation of offences**



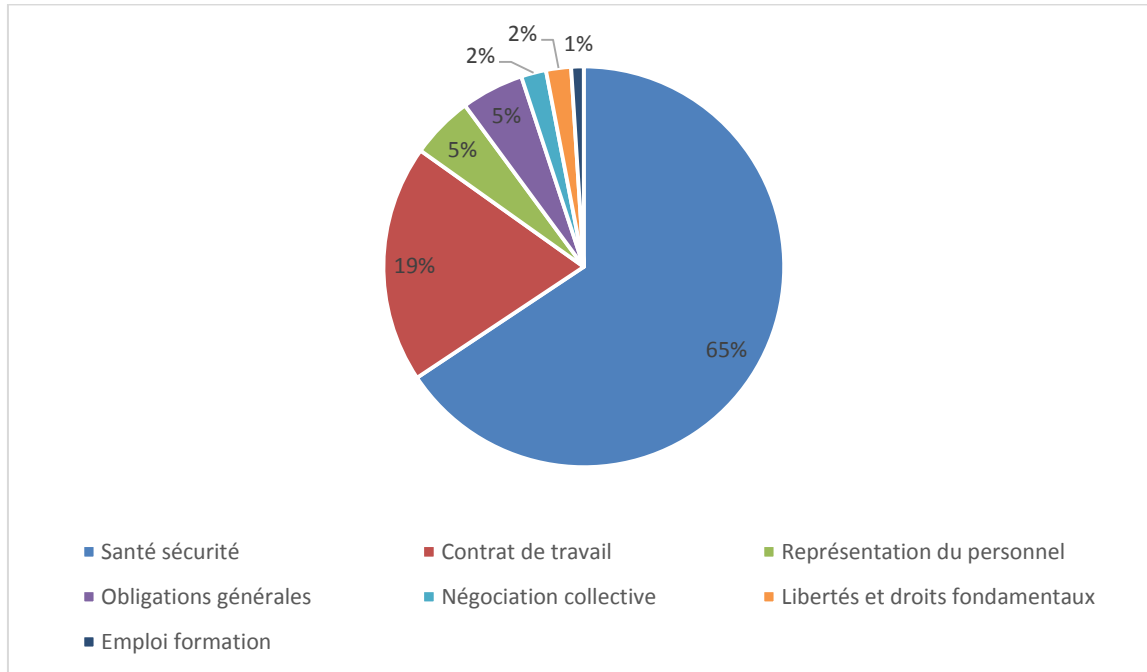
Source of data: L’inspection du travail en France en 2013, *Ministère du travail, de l’emploi, de la formation professionnelle et du dialogue social, 2014.*

(Letter Warning      Report      Referral to judge in chambers)      Site closed

According to the report of the Ministry of Labour on the activity of the labour inspectorate in France in 2013, “the distribution of reports made by theme [...] has been relatively over a long period. The sub-theme of prevention of illegal work is in the forefront, accounting for 30% of procedures. Overall, almost

a third of all reports concern health and safety breaches [ ...:] under the theme “employment contract” [...] breaches of length of working time are the ones most often identified.”

**Figure 5: Theme of inspections**



Health & safety  
General obligations  
Training

Employment contract  
Collective bargaining

Staff representation  
Fundamental rights and freedoms

*Source of data: L’inspection du travail en France en 2013, Ministère du travail, de l’emploi, de la formation professionnelle et du dialogue social, 2014.*

*NB: Inspection of part-time work, FTCs and agency work comes under the category “Contract of employment” (Duration of work: 40% of which 10% for part-time; FTC and TAW: 7%).*

According to the report of the Ministry of Labour on the activity of the labour inspectorate in France in 2013, there are two national priorities: protection of health and safety and the fight against illegal work (including transnational supply of services).

In addition, implementing Law no. 2015-994 of 17 August on social dialogue and employment will be another national priority in 2016. Supporting social dialogue had not been a priority for a long time.

Regarding FTCs and TAW, the Labour Inspectorate seems to have taken note of the fact that these forms of employment are no longer the exception when it comes to hiring. The report quotes an INSEE study: “... in the space of thirty years, in the private sector, mobility has increased by 25%, the proportion of special forms of employment by 150% and staff turnover by more than 350%. This trend [...] evidences a shortening of some hirings, especially temp assignments and FTCs, and a profound change in the way they are used by companies.” (Picard, 2014).



### **2.5.3 Labour tribunal**

The *Conseil des Prud'hommes* is the competent tribunal for individual disputes arising from the work relationship between employers and employees under private law (conflicts involving collective interests go to the *Tribunal de grande instance*). It is competent to adjudicate on the validity of an employment, before its implementation, during it (wages, bonuses, leave, training, etc.) and its termination (dismissal, compensation, notice, etc.). There are two ways of settling conflicts: conciliation (the first obligatory stage in settling conflicts and finding an agreement between the two parties) and adjudication (when conciliation has failed, the verdicts office pronounces on the dispute). Access to the tribunal is free of charge in France. Only lawyers' fees are payable (legal aid is available for low incomes) but it is not obligatory to use one: the employee may either represent himself or be represented by a trade union delegate.

The *Conseil des Prud'hommes* is made up of an equal number of employees and employers in the five (industry, commerce, agriculture, miscellaneous activities and supervision) who must work or have worked in these sectors. These tribunals are one of the few French judicial institutions whose judges are directly elected. They are non-professional judges, elected every five years by employees, jobseekers and employers. On being elected, they may receive training in labour law and the procedure of the tribunal, but this is not obligatory, even if the employees are often trained by their unions (this will become obligatory under the Macron law).

Some 200,000 employees appeal each year to the 210 tribunals of their territory. For a long time the tribunals have been subject to strong criticism and accusations, but these have recently intensified (Lacabarats, 2014). While the most widespread criticism is that the tribunals always take the side of the employees because the members are "biased" (ibid., p. 19), the current problems are of several types: the procedures take much longer than those of other courts (an average of over 15 months in 2012), as a result of which France has been accused of "denial of justice"; the rate of appeals is too high (62% in 2012); and the obligatory first stage of conciliation, the primary task of the tribunals, is too often ineffective (succeeding in only 5.5% of cases in 2013), etc (La letter Tresor Eco, 2014). Finally, 20% of cases have to be referred to a professional judge for arbitration when the members of the tribunal cannot agree.

It is often thought and written that unions and employees are increasingly resorting to tribunals to contest many decisions, including those of company managements, so that there is a growing judicialisation of conflicts. However, a growing number of researchers, including Jérôme Pélisse (2009), have demonstrated that this is not the case (Pelisse, 2009). In 2013, fewer than 30% of individual collective gave rise to disputes, even if this figure should be taken with precaution since there is no comprehensive statistical source enabling one to quantify the total number of dismissals and their follow-ups (Severin, Valentin, 2009).

The important point to note is that tendentially the number of cases brought before the *Conseils des Prud'hommes* has steadily declined over the last fifteen years. However, this does not mean that there is less conflict, rather that its forms are changing (Pélisse, 2009). Strikes are no longer a meaningful

indicator of the level of conflict (Bérout et al., 2008), although these conclusions should be nuanced according to the types of sector of activity and the types of firm, in which different forms of conflict are found. For example, recourse to the Prud'hommes is lower in large firms where the unions are present and more frequent in small firms.

#### **2.5.4 Gaps**

The labour inspectorate has a general competency whatever are the firm and/or the labour contract. It makes its own decisions as to where to inspect as well as being alerted by individuals and unions. Due to the size of the inspectorate's staff and its wide competencies, it is obvious that systematic checks on all firms are not possible. Again, one of the main gaps is between big and small firms (where checks are less frequent). Despite some efforts, checks on firms using posting workers are also more difficult. Another of the key questions is illegal work (Dingeon, 2014). The Ministry of Labour has launched campaigns against it (Guichaouoa, 2014). Some reforms also have the same goal, through exemption from social contributions on employers (for example in the field of home service work for individuals who belong mainly to the field of OECs, with a predominance of women working part-time).

## **2.6 Social protection**

### **2.6.1. General overview**

In the classical view of Esping Anderson (1990), the French social protection model is sometime said to be close to the Bismarkian model. This has been highly criticised (Friot, 1998). Keeping in mind this debate we highlight some key points of this model.

- First, it is based on social contributions, both by employers and workers in a pay-as-you-go system;
- Secondly, it involves employers and unions, often at an intersectoral (national) level (in that sense, it is not a corporatist model) in the definition of contributions and rights, through bipartite bodies;
- Thirdly, it is (was?) a kind of universal model: rights are open to everybody, even non-working people through some family-based extensions;
- Fourthly, the state is involved as a kind of supervisor of the system.

So most basic social protection is based on this model and covers all types of work contracts, partly including independent work (with the exception of posted workers).

It includes social security (mainly illness and accidents at work), housing facilities and family benefits.

Attempts to move to a "capital-based" system (such as pension funds) have so far failed. However, through *interéssement* and the right to stock options, a slight move in that direction has been made.

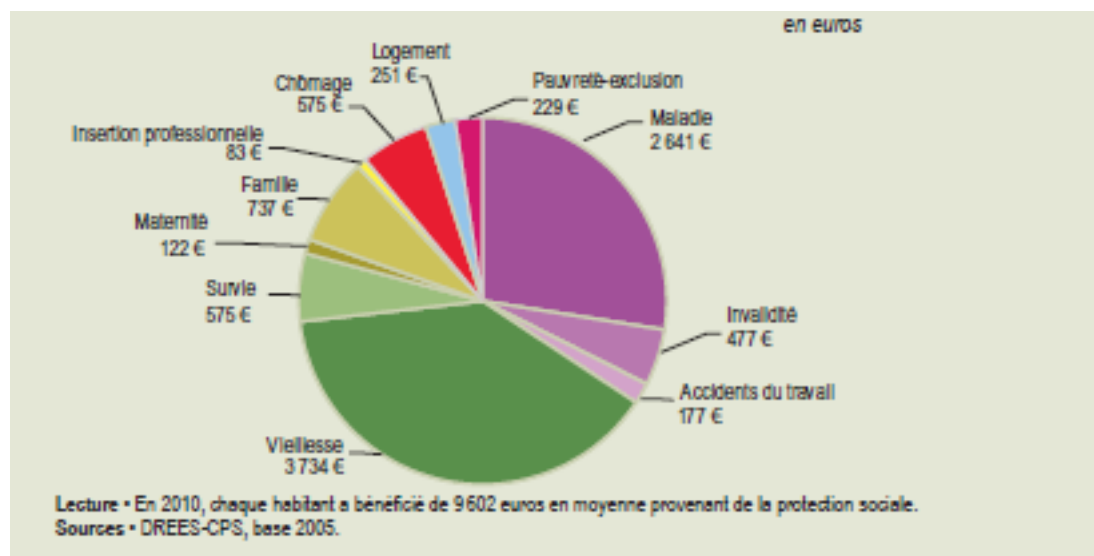
In the more recent period, the system has been strained through the costs for firms, the more complex mobility of workers, and the changes in family structures.

So, some changes have been made to introduce “universal rights” (state-based minimum guarantee on family resources, universal guarantee for social security – illness rights – the difficult merging of the national employment agency and the bipartite agency governing unemployment benefits, etc.). In order to reduce social contributions in a “free world of competitive markets”, most social contributions on the minimum wage (and over) have been diminished and now borne by the state and other fiscal resources. But, at the same time, public deficits are being called into question.

In 2012, expenditure on social protection amounted to 32.1%, of GDP, close to Denmark. 41.7% of this came from the social contributions of employers, 20.1% from individuals and 38.1% from the state (including tax regimes directly assigned to social protection – CSG). (Eurostat-Sespross). While the proportion directly financed by the state budget has been quite stable since 2006, new resources through specific taxes on individuals (with an enlarged base, including resources from capital) have been introduced. They now contribute about 25% of the total social protection budget.

In 2010, per capita expenditure was 9,602 €. Health (34%) and pensions (45%) are the core of the social transfers (DREES, 2013).

**Figure 6: Resources available per capita from social protection**



### 2.6.2. Gaps

At this stage, we can only distinguish different kinds of gaps, according to individuals’ status.

#### *Exclusion from the working population*

Some populations are partly or totally excluded from the basic regime of social protection as they are (were) not on the labour market and do not contribute through social contributions. This is the case for young new entrants without previous work activity during their studies, for inactive single parents with children, for migrant newcomers in France, illegal workers, etc. In most cases, the trend has been to introduce new “universal rights”, based on the state and tax contributions. This is the case, for example in the field of health benefits, through the Universal Medical Guarantee (CMU), providing in theory free

access to medical care. However, this system sometimes has holes in its guarantees (people not claiming or not granted their rights) as well as for example cases of doctors refusing patients belonging to this regime. One can say the same of the minimum resources guarantee (RSA, recently extended to the young below 25), which is included both in the tools to fight poverty and in the active labour market policies.

#### *Different rights according to the contract and labour market status*

Some parts of working populations have lower rights and benefits than others. They (and employers) contribute, but, due to their working time and/or contracts, they cannot claim the full benefits. This is the case for unemployment benefits (based on previous wages and working periods, for example for part-time workers). Many of the young unemployed are also excluded from unemployment benefits as they either do not work or for too short spells. This is also the case for part-timers reaching the age of retirement. The more the career is “broken”, the lower the benefits will be. If they fall below the minimum resource threshold, they will be eligible for various minimum threshold state base benefits.

#### *Gaps linked to occupational position and/or firm size and the collective bargaining arrangements*

This concerns all statuses, including the COE and nonstandard contracts.

A large proportion of complementary social protection is granted on the basis of specific contributions defined at the sectoral or firm level. They include the special health leave regime (waiting period or not, duration, etc.), complementary benefits (on spectacles, etc.), more benefits for specific regimes (managerial positions). One can say, briefly, that:

The lower a person is in the job hierarchy (and in the labour contract), the lower they will be in relation to these additional benefits.

This again often crosscuts the size of the firm and the sector. For the same open-ended contract, benefits will be lower in small firms, and in sectors with low wages/low level of bargaining, benefits will be lower.

#### *Unemployment benefit and work*

Unemployed persons registered by Pôle Emploi (the employment agency) are classified in several categories (to be precise, eight) and there are many discussions about this, but we can condense them here into two types: those who work and those who do not work. So the definition is different from that of the ILO (where a jobseeker does not work). In France, an unemployed person registered by Pôle Emploi can work (without limit on the number of hours) and seek a job while being registered as unemployed (if he seeks a job, even if he works regularly).

More and more people are in this particular situation. In 2014, one in three worked while they were registered as unemployed persons.

The unemployment benefit system has included and recognised this possibility: each month, each jobseeker must report their number of hours worked (and send their pay slips to Pôle Emploi) and there

is an automatic calculation of their unemployment benefit (which can be zero if they have earned more than a specific scale, the maximum of the unemployment benefit if they have not worked, or only a complement). They can also receive unemployment benefit and salary in the same month without restriction of hours (unlike before 2014 where a maximum of 110 hours was allowed). So, even if they have worked a lot and earned a lot, although they do not receive unemployment benefit but continue to be registered by Pôle Emploi and to benefit from its services.

The main objective of this scheme is to allow jobseekers to stay in the labour market to avoid long-term unemployment.

25% of jobseekers who work have temp agency contracts and 44% of them have fixed-term contracts.

But there are many gaps for this population because:

- 1 - Whatever the nature of the contract of employment, jobseekers who work are more often part-time than others
- 2 – They have shorter fixed-term contracts than the others (17.9% for less than a month as against 7.9% for employed not registered with Pôle Emploi)
- 3 – Finally, they earn monthly less than other employees (55% earn less than 1,000 € compared to 25% for employed people not registered with Pôle Emploi).

And at present there are no statistical data on the quality of the employment that jobseekers take. So there are many questions about these workers. Is this possibility of working while seeking a job a stepping stone to finding a good job or precarity trap for them? Not to mention the question of the possible opportunity for the employer to offer a low wage because it can be made up by unemployment benefit, or to offer a shorter contract more easily.

### *Reform of retirement pensions*

The statutory retirement age is raised from 60 to 62 years, depending on the year of birth.

The minimum age for receiving a full retirement pension, whatever the number of years of contributions, is raised from 65 to 67, depending on the year of birth.

The length of contributions giving entitlement to a full pension is raised from 167 quarters (for those born in 1958) to 172 quarters (for those born in 1973).

Average annual salary is calculated as the average of the salaries giving rise to contributions in the 25 most advantageous years of the career.

A measure in favour of women: all quarters of maternity leave are taken into account (decree of 1 June 2014).

A measure in favour of parents: four quarters added for bringing up children, limited to eight quarters per child (including quarters of maternity leave). For children born from 2010, these quarters can be

shared by agreement between the parents.

A measure in favour of part-time employees: they previously had to earn the equivalent of 200 times the hourly SMIC to validate a quarter; they now have to have earned the equivalent of 150 times the hourly SMIC.

Creation of a personal account for prevention of arduous work [*compte pénibilité*].

### *Trends in social protection*

Increasing overall poverty within the active population was an incontestable fact.

However, it is difficult to speak, in the French case, of a global deregulation in the field of social protection. There seems to be more a slow shift from the contribution-based model to another one.

Indices of these shifts:

- The growing proportion of the resources of social protection in the tax regime (general and earmarked contributions)
- The new universal rights such as the CMU and RSA, without (or with partial) links with job position
- The new and general obligation on all firms to provide a complementary health social insurance (law in 2013, compulsory in 2016). This obligation will probably reduce the gap between big and small firms, even if the benefits will be different.

Other shifts stemming from national bargaining are on other bases. As stated previously, careers are less continuous (COE, 2014). Moving from one status to another is (and will be?) more frequent. A new approach to social protection, partly inspired by the “transitional labour market” school (Schmidt, Gazier, 2002) has been emerging. On different bases, French unions are speaking of “*sécurisation des parcours*” and “*sécurité sociale professionnelle*”. One of the key questions is to disentangle the links between a social protection based on the stable OEC and the more complex mobility on the labour market.

## **Box 1: New rights, a new conception of social protection**

### **National Union A**

New rights have been created and others have been modified to respond to the shortening of contracts. After that, you can still ask whether that structures some sectors, but, all the same, when, recently, rechargeable rights were created, the idea was all the same to give a person financial security in the period before returning to work, using extremely clear language: returning to work will mean losing your rights, on the contrary, you will accumulate them. For us, in terms of preventing long-term unemployment, which is now increasing enormously with the crisis, we think that any spell of employment tends to favour a more lasting return to work, but it can also give more security to transitions. You can have strategies for combining rights, taking account of short periods of work that make it possible to accumulate rights and then, after a longer training... rather than simply accumulating scraps of contract, a bit of unemployment benefit, then some more bits of contract work...

So, in fact we were thinking about you could more universal rights and more contribution-based rights, so as to identify the acceptability of obligatory deductions, obligatory contributions... In fact a parallel is constantly drawn, where we are now, ..., who do these rights concerned and what is the coherence of these rights with contributing or with universality. Why? Because behind it is the question of solidarity. But also so as not to get drawn into the argument about competitiveness: "we have to reform the financing of social protection, we'll reduce the contributions on low wages"... Anything goes when it comes to gaining margins in terms of financing social protection, for questions of competitiveness, but for us, that's not the subject! Competitiveness depends on increasing skills, long-term investment, R&D, moving up-market....

### **National Union B**

How do we make their pathway secure, and what enables them to bounce back? What tools create the security that allows that? Typically, the model of an effective flexsecurity. We can't change the world as it is, there is going to be precarity, but we have to try to make people more secure. I tended to agree with that model, except that the problem of making pathways secure is a dynamic logic, I have to start from point A... The problem is that people aren't too sure about where point B is, they can't reach it, right now. There you are. It's necessarily a dynamic tool: I make pathways secure, so I'm going somewhere. The problem we face now is, as we were saying at the beginning, is that the great models of transition are from employment to non-employment, or from employment to precarity. That's the way occupational transitions go now, in France. So we are not doing well on that... It doesn't make any sense unless there is convertibility of rights. What does that system amount to, in broad terms? You have someone who is a jobseeker, who has his time account. What opportunity does he have to use his time account? Or his training account. The "arduous work account" [*compte pénibilité*] is rather like that, all the same. There's already a first form of convertibility... you can use some of your rights for training.... I think it's a tool that helps in the fight against precarity. Because it will give security to people who can use rights that aren't linked to training, saying, for example, I need to get my licence in order to get such-and-such a job. But we are on the defensive, on matters like that....

### **National Employers' organisation**

What is the rechargeable rights mechanism?... Perhaps you know, you can see what it is.... It's something that we supported. It's a joint initiative that we back completely.... The idea is clearly to give greater security to people who move from one short contract to another, with the – potentially perverse – effect that the minimum length of work for recharging is set at 150. To open the account, you need 610, but to recharge, you only need 150, and you wait for the evaluation... but it's possible that there can be a perverse effect which is that people, with the more or less deliberate complicity of the employer, can settle into work cycles of 150 hours. But we are still up against the same problem, which is the limitation of fighting precarity other than through an economic policy that would generate full employment, and which is that, when you give security and support, through new rights, to employees who employees who are regularly on short contracts, at a given moment, you lock them into it...

Here again, there are many indices of these shifts, often introduced by national collective bargaining (under state pressure) and later translated into labour law.

- In the field of training rights (which is not included above as a component of social protection), a new individual portable right has been introduced: each worker (and or unemployed person) gets an individual portfolio of rights (from public funds and/or from the firm-based training levy). This portable portfolio can be transferred and activated in some transitions on the labour market (from employment to unemployment, between two employers, etc.);
- Health rights (on a firm-based complementary system) are partly maintained during an unemployment period;
- Unemployment benefits are now “rechargeable”. Leaving unemployment for a job (even for a short period and/or a part-time one) does not cancel a person’s previous rights (based on the previous wage and tenure). New working and contributing spells are added to the previous rights. This was the result of a national collective agreement in 2014.

## **Conclusion**

We will see in the next sections what are the specificities of some “atypical” labour contracts. There are indisputable indices of the erosion of the standard employment relationship when we grasp it through the kind of contract, and/or through the spectacles of poverty. However, it can hardly be said that the French model is vanishing. While indices of market-based deregulation are numerous, other trends are at work. Three main questions for our further analyses are:

- What is the weakest part of the labour force cumulating precarious indicators (that is, crosscutting the labour contract situation)?
- What are the institutional dynamics, again possibly crosscutting the labour market situation and implying new actors in the social dialogue?
- How to speak with new concepts and new statistical tools about the margins of the wage-employment nexus, and are these frontiers the new world of work?

And, as shown in the following box, the social partners do not necessarily share a common view on the key issue of precarity.



## **Box 2: What is precarity? What about labour contracts?**

### **National Union A**

...In the transformations of the labour market, you can see an explosion of short contracts. We look at the question much less in terms of the employment contract than in terms of the problem of polarisation of qualifications between very highly skilled and low-skilled, with a tendency towards the erosion of intermediate skilled employment... In any case, the segmentation of the labour market is much more problematic, much more marked by the polarisation of skills than by the nature of the employment contract.... Of course we need to give security to all these periods of activity and non-activity in the course of a working life. But you really can't reduce it to an OEC entailing a certain number of classic social rights.... When we talk about quality employment, we are talking as much about working conditions as working time or enhanced skills.... You can have an OEC of two hours a day, or four hours a week, but in completely infernal working conditions, or combine two OECs with three hours' travel between them.... And yet there is still an OEC. So quality employment doesn't at all just mean a full-time OEC, it's more complicated than that.

### **National Union B**

I think precarity has many dimensions. It concerns the forms of employment, that's to say that what you see in France is that for a given volume of employment, there's a growth of fixed-term contracts, jobs where you have perhaps a limited chance of staying on... where there is no stability. There's been an increase in that type of contract. But if you look at stability in employment, in France, it hasn't changed that much, in fact.... We are always being told that, in France, in this new world, people will change their jobs four or five times in their lifetime, but it isn't as marked as that. After that, it's the conditions and the way people change their jobs.... What we have seen in the last 25 or 30 years, accentuated by the crisis, is that there are shifts away from standard employment, occupational transitions, that are moving towards forms of precarity, non-employment, or non-permanent jobs of the FTC type, and so, modifications of the legal status of employment, the contract, the OEC, to other forms of contract, You could also mention contracts that are grey areas of the type freelancer, auto-entrepreneurship, which, for us, are forms of precarity...

### **National Employers' organisation**

As regards precarity, I think we are closer to the Spanish than the Danes, because in France, 93% of employees are covered by a collective agreement... so that is how we are going to deal with it.... More perhaps with FTCs, in the end, short contracts, so FTCs, TAW and also part-time.... FTCs make up almost 90% of hirings now, as regards flow, not stock; in stock, it is still 10%.... So when you look at it as a film, it remains very large, but as a photo, all the same, the FTC remains an exception. But it is focused on a particular population, because 49% of FTCs are signed by young people aged under 30, so you can see that this concentration on young people means that that represents the precarisation of the labour market, French style. So, for us, precarious work means the concentration on certain FTCs, and especially the short ones, under six months, which have exploded in recent years. Then there is part-time, which is more complicated, because, according to surveys, 70% of part-time employees say they have chosen it, so it's complicated to call describe precarious work as a choice. The fact remains that there are still the other 30%, and among those 30% there is an overwhelming majority of women.... So, as regards precarity, I would say we are closer to Spanish approaches concentrated on short contracts. Because, despite all that has been done in the last few years, that has effects on access to rights, cover in time of absence of work, etc.

## 3. Fixed-term contracts and temporary agency work

### 3.1. General overview

While standard employment remains dominant in stocks, special forms of employment status remain important in flows (entry as well as exit levels remain high) (Kornig and Michon, 2010). So, although levels of precarious work do not show significant changes since the 2000s, other indicators, such as the proportion of fixed-term contracts (FTCs) in entries or job turnover, are characterised by significant increases. In point of fact, indicators based on flows reflect a shortening of the duration of certain job spells, especially for jobs offered by temporary employment agencies and for FTCs (the European data do not separate TAW and fixed-term contract, the French data do). This shows a substantial change in the use of these forms of employment by enterprises: temporary contracts are less a means to transit to permanent employment and the workers concerned by these contracts are increasingly likely to remain on temporary contracts, leading to recurrent situations. Thus, worker flows are progressively concentrated on certain jobs, especially those for which successive short-term contracts for the same person are allowed by the labour law (Picart, 2014:3).

*NB: When we speak of fixed-term contracts, we have to highlight the fact that in France there are many types of FTCs, which all correspond to the demand of employers, like FTCs “for use” only for some business sectors, FTCs for temporary increases in activity, FTCs for substitution employee, FTCs for seasonal employment, etc.*

Behind the stabilisation of special forms of employment status as a whole, there are differences concerning the various types of employment relationships. The proportion of FTCS has slightly decreased (9.6% in 2012 as a proportion of total employment, 64% as a proportion of all special forms of employment status), while temporary work and apprenticeship have increased over time (2.2% and 1.7% respectively as a proportion of total dependent employment in 2012, and 16% and 13% respectively as a proportion of all special forms of employment status). As for subsidised employment, its incidence has tended to decrease over time (1% of total employment, and 7% as a proportion of all special forms of employment status).

**FTC / TAW:** The rules are the same for FTCs and temporary employment contracts. The differences in rules concern different types of recourse

**Table 5: Main rules the various labour contracts**

	Maximum duration	Maximum renewal	Limits to successive contracts on same post with same worker or with another worker	Compensation at the end of contract (compensation for precarity)	
Temporary increase in activity (forbidden for particularly dangerous work and, with exceptions, in the 6 months following redundancy)	18 months Exceptions: 9 months for urgent safety work; 24 months for work abroad	2 (since 2015)	Waiting period: 1/3 of length of contract if contract ≥ 14 days; ½ of length of contract if contract < 14 days Exceptions: no waiting period for urgent work, or if employee has terminated his FTC or declines to renew his contract	10% of total gross remuneration paid to employee (6% if a collective agreement provides for vocational training measures for precarious employees). Except when: - contract with young person in holiday period - employee declines an OEC - early termination of contract by employee or because serious misdemeanour or in cases of <i>force majeure</i> .	
Stand-in for absent employee (forbidden to replace an employee on strike and, for TAW, to replace an occupational physician)	No maximum (but general ban on long-term cover for permanent post in firm). Exception: 9 months when waiting for employee recruited on OEC for the post.	2 (since 2015)	No limit	10% of total gross remuneration paid to employee (6% if a collective agreement provides for vocational training measures for precarious employees). Except when: - contract with young person in holiday period - employee declines an OEC - early termination of contract by employee or because serious misdemeanour or in cases of <i>force majeure</i> .	
Usage	No maximum (but general ban on long-term cover for permanent post in firm).	2 (since 2015)	No limit	No compensation	
Seasonal	No legal maximum but for duration of season. For the administration, maximum 8 months	2 (since 2015)	No limit	No compensation	
Other FTCs:	Contract for specified purpose (engineers and managers, if an agreement provides for this)	18 to months	No renewal	No limit set by law but certainly by the agreement authorising this recourse.	10% of total gross remuneration paid to employee (6% if a collective agreement provides for vocational training measures for precarious employees). Except when: - contract with young person in holiday period - employee declines an OEC - early termination of contract by employee or because serious misdemeanour or in cases of <i>force majeure</i> .
	Contracts subsidised under employment policy	Depends on contract	Depends on contract	No limit	No compensation

It is interesting to note that while the overall proportion of fixed-terms contracts has declined, the recurrence of FTCs has considerably increased over time. In 2010, 86% of workers hired on a fixed contract were concerned by recurrence, as against 30% in the early 1980s. Moreover, recurrence has become almost a stepping stone into open-ended contracts: the rate of transition from fixed-term to open-ended without recurrence declined from 60% in 1982 to 25% in 2011. Another aspect to be underlined is to the intensification of recurrence: between 2000 and 2010, the proportion of those who were hired on a recurrent basis in the same company at least twice times in a period increased by more than 20 percentage points, from 17% to 38% (Picart, 2014).

Although planned recruitments for standard employment, FTCs for more than 6 months and TAW for more than 6 months increased between 2014 (45.9%) and 2015 (57.9%), the 2015 study of the labour needs of business by Pôle Emploi (*Enquête sur les besoins de main d'oeuvre*) shows that employers planned to hire 35% in standard employment (OEC), 22.7% on FTCs and 42.1% in temporary employment (Pôle Emploi, 2015).

FTCs, and even more so temporary work, are particularly sensitive to the economic fluctuations of the market. In fact, in times of economic crisis, precarious employment first decreases: temporary employment and FTCs are not renewed and they turn into unemployment. It is only when employment is scarce structurally that precarity starts growing (Conseil d'orientation pour l'emploi, 2014). Hence, during the recent economic crisis, the number of workers concerned by temporary work decreased by almost 35%, and in 2012 it was still 25% below the pre-crisis level. As for FTCs, the decrease in the number of workers concerned was about 10%, and the pre-crisis level was already re-established in 2012.

All these elements are particularly interesting since labour market economists have highlighted the existence of either a myriad of statuses, or at least the emergence of differentiated uses of flexibility and atypical employment contracts according to the workforce groups. Indeed, the focus of economic research has shifted over the last twenty years from a perspective focusing on the analysis of the possible evolution of special forms of employment status according to the outcomes of collective bargaining to a perspective based on the analysis of how differentiated forms of employment correspond to different workforce groups, sectors and activities (ESOPE, 2005).

Accordingly, it must be underlined that the incidence of precarious work varies according to the groups of workers concerned. In fact, even if precarious employment is increasing within new worker groups, it is highly unequally distributed, and it mainly affects women, young people, and the less skilled (blue or white-collars) (Kornig, Michon, 2010). Elderly workers and migrants are also specific groups who are more likely to be working in precarious conditions.

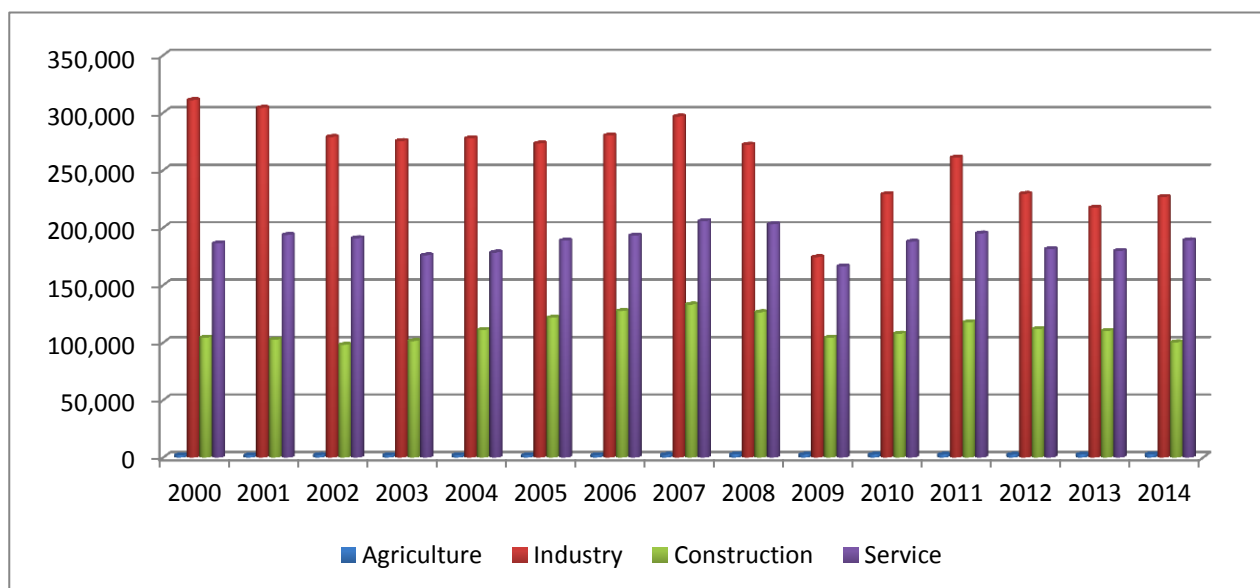
Young people have been the most touched by the growth of precarious work, since its incidence increased considerably for them throughout the 1980s and 1990s, and its levels remain high at present time. In fact, in contrast, contrary to what has happened for the other groups of workers, the proportion of particular forms of employment status for young people did not attain any stability in the 2000s, but has continued to increase. In 2013, among 15-24 year olds, over half of the jobs are in special forms of employment, against one in six in 1982 (INSEE, 2014). The proportion is particularly high among blue-

collars and low-skilled workers (Conseil d'Orientation pour l'Emploi, 2014). On the whole, temporary employment has decreased for people aged 30 and over, and has started to increase slightly again for people aged 60 and over old or more. Moreover, the increase in non-permanent work over the 2000s for people aged 15-24 is related to the increase in apprenticeship contracts, since the proportion of FTCs in total employment has decreased, and the one for temporary work has remained stable. All these tendencies indicate that, basically, for many young persons, precarious work has become a stepping stone into the labour market (Givord, 2005). However, the experience of non-permanent work during this life period can turn into a precarity trap, as is suggested by the ageing of people concerned by it. In point of fact, the growth of temporary work during the 1980s and the 1990s may have trapped some young people in precarious work due to the difficulty of finding a permanent job. This is especially true for those who left the initial educational system prematurely and thus have a low level of education. Moreover, these are workers who are used to replace elderly workers exiting the labour market (Kornig and Michon, 2011).

Women are less represented among temporary workers (TAW) and in apprenticeships, but they are more present in FTCs, and are widely concerned by part-time work: in 2013 they represented 80% of the part-time work force, and 30% of the female workforce. However, their presence in the various special forms of employment status depends on the feminisation levels of sectors and occupations.

While looking at the economic sectors, other differences between special forms of employment status can be underlined.

**Figure 7: Number of temporary agency workers (in FTE) by economic sector**



Data sources: DARES 2015

Temporary agency employment is more concentrated in some branches of the manufacturing sector and construction, which explains why the majority of temporary workers are blue-collar (38.4% unskilled

blue-collar, 39.4% skilled blue collars). However, temporary work is also increasing in the public sector. Fixed-terms contracts can be observed in the service sector, particularly in those branches that are related to care and services to individuals. However, in recent years, the use of FTCs has considerably increased, particularly as regards short and very short FTCs. The service sector encompasses several activities which usually run over the short term, either because they are seasonal activities or because of the nature of the activity itself, where it is common to use FTCs (Conseil d'orientation pour l'emploi, 2014).

Finally, the proportion of fixed term contracts (including TAW) and their duration vary from one sector to another. In the end, all these aspects show that the social uses of the special forms of employment status also differ in relation to the socio-demographic composition of the categories of workers that are concerned by them, as well as in relation to the economic sectors in which they are more developed. Accordingly, it is possible to delineate some profiles: the typical temporary worker is a young man, blue-collar, unskilled, working in construction, the automobile or the food industry; FTCs are mainly held by women, white-collar and the unskilled, working in the service sector. These profiles are clearly related to the use that employers make of special forms of employment status as a means to acquire flexibility from their labour force, according to the specificity of their needs in terms of flexibility (Kornig and Michon, 2010). These different profiles relate to a diversity of experiences in terms of job insecurity, employment perspectives and expectations, especially as regards the achievement of secure employment paths, as well as to a variety of deviations in terms of the social profile of the union members with whom they are likely to be in contact (Bouffartigue, 2007).

### **3.2 In-work regulation gaps**

According to the Labour Law, all fixed term contracts follow standard contracts in the principle of equal treatment. However, FTCs and TAW contracts cannot be used on a long-term basis to fill jobs that are related to the company's regular business. There is restriction on the use of temporary workers (there are judicially supervised and there is a list of permitted and forbidden situations to use this type of contract, such as six months after a redundancy), on how many times an employer can renew an employee on the same fixed term contract (once until the Macron Law, which changed this point and allows twice), and on the maximum duration (must not exceed 18 months).

But between formal regulations and real behaviours, there may be a long distance. To our knowledge there is no information about the real average duration of open-ended contracts. But a number of points are well known. The assignment duration of temporary agency work is very short: 1.9 months (2008 average). In 2008, nearly half of temporary agency workers were assigned for less than 1.5 months in the whole year (Dolmens, 2009). Some firms and/or sectors systematically obtain a high proportion of their workforce through temporary agency contracts. In many cases, over a long period, they have been the same individuals. For some firms (especially in the car industry – see Moncel and Sulzer (2006)) there is no hiring with permanent contracts that does not result from a selection within their young temporary staff (limited duration contracts or temporary agency contracts). Finally, many abuses have been presented to the tribunals and the unions have obtained reclassification of the temporary contract to a permanent one.

The minimum wage is compulsory for all FTCs. For working time and working conditions, it follows the standard employment rules too. Despite the principle of equal treatment, temporary employees generally have bad working conditions. Their working hours are less stable and predictable from one week to another. Their work rhythms are more dependent and difficult, compared to those of the permanently employed (Rouxel, 2009).

Temps have the same rights and, for a long time, temporary agency work was often described as the “most protected atypical contract”. But things are not so simple. In so far as the duration of the contracts is often short, there is, in practice, no right acquired through length of service, for example. To compensate for the precarity of this status, there is a “precarity bonus” which is a minimum of 10% of the wage, which must be paid monthly to all FTC and TAW workers and compensation for annual vacation, which make for a bigger wage than other workers. But despite this, French temps are paid less, all other things being equal, than permanent workers, especially male temps (Scantanelli, 2002; Erhel, Lefevre, Michon 2009).

French employers have to pay a mandatory social contribution for vocational training, equivalent to 1% of the payroll. It 1.3% for temporary agency workers. One might deduce that for training issues, agency workers benefit from a better situation. Likewise, temps have the same training rights, but in fact, if there is any training (it is not offered to every temp), it is often to adapt the temp to the work and not to develop their skills and abilities (Belkacem, Lhotel, 2012). Precarious employment trajectory penalise access to training (Pérez, Thomas, 2005).

Temporary jobs are often described as a possible stepping stone to stable employment. In France, 70% of hirings were on fixed term contracts in 2010, before the crisis, and 84.2% in 2014.

However, even if hiring for very short time with a fixed-term contract has been more expensive for employers since the 2013 law on job security (Loi sur la sécurisation de l’emploi), the proportion of FTCs is increasing. But even if young people work through FTCs (more than the oldest), their transitions to standard employment are not necessarily decreasing strongly (Di Paola, Méhaut, Moullet, 2015).

**Table 6: Employment situation for two cohorts 7 years after leaving the education system**

	1998 cohort Situation in 2005		2004 cohort Situation in 2011	
Unemployment	9.4		10.2	
Inactivity	4.9		5.3	
In employment	85.7		84.6	
Of which:	Part-time		Part-time	
Open-ended contracts	69.0	10.6	64.3	9.3
All FTCs	11.6		12.8	
(Fixed-term contracts)	(7.4)	21.5	(8.6)	23.3

(Temporary agency work)	<b>(2.8)</b>	<b>11.3</b>	<b>(3.2)</b>	<b>9.3</b>
Other jobs	<b>6.5</b>		<b>8.5</b>	

Source: Céreq studies (Enquête Génération 1998 / Génération 2004)

For temps, the situation is different. The likelihood of exiting TAW to a permanent job decreased between 2000 and 2014. In 2000, 36% of the temps who were temps one year before were employed with an OEC or FTC and 7% were unemployed, whereas they were respectively 18% and 29% in 2014 (Prism'emploi, 2014).

### **3.3. Representation gaps**

All employees, on any employment contract, have the same rights to unionisation and representation within any firm. Since, in France, the representation system varies with the size of the firm size, it has been decided i) that temporary agency workers (who are by law employees of the agency) have their unionisation rights within the agency, and ii) that they are included in the user firm workforce to determine which representation regime has to be applied within the user firm.

There is no doubt that the situation of temporary employees is insecure and more dependent. They are less unionised than permanent employees, even taking into account the very low unionisation in France. But it is also the result of the fact that they are used in sectors where the unionisation of permanent workers is weak. This generalisation has some highly important exceptions (one of them being the car industry). Dufour, Bérout et al. (2008) give the reasons for such a confused picture. The unions have been very late in acting for the unionisation and mobilisation of agency workers. As these authors state, in a precarious environment, trade-union activities are themselves precarious. Where there is no union (as is often the case in France), there is no reason to think there is no abuse. The unions have great difficulty in defending workers with atypical contracts such as temps or longstanding fixed-term contract workers. First, the conditions of employment (short assignment / several firms / mobility) limit the opportunities to meet regularly with these workers and to organise any action with them. Secondly, temps are often unwilling to speak to unions, for fear of being denied work. Thirdly, there is ambiguity in relation to the historical demands with regard to precarity, as if defending precarious workers were equivalent to defending precarity (Belkacem, Kornig, Nosbonne, Michon, 2015).

Furthermore, unions have considerable difficulty in opposing temporary work, when temporary contracts are the only entry points to regular employment and are supported for this reason by some workers.

### **3.4. Enforcement gaps**

Temps are afraid to turn to the unions for help, as mentioned earlier, even if there are active unions in temporary work agencies. The same is true for FTC workers, who are not sure of being hired again after being seen with union representatives. On the one hand, the fear of unemployment and the hope of more stable employment explain the distance of these workers from the unions, and on the other hand,



the unions have difficulty in adapting their mode of action (Bouffartigue, 2008; Bérout, Bouffartigue, 2009, Bouffartigue, 2009). The profiles of these workers are very different from those of union members, and they have difficulty in understanding each other.

Furthermore, in the temporary work agencies, some sociological studies have highlighted the circumvention of the law (Chauvin, Jounin, 2007) (Jounin, 2008). Temps are not always reported, and this is often the case in some sectors like construction, whereas it should be done in the 48 hours preceding the assignment (Labour Law). Thus, the TWA can hire their temps when they want (Chauvin, Jounin, 2007). The authors note some convictions, but cases often end in acquittals.

Finally, some TWA sometimes open for only a few months. They do not report their employment to the legal authorities, and they close before being checked. It is difficult, in these situations, to check these agencies.

### **3.5. Social protection and integration gaps**

All employees benefit from the basic health insurance, unemployment benefits and retirement schemes, as regulated by law. But in France these standard benefits are complemented by additional schemes resulting from collective agreements. Generally, these supplementary schemes do not apply in the same way to non-regular and permanent employees. Above all, many social benefits require seniority to obtain the full benefits. This implies that the non-regular employed do not have equivalent access. Temporary employees are not really equal to regular ones.

In TAW, many things have been done to help temps find work subsequently. The Fonds d'Action Social du Travail Temporaire (FAST) was created by the social partners in 1992 to support temps' needs like housing and rental deposits, access to credit, mutual insurance, etc. In fact, here again, there is a seniority clause (roughly four months' assignment for access to the housing service). The average assignment duration in the year is 2.6 months, but half of them work 1.5 months per year.

### **Conclusion**

Despite this negative side, 20% of temporary agency employees wish to remain in temporary employment. Why does this minority choose precarity? Kornig's analysis of the working and employment conditions of temporary employees highlights a differential management of these employees. Two types coexist: mass interim employees and individualised interim employees. The interests of companies and professional temporary employees forge a particular employment relationship, which is co-constructed between agency and temp, which in turn makes it possible to explain this choice. Professional temps do not have the same work conditions as the others (Kornig, 2007). Professional temps make this choice because agencies offer them the best assignments and more training. These temps are more skilled than the others and the agency know it and want to retain them. They can bargain more strongly over their pay and they have an individual relation with the agency, contrary to the vast majority of temps. So employment status does not suffice for an understanding of precarious work and employment.

Furthermore, since March 2014 (the Rebsamen Law) Parliament has established a new contract for temps which is a standard employment (OEC) for temps as already exists in other European countries (Germany, Holland, etc.).

## 4. Subcontracting, self-employment (and bogus self-employment)

### 4.1 Subcontracting workers

#### 4.1.1. Overview

The current definition of subcontracting is as follows: “Subcontracting is the operation whereby an entrepreneur entrusts the execution of all or part of a business or public contract concluded with the client, by subcontract, and under his responsibility, to another person, called the sub-contractor.”<sup>3</sup>

The workforce in subcontracting has grown considerably but there are few data on this phenomenon, which lies outside the statistical categories (since, very often in the surveys, it is not clear whether a firm is the contractor or the subcontractor). It is a complex, very heterogeneous world (in terms both of the types of firms and the degree of contractual precarity), with different circles of subcontractors, first rank, second rank, and so on ... (Sauze et al, 2008).

Subcontracting has expanded in France since the 1980s, in a context of reconfiguration of the productive system and increasingly networked organisation of firms. En 2011, 18% of firms with 20 employees or more were in a situation of exclusive contractor.

Several types of subcontracting coexist: specialist, capacity and market subcontracting. Two kinds of employees work in subcontracting: the in-house employees of the subcontractors (whether in France or abroad) and TAW employees recruited for occasional assignments for the subcontractors.

In terms of sectors (INSEE 2012): industry accounts for almost a quarter of the subcontracting market (23%), followed by construction (15%) and transport and storage (14%). The tertiary sector follows with specialist, scientific and technical services (12%), ITC (11%), commerce – car repair (8%), etc.

Subcontracting firms were severely affected by the economic crisis of 2008 (especially the automobile branch). 70% of the added value of industrial subcontracting comes from the “metal” branch (casting and metal working).

The law of 10 July 2014 increases the responsibility of contractors with a view to dealing with problems of responsibility.

Subcontracting firms are smaller than non-subcontracting firms, so we find again the gaps of the company size effects previously mentioned.

#### 4.1.2. In-work gaps

Working conditions are less good than in non-subcontracting companies (and even in the contractors):

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<sup>3</sup> Ordonnance no. 2010-1307 of 28 October 2010.

the work is more prescribed and controlled in subcontractors than in non-subcontractors, night work is more frequent and the constraints of work rate and the risk of accidents are felt more strongly in subcontractors. It fundamentally appears that work is less bearable among subcontracting employees at the end of the chain (DARES, 2011).

Situations of co-activity are often poorly coordinated (Pelletier, Ruffier, 2014), tasks incoherently distributed, workplaces little known, statuses ill-defined, etc. (Jounin, 2006).

Collective agreements are sometimes less advantageous for employees, in, the hotel chain business, for example, which subcontracts all or part of the room-cleaning; the work is done by immigrant women who do not always speak French well, do not know their rights, etc. (Descolonges, 2011). Wage costs are fairly homogeneous across the sectors of industrial subcontracting, but 15% lower than in industry overall. (INSEE, 2012).

The main kinds of work externalised are implementation tasks and the most arduous and/or dangerous operations, under a policy of risk transfer from contractors to subcontractors (Pelletier, Ruffier, 2014).

Tendentially, the further out one moves from the first circle of subcontracting, “the more one encounters the use of precarious forms of employment and unpleasant, degraded, dangerous forms of work” (Bouffartigue, Pendaries, Bouteiller, 2010) and the law of silence often prevails (Jounin 2006).

The growth of subcontracting is one of the changes in the productive system tending to undermine health at work, on the one hand because there is weak articulation among the external prevention agents (Kornig, Revest, Vayssière, 2007) and on the other because the occupational risks (accidents and others) are greater in subcontracting firms than elsewhere (Bouffartigue et al., 2009).

Finally, the fear of losing one’s job is higher among the employees of subcontractors, other things being equal; working for a subcontractor is associated with a 40% greater fear of job loss in the year (DARES, 2011).

#### ***4.1.3. Representation and enforcement gaps***

Non-subcontracting firms and contractors more often have elected staff representatives or union delegates (DARES, 2011).

Several authors stress how subcontracting makes it possible to employ workers without being tied to them by an employment contract but rather to the subcontracting firm through a commercial contract, a kind of alternative to the employment contract or avoidance of the employment relationship (Perraudin, Thevenot, Valentin, 2006; Jounin, 2007), a fragmentation of collectives (Bouffartigue et al., 2009; Perraudin, Thevenot, Valentin, 2013), even a creation of competition among the employees (Seiller, 2014), or subordination of the workforce (Tinel et al., 2007).

“Subcontractors and temps generally have fewer rights than standard employees of the firm, and less opportunity to exercise them” (Jounin, 2006).

Among the employees in subcontracting, one relatively new type of employee should be noted – the

employees of subcontractors, made available to the contractors on a long-term basis, with a hybrid employment status (they may be self-employed, for example), sometimes in posts of responsibility, but without belonging to the staff of the firm. These employees experience an isolation and occupational uncertainty that generates a kind of “occupational malaise” (Evaere, 2014).

## 4.2. The self-employed

### 4.2.1. Overview

The number of independent workers decreased between 1950 and 2000. Since 2005 the proportion of self-employed in total employment has increased (+ 26% between 2006 and 2011) (except in agriculture) and accounted for 2.8 million people in 2011 (including main and complementary activity).

**Table 7: Proportion of self-employed workers in total active population**

France	2000	2005	2010
<b>Self-employed</b>	13.7%	11.9%	12.9%

Source: EWCS 2010 survey in Study on precarious work and social rights, 2012

Some reasons for the growth are the 2008 crisis (Jounin, 2008) and the creation in 2009 of the “*auto-entreprise*” (AE) (a new simplified tax regime<sup>4</sup>). The French statistics (INSEE) on self-employment now distinguish in the data the “conventional self-employed” from “*auto-entrepreneurs*” because of the extent of the phenomenon: one self-employed person in five is an *auto-entrepreneur* (INSEE, 2014). But there are two sorts of AE in France: 67% of AE who are *only* AE (they do not have another job, like 90% of the “conventional self-employed”) and 33% of AE who are wage-earners and use the AE status as a complement. Only 10% of the “conventional self-employed” are employed by a company, probably part-time.

Self-employed workers are more often men (2/3) and older (median age 45) than employees (median age 38) but women are more often AE (39%) than conventional self-employed (32%) and women in AE are more skilled than their male counterparts. They begin this activity later, after being employed in a company.

The over-60s still outnumber the under-30s. However, the AE are younger (median age 41) than the conventional self-employed (median age 46).

Rather more of the self-employed are graduates than among the employees, because of the size of the health professions and the craft professions, which cannot be practised without a degree or diploma (INSERM, 2010).

There are three categories of self-employed: retailers (42%), crafts (40.5%) and the “liberal professions” (17.5%) (INSERM, 2010). They work more for small and medium enterprises in a close

<sup>4</sup> Three out of four AE would not have created their business without this new regime (INSEE, 2012).

relationship (INSEE, 2015). Less than 5% of them work for industry (where large enterprises predominate, with which they work less). Three sectors predominate: the trade and crafts sector (20%), health (16%) and the construction sector (14%). This distribution by sector differs from that of the employees, of whom 13% work in trade, 6% in health and 6% in construction (INSEE, 2013).

AE activities are concentrated in four sectors: business consultancy, household services, trade and construction.

#### **4.2.2. In-work gaps**

*In this case, it is not labour law which fixes the terms of the contract between the self-employed person and the client, but commercial law. This is the only case among the atypical employment forms described in this report.*

The law, for example, does not regulate remuneration and, contrary to what one might think, the self-employed are more likely to be poor than other workers (18% are poor in Europe); they earn annually 3,700 € less on average than other workers. On average, they earn 2,600 € monthly (except in agriculture). But there are differences between the conventional self-employed and AE: the conventional self-employed earn more (3,100 € monthly) than AE (460 € monthly) (INSEE, 2015).

More than nine out of ten auto-entrepreneurs earn less than the minimum wage (SMIC). The earnings of most AE are still very low (COE, 2014). Many AE have set themselves up as such but they are not always active. For the first quarter of 2013, 465,000 AE declared incomes out of a registered 914,000 AE (one in two AE have no activity and generate zero turnover).

Many inequalities are observed among the self-employed, more than among employees, because of the weight of high incomes and the lowest wages (INSEE, 2015). With equivalent characteristics, women earn one third less than men (29,300 € compared to 39,000 €) although more women work in the most lucrative sectors. This difference may be due to the fact that the women are younger than the men and work fewer hours (42 per week) than the men (52 hours).

French self-employed people work more than employees, as in most European countries. They work eight hours more per week than employees (INSERM, 2010).

*NB: very few socioeconomic studies have examined this type of work and workers and the few that exist are very recent (the AE have generated more interest, which explains recent studies). So there is a still a lot that we do not know about them except that this is a widespread category of workers.*

#### **4.2.3 Representation gaps**

The unionisation rate is very low in France, and studies investigate more the unionisation of employees than of the self-employed. There are different unions/organisations for the conventional self-employed and for AE, so that we do not have the rate of unionisation for the self-employed.

One might hypothesise that the self-employed are less engaged in collective action and representation because of their solo work. This is not the case. Historically, “by setting up themselves up as organised groups, the different categories of self-employed workers gradually broke their isolation and built a network of institutions, professional associations, trade unions, places of exchange and mutual assistance, as seen in particular in agriculture” (INSERM, 2010).

There is, for example, a longstanding tradition of unionisation in the entertainment industry too, since the beginning of 20<sup>th</sup> century (Sigalo Santos L., 2014). There are many unions in this sector.

If there is a gap, it would be more for the AE, less organised by profession. Nonetheless, the FEDAE (Federation of AE) has existed since the creation of AE in 2009. It had 40,000 members in 2012 (34% of them women).

#### **4.2.4. Enforcement gaps**

The labour tribunal can be called on to denounce bogus self-employment (when the “self-employed” work in wage-earner conditions, that is, with a link of legal subordination). The judges look at how the work is executed and may redefine the contract as a OEC.

With the increase in AE, it seems that bogus self-employment is also increasing. Beatrice Appay talks about “permatemps” who work for Microsoft as self-employed but because it is Microsoft that has decided to work only with self-employed people (who are precarious employees of Microsoft), and it’s like a sort of blackmail to work for Microsoft (Appay, 2009)

New forms of work, between employee and self-employed, have appeared, which are not easy to define.

#### **4.2.5. Social protection gaps**

The self-employed do not have employment protection (because their positions are more linked to the activity and characteristics of their business), nor unemployment insurance (unless voluntarily taken out), but there is compulsory health insurance with the RSI system (which is encountering many problems in its operation in 2015).

They are not the main beneficiaries of the rights that the law gives to employees on work injury and prevention of occupational risks (Michon, Kornig, 2010).

The self-employed are less likely to be in good health. They do have not the same rights as employees, especially in social protection and unemployment rights (COE, 2014) because it is more difficult to guarantee replacement income (in the event of pregnancy or sickness, continuous training, etc.) (INSERM, 2010).

But, as we have seen, one AE in three is also employed by a company (one conventional self-employed person in 10), so have they a basic social protection in this way.

## **Conclusion: precarious or not?**

Bogus (or false) self-employment is a form of employment relationship located somewhere between subordinate and independent work, where the form of the employment relationship is classified as that of an independent, self-employed contractor but where the conduct of the relationship mirrors that of subordinate relationships.

Many factors define them as precarious workers (INSERM, 2010): they are more dependent on their clients, the choice of being independent is more imposed (by unemployment, by employers, etc.) and so less linked to a personal project. They do not have a family tradition of independence (which protects or gives experience, as Dunn and Holtz-Eakin (2000) highlight) or a spouse in the same situation (Caputo and Dolinski, 1998). The death rates of their companies are higher than for others, because of the context of the creation (more unemployment in the context of crises).

Many interviewees argued that those who were in bogus self-employment were more vulnerable than dependent employees due to their exclusion from collective bargaining and the resultant absence of procedures dealing with disciplinary matters.

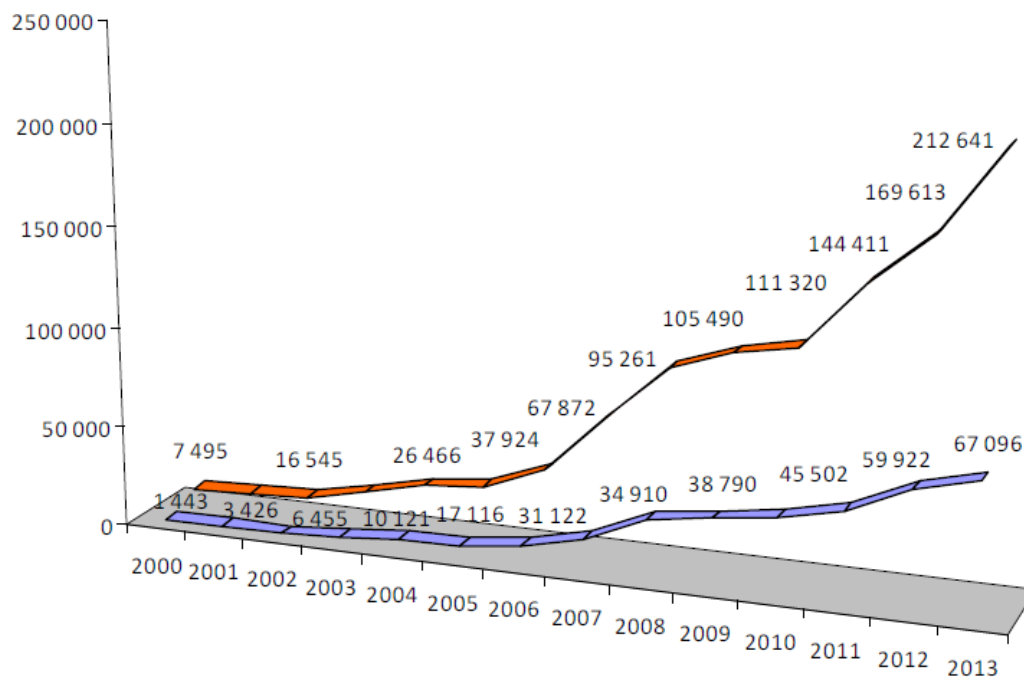


## 5. Posted workers

### 5.1 General overview

As in other countries, the firm must declare the use of posted workers to the labour administration. Since 2008, the number of declarations and also the number of posted workers have been increasing rapidly (from 100,000 to more than 200,000 workers in 2013). This growth is partly due to better compulsory registration. The total number of working hours provided by posted workers is estimated at over 7,000,000, which is about 32,000 Equivalent Full Time workers (DGT, 2014).

**Figure 8: Number of posted workers (red) and hours of work (blue in millions)**



Source: DGT, 2014

Roughly half of the posted workers come from EU15 countries, and rather less from the other EU members. The three main nationalities are now Polish, Romanian and Portuguese. At the border of Luxemburg and Germany there is a significant flow.

The construction industry is the main sector for the use of posted workers (50%) (Jounin 2010 for a good example in the field of “reinforcement”), followed by the industrial sector. EU (non-French) TWA also provide a significant proportion of the posted workers (17%), probably also for the construction industry and agriculture (Potot, 2010).

In a *département* in the south of France, which is above average for the number of posted workers, the most recent data show for 2014 an increase of 16% (declarations) for + 37% of days worked and + 56% of posted workers. The national trend is probably similar.

This could explain why, despite new regulations (see below) and despite the rather low number of workers (in FTE) the question of posted workers has been so sensitive in political debate and in the newspapers in 2015. This was the case for the construction industry (*Le Monde*, 2015): one employer denounces social dumping, and the regional employers' association is discussing with the Ministry of Labour for new regulations. This was also the case last summer, with the debate on pig meat: pig breeders were calling for higher prices and the large firms in the slaughtering industry replied that this was impossible due to German price competition, explained by a wider use of posted workers in German abattoirs.

## 5.2 In-work regulatory gaps

According to the labour law, posted worker contracts must follow the general rules of the OEC, defined by the labour law and by collective agreements.

The list is impressive:

- Minimum wage (law and collective agreements); equal treatment (gender equality, etc.)
- Working time regulation
- All rules regarding leave (holiday leave, maternity leave, etc.)
- Right to join a union, to strike...
- Health and Safety rules...

So, on the basis of this list, one can say: no gaps! We will see below that one of the main questions is the enforcement gap. However, we must first emphasise some legal gaps. In fact, the legal list is a restrictive one. What is not on the list does not apply to posted workers and posting firms.

This is the case (as in the EU directive) of social contributions, which can be paid in the country of origin and at the rate of that country. As is well known, social contributions are rather higher in France than in other countries (even if, at the level of the minimum wage, many exemptions have been introduced). This is one of the cost advantages in using posted workers; and it could also introduce differences with other workers if the national regime of social protection is lower in the country of origin.

A second gap concerns training rights (individual training leave, firm-based training levy, etc.), which do not apply to posting firms.

A third gap concerns health and safety rules. First, if the posting firm is able to prove that health rules have been checked/followed before the hiring in the country of hiring, no check will be carried out in France. Secondly, the posting firm has to implement a Health and Safety Committee (CHSCT) (however, if a CHSCT is present in the French firm, it can also act for the posted workers) (Chapoutier, 2011).

### 5.3 Enforcement gaps/representation gaps

The labour administrations, as well as the Health and Safety administration, provide information in various languages for both firms and the workers (see, for example, Ministère du Travail, 2014).

The unions are also provided with information and organise campaigns against some borderline and/or illegal uses of posted workers. Similar campaigns are also organised by whistleblowers or collectives (Collectif Bolkenstein on the ITER plant site...).

In the recent period, following the new EU regulation, the legal rules have been reinforced (Savary Law and March 2015 decree). Other statutory rules are currently being discussed in Parliament.

The main lines covered by these enforcement laws are:

- New and stronger obligations to declare officially the use of posted workers
- Greater scope for the unions to act in the labour tribunal
- And extended responsibility of the main firm (*maître d'ouvrage*) or subcontractor in cases of irregular situation of the posted firm or unacceptable housing. However, this responsibility does not apply if the subcontractor has informed the labour inspectorate.
- A new administrative penalty of 500,000 €, which is, however, a substitute for penal responsibility.

The unions have a rather positive point of view on this new legislation (CFDT, 2015).

However, in the most recent analysis of the Ministry of Labour, for 2013 (DGT, 2014), more than 1,000 checks have been made both on regularly declared firms and non-declared ones. These checks revealed many illegal situations, which are also denounced by the unions and employers' organisations:

- Posted workers who are not regularly hired in their home country (and are just hired to be posted). This is very difficult to check in the home country.
- Firms with a casual activity, created just to post some workers, and disappearing after the contract.
- Wages below the minimum wage and/or including subsistence and housing charges.
- Irregular use of posted workers from South American countries, through Spanish TWA firms in agriculture.
- Health and safety regulations not observed (high level of work accidents, sometimes without declaration), even on closely inspected and "officially" regulated sites (such as the new nuclear site of Flamenville).
- Unacceptable housing conditions.
- French firms (for example in the transport industry) creating an office in a foreign country (without an activity) in order to be allowed to use "intra-firm" posting.

This has led to increasing checks, in the framework of a national plan against illegal work. However, most analysts and the labour inspectorate emphasise the specific difficulties in checking firms and enforcing the rules. One example is the fact that for relatively short-term assignments, wages (under a threshold) can be paid in cash and payslips are not available. Another reason is the complexity of the chain of firms (sometimes three or four levels) which blurs all the responsibilities.

Employers' organisations, specifically in the construction industry, have regularly denounced abuse in the use of posted workers with a distorted competition which is cost-driven (lower social security charges and wages, irregular working conditions, etc.). More recently, a national union has published guidelines for its members to organise campaigns among posted workers.

## 5.4 Social protection

As previously mentioned, some components of social protection are open to posted workers, such as maternity leave and access to hospitals. However, due to the rather short spells of work in France, it is likely that few posted workers actually use these opportunities.

## Conclusion

The French debate about posted workers could be seen on the one hand as a kind of "insider-outsider" debate. It could be also described, on the other hand, as over-developed, as the number of posted workers (in FTE) remains rather low.

In terms of precarity, what can be said?

Posted workers are, more often than other workers, in the "grey zone" of the labour market. The risk of being underpaid (or not paid), of being more exposed to health risk, of working and living in bad conditions, is clearly higher than for most other categories (if we exclude illegal work). So the "within gap" in the French labour market is probably one of the higher ones. As emphasised by Potot (2010), posted workers seem to have become a substitute for the traditional migrant (including the grey labour market): easier to recruit, with fewer legal risks, malleable (working conditions, firing, etc.), and more socially and culturally acceptable in a country with borders closed to the traditional flow of migrants inherited from the old colonial empire. What about the "between gap" (i.e. between this worker and a worker of the sending country)? We cannot find any conclusive literature on this question, including longitudinal analyses, in order to see if the posted worker is or not a recurrent one. All that can be said is that, for posting firms following the rules, the "between gap" could be to the advantage of the posted worker.

A second important conclusion must be drawn from the recent increase in the number of posted workers, despite the crisis and the high level of unemployment in France (and/or because of the crisis in the sending country). If posted workers are so attractive, it is mainly for cost-driven reasons, in a broad sense: not only wages, but also all the ways in which loopholes in the French system, and also in the EU regulation, can be exploited. This growing use of loopholes with frequent references to a "free" labour market could be said to reproduce, in the field of labour, a social dumping process akin to the taxation and border legal rules dumping process in the financial industry. In that sense, even if marginal, the posted worker problem could be a sign of an erosion of the SER.

## 6. Part-time work

This last subsection on part-time work is more ambiguous. While part-time is commonly considered atypical (in comparison to the male bread winner in full time employment of the “30 glorious years”), this is more debatable today. Moreover, at this stage it is difficult to isolate “precarious” part-time from other more stable situations, such as voluntary part-time on an OEC with a high level of family-based resources.

### 6.1. General overview<sup>5</sup>

Part-time work in France first developed as a way to respond to employers’ requests for increased flexibility in the management of their labour force. The most significant increase was registered in the 90s, when nearly all new jobs created (net job creation) for employees in the commerce and personal service sectors were part-time. In this period, public policies largely encouraged the spread of part-time work, mainly through the reduction in social contributions granted to employers for every new employee hired on a part-time basis. This upward trend was stopped by the abolition of such financial incentives at the very beginning of the 2000s, when the Aubry laws on the 35-hour working week came into force and recourse to part-time work began to be discouraged in order to promote the implementation of the collective reduction in working time. Nevertheless, the situation began to change after 2003, and over the 2000s part-time work slightly increased, oscillating around 16% to 17% of total employment, mainly depending on economic conditions in the labour market and employers’ strategies to increase flexibility. In 2013, the part-time employment rate was 18.4%, confirming the rising trend registered in the previous decade.

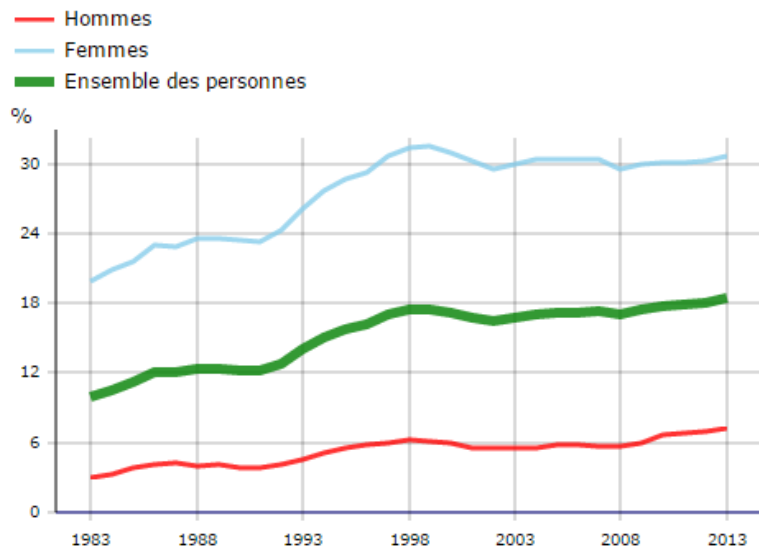
As in many other European countries, part-time work is not equally distributed across the working population. Factors such as sex, age, skills, sector and firm size considerably affect its spread among different categories of the labour force.

First of all, part-time work is unevenly distributed according to sex and it represents an extremely feminised employment form. In 2013, only 7.2% of men were working part-time, as compared to 30.6% of women, who also accounted for more than 80% of the part-time workforce.

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<sup>5</sup> All the statistics presented in these pages are those published by INSEE (or DARES when indicated).

**Figure 9: Part-time employment rate (% of total employment), by sex (1983-2013)**



Source: INSEE, enquêtes Emploi (calculs INSEE)

Men

Women

All

With regard to the age factor, part-time work is most common among young workers and older workers: in 2013 23.7% of the 15-24 age group were in part-time employment and 21.2% of the 50+ age group were in the same situation, while part-time accounted for 16% of employment of the 25-49 age group. Nevertheless, gender differences must be underlined once more: while in the case of men part-time work is most common among the youngest and the oldest age groups, in the case of women its incidence increases with age.

When looking at the skills profile of those in part-time employment, it can be said that low-qualified people are usually overrepresented. In 2011, about 50% of part-time employees had no qualification, or had completed less than secondary education. Only 15% of those concerned by part-time work had a university degree. Once again, gender differences are significant: for example, the incidence of part-time work among women with no qualifications at all was 41.7% in 2011, as compared to 8.3% for men.

The highest part-time employment rate is registered in the service sector (22% in 2011, as compared to 7% in industry and 5% in the construction sector), as a very large proportion of part-time workers are registered among its activities (about 92%), of which the largest part is made up of women (about 84%) Nonetheless, important differences can be observed in the various areas of the service sector. Part-time work is less common in activities such as financial services, insurance and real estate agencies (each of these activities has less than 15% part-time employment), while it is widespread in retail, accommodation and food services, as well as in cleaning services for companies (each of these activities has more than 30% part-time employment). Moreover, part-time employment practices differ from one group of activities to another. As for retail services, part-time work concerns mainly women, it can be characterised as “long” part-time work (more than 28-30 hours per week), atypical working-hours are most of the time the norm, and underemployment is all but unusual. As for accommodation and food

services, part-time work is mainly taken up by men from the youngest age group (15-24 years old), it can be characterised as “short” part-time work (less than 20 hours per week), and, as in the previous case, atypical working hours and underemployment are very common phenomena. Finally, in cleaning services, part-time work concerns mainly women in the older age group (aged 50+), who work short but stable hours, and who are very often in a situation of underemployment or multi-activity. However, these three types of activity share some common features with regard to part-time work: employees are low educated (about 50%), wages are rather low (they barely reach the SMIC threshold), but the proportion of open-ended contracts is quite high (about 80%).

In terms of the size of the firm, part-time work is mainly found in so-called micro-enterprises (up to ten employees, about 28% in 2011) and SMEs (10-250 employees, about 35% in 2011). Likewise, a large proportion of workers directly hired by households work on a part-time basis (about 52% in 2011). It is important to underline that firm size seems to be correlated with the voluntary character of part-time work: involuntary part-time work is, in fact, more widespread in small companies than big ones (57% for the former as against 28% for the latter in 2011).

While it must be said that among part-time workers the proportion of voluntary part-time work is higher than the proportion of involuntary part-time work<sup>6</sup> (respectively more than 60% and less than 30%), what is worrisome is the profile and the employment conditions of those in involuntary part-time work. In fact, the latter is more frequent among low educated people, who occupy low qualified positions, are mostly hired on an atypical job contract (fixed-term contract or temporary agency contract), experience a higher risk of unemployment, have atypical working hours, and have almost no access to professional training. These patterns clearly indicate that for some categories of the working force part-time work may become a factor of increasing precarisation.

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<sup>6</sup> This term designates those who work part-time because they could not find a full-time job, as opposed to underemployment, which designates those who wish to work longer hours.

**Table 8: Voluntary vs involuntary part-time work: employment conditions (%)**

	Proportion in part-time	Proportion in involuntary part-time	Proportion in involuntary part-time
Type of contract			
OEC or civil servant	78.7	62.7	87.1
FTC or TAW	18.3	28.6	10.9
Subsidised contracts	4	8.8	1.9
Previous experience of unemployment in past year			
At least 1 month	11.1	23.7	5.1
Length of service in company			
Less than 1 year	16.2	28.9	10.4
1-5 years	28.7	38	24.4
5-10 years	16.1	14.4	16.9
10 years or plus	39.1	18.6	48.4
Access to training in last three months			
Yes	8.8	6.4	10
All	100	100	100

Source: INSEE, enquête Emploi 2011 (calculations DARES)

## 6.2. In-work gaps

Until recently, the Aubry laws of June 1998 and January 2000 (the 35-hour week legislation) represented the legal framework of reference for the regulation of part-time work, as well as the only French legislation expressly intended to transpose the 1997 European Directive on part-time employment. Together with the Code du Travail, these laws defined under what conditions a part-time work contract could be signed, the kind of guarantees and rights granted to part-time workers, the conditions on which they could have access to the social protection systems, and the powers assigned to collective agreements for introducing derogations with respect to all these elements.

The reforms introduced very recently, mainly Law no. 2013-504 (“Lois pour la sécurisation de l’emploi”), which was complemented by Law no. 2014-288 (“Lois pour la formation professionnelle, l’emploi et la démocratie sociale”) and Decree no. 2015-82 (“Ordonnance relative à la simplification et à la sécurisation des modalités d’application des règles en matière de temps partiel issues de la loi no. 2013-504 du 14 juin 2013 relative à la sécurisation de l’emploi”), brought in some changes with respect to some of these elements. Two main changes can be pointed out.



First, a minimum working-time threshold of 24 hours per week is established, which means that no contract can include fewer working hours on a weekly basis (or monthly equivalent). Non-observance of such a threshold is possible in some cases:

- if the employee asks to work fewer hours in order to cope with personal constraints or to cumulate multiple jobs (in this case the total amount of hours reached through multiple jobs must be equivalent to a full-time job, or at least to the minimum threshold of a part-time job);
- if the employee is a student aged under 26;
- if the employee replaces another employee on the basis of a fixed-term contract or a temporary agency contract;
- if the employee is hired on the basis of a fixed-term contract which lasts no more than seven days;
- if the employee is hired by a temporary work integration enterprise (“*entreprise temporaire d’insertion*”);
- if the employee is hired by a physical person (“*particulier*”) and not by an enterprise;
- if a collective agreement states so; in this case guarantees must be provided to employees about their right to cumulate multiple jobs.

Moreover, it is important to highlight that employers who hire employees on the basis of a “*contrat aidé*” (subsidised employment contract) are not compelled to observe the 24-hour minimum threshold. This can be a problematic aspect inasmuch as some 66% of the individuals hired through a “*contrat aidé*” work part-time (INSEE data for 2011).

Secondly, the sectors and related branches that make extensive use of part-time work have an obligation of collective bargaining between social partners, particularly as regards:

- minimum duration of part-time work;
- number and duration of activity interruption periods;
- length of notice required for changes in working schedule (overtime is allowed through an amendment to the individual contract);
- overtime premium for additional work (10% due from the first additional hour of work).

Whether or not these reforms have been introduced in order to favour voluntary part-time work and to improve the quality of part-time jobs, some concerns have been raised about their potential effectiveness. These refer mainly to the exceptions to the minimal 24-hour threshold, particularly the conditions upon which employers assess employees’ personal constraints for shorter hours, or the power given to collective bargaining to make exceptions to such a threshold.

In the end, it must be underlined that French labour law establishes the principle of equal treatment between part-time workers and full-time workers. This means, for example, that part-time workers enjoy the same rights as full-time workers as regards the duration of the probation period, the calculation of employment tenure, the calculation of entitled paid leave, and remuneration (for which a “rule of proportionality” is established), and access to collective representation.

Because of the principle of equal treatment between part-time workers and full-time workers, one might imagine that no gap is observable between these two categories of workers. Moreover, the fact that over recent years the growth of part-time employment has concerned mainly voluntary part-time work based on open-ended contracts can be seen as an encouraging trend in this sense. Still, some gaps may emerge because of the reduced number of working hours of part-time workers, in particular with respect to social protection standards.

Indeed, a lower number of hours worked means a lower salary because of the “rule of proportionality”. Likewise, average hourly earnings for part-time workers are only 1.6 times higher than the statutory minimum wage (SMIC) – 1.3 times in the case of involuntary part-time work – as compared to 2.1 times higher for full-time workers. In this sense, it must be pointed out that part-time workers represent more than 50% of workers eligible for the RSA scheme (“revenu de solidarité active”, a low-income benefit for those at risk of poverty), and about 80% of them are in a situation of underemployment since they wish to work longer hours in order to increase their earnings (DARES data for 2010).

### **6.3. Social protection gaps**

Accordingly, where access to social protection is linked to minimum earnings or a minimum number of working hours, part-time workers can be penalised.

For example, in order to be entitled to some social insurance schemes, such as those related to disability, maternity, invalidity and death, a part-time worker must have cumulated either a minimum number of working hours (200 hours over a quarter year for social protection daily allowances, 1200 hours over a year for in-cash or in-kind benefits) or a minimum amount of social contributions paid to the health insurance fund. However, if one takes into account the rather high level of working hours of a part-timer in France, it is relatively easy to reach these thresholds (around 16 hours a week).

Then, reduced working hours can affect retirement pay and pension schemes for part-time workers, given that their contribution is proportionate to the amount of time worked. Likewise, given that part-time jobs are usually low-paid, and that retirement pay is calculated on the basis of the average salary over the best-paid 25 years of an individual career, it is easy to see how part-time workers may be penalised in this way. This is still a contested fact in the literature (DRESS, 2015). In the new basic regime (2014), a part-timer paid at the SMIC could claim entitlement to a full pension if he works more than 150 hours per quarter, which is roughly 1/3 time over a year. Recent simulations seem to confirm that integrating these new rules, the penalty ranges (for 10 years of part time at the end of the career) from 2 to 13% depending on the status (private or public civil servant) and the position in the wage hierarchy (lowest for a private wage-earner at the SMIC level). In order to avoid such a penalty, employers can compensate by covering part of their part-time employees’ contribution so that the latter cumulate pension pay entitlements equivalent to those of full-time workers. However, a specific agreement must be signed between the employer and the employee (under a collective agreement) in this sense.

Finally, in the light of the recent reforms, some gaps may also emerge within the part-time labour force and strengthen inequalities between different categories of part-time workers, some of which already

experience precarity more than others, particularly because of the involuntary character of their part-time work situation and/or the cumulation of atypical employment status (i.e. hybrid situations, like part-time work on a fixed-term contract). Mostly, the various cases in which it is possible to make exceptions to the 24-hour threshold may further jeopardise the part-time labour force and possibly create new gaps.

## Conclusion to Part 1

Even if France does not greatly diverge from the EU average for various indicators of precarity (namely atypical contracts or minimum wage), awareness of this topic has increased in the last twenty years. A more multidimensional approach (including working conditions, lack of skills, etc.) is arising among academics, the social partners, NGOs and politicians.

The main gaps result, first, from disjointed careers that yo-yo between unemployment, employment and inactivity. Thus the rate of poverty among the economically active population has been rising, despite the social safety net. Certain groups in the population are wholly or partially excluded from the system when they do not contribute socially (through work). This applies to young labour market entrants who have never previously worked, single-parent families with no-one in work, migrants, illegal workers, etc. Subsistence benefits have been introduced in order to offset these inequalities and to give these excluded groups access to healthcare, for example. The so-called “active solidarity income” (revenu de solidarité active or RSA), which provides income support to the working poor, has recently been extended to young people aged 18 to 25 (subject to conditions) and it also confers entitlement to a certain number of other benefits (such as free public transport, help with funding driving lessons, with removal costs, etc.).

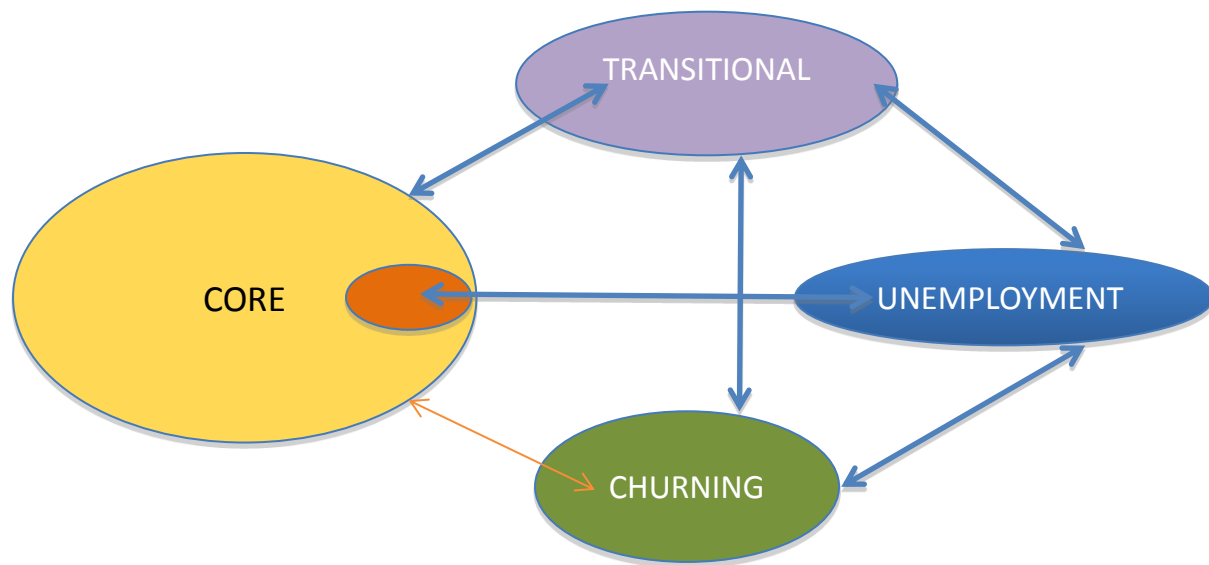
One can hardly analyse these phenomena without including the high level of unemployment (and long-term unemployment), which is a French specificity among our six countries (partly shared with Spain). In this context, dualisation of the labour market seems to be increasing, with new characteristics. Almost all hirings are now done through atypical contracts.

As shown in figure 10, one can probably identify three main different areas of precarity. The first one (and probably the new one, green in the diagram) is characterised by very short-term contracts (FTC, TWA and some subsidised jobs, often with involuntary part-time). People frequently move from these contracts to unemployment, from unemployment to short job spells. In this area, we probably find mainly unskilled/low skilled jobs. Young (and old) workers without qualifications are often trapped in this churning segment of the labour market, which is mainly concentrated among service activities.

The second one, in purple in the diagram, more classic (but increasing due to the changes in the hiring processes), is also characterised by FTCs, TWA and subsidised jobs (with more training opportunities). Young newcomers on the labour market (whatever their qualifications) are numerous in this segment. Movements to and from unemployment are also numerous. The sense of precarity is high. However, as these short-term contracts are often used as a trial period, the likelihood of moving from this segment to the core segment is higher. Nevertheless, risks of losing skills and gaps in social protection are high. We must probably add to this segment some skilled jobs in expanding sectors (education and training, sport, entertainment and culture). However, the rules are partly different. Some specific social protection (entertainment and culture) provides a safety net. Workers build sometimes their own combination of status (such as self-employment + part-time wage earning contracts) to cope with a structural

functioning of precarity which may be a choice (possibly a second best) linked to a high level of personal commitment in activities chosen out of passion.

**Figure 10: Areas of precarity**



Within the core segment, orange in the diagram, indices of erosion (in red) are also obvious, and can be seen as the consequences of industrial restructuring in the major recession. Low skilled labourers in various industries (for example recently in the meat industry), middle-aged, including women, are hit by job destructions. Despite many of social plans for reconversion, they often join long term unemployment, where they remain trapped.

We have identified among the various statuses some gaps (in-work, social protection). It should first be said that employment status is not necessarily the good (or only) key to entry. It must be crosscut with sectoral and occupational patterns, as well as with individual characteristics. This is sometimes difficult due to a lack of data. Moreover, in the French case, some categories do not totally fit with an “atypical” approach. This is the case for the part time, which could be said to belong more to the core segment. It should also be said that a specific difficulty is to grasp self-employment, which often escapes statistical (and research) analyses.

Due to the strength of the open-ended contract in the labour law, most of its rules also apply to all other statuses. However, this does not avoid in-work and social protection gaps. This is for example the case for training opportunities (usually lower for FTCs and TWA), for health and safety, etc., and for career and wage progressions. These gaps sometimes come from loopholes in the legal and negotiated safety net, old loopholes more acute today due to changes in employers’ behaviour, new loopholes linked to the growth of new sectors and activities (home care, the Internet and “Uberisation”). Social protection appears to be increasingly beset by strong pressures. Some schemes are being thrown out of kilter by a decline in resources due to unemployment and increasingly precarious employment situations as well as

by demographic changes. It may be difficult to increase these resources (derived from contributions) in a context of globalised competition and the consequent drive to cut labour costs.

But gaps also come from a lack of representation and enforcement.

The main gaps in representation result from sectoral and size effects. First, the various obligations (works councils etc.) are weaker for small firms. Secondly, employee representatives have less of a presence in small firms. These size effects are further reinforced by a sector effect (e.g. retailing, home care, hotels and catering) and, in part, by employment status and employee category (temporary agency workers, part-timers, etc.). Company structure also plays a role: employee representatives are more likely to be found in multi-establishment than in single-establishment companies and in companies that are part of a larger group than in independent companies, regardless of size. Gaps in representation also concern employer's organisations. Strong and coordinated employers' organisation could also contribute to better collective regulation.

The representation gaps have at least two consequences. On the one hand, unions (and employers' organisations) have difficulty in defining what to do in some complex situations. Moreover, some would-be improvements can lead to unexpected negative effects. On the other hand, gaps in representation open the way to gaps in enforcement (no possibility to close the use of loopholes for example in the churning segment), which are not compensated for by state control.

Nevertheless, social dialogue is alive and has produced new rules and tools. As is usual in France, social dialogue frequently interacts with state policies. Some key topics, in the field of "sécurisation des parcours", i.e. attempts to build a kind of flexi-security, have been discussed, as in Germany, under a kind of "shotgun" wedding: the social partners must bargain and agree on the topic; if not, Parliament will pass a law.

Based on case studies, the second part of this research will now give examples of various contributions of the social dialogue.

## Part 2

### 7. Introducing the four case studies

The four case studies in this second part deal with some key questions arising from the first part of this report. One could say that they are “best practices” in the field of social dialogue. However, we will see that their outcomes are sometimes weak. They also reveal the difficulties of implementation, due to the configurations of actors and the particularity of some fragilised groups, isolated in their working or daily lives.

The first case deals with the question of short fixed-term contracts for seasonal work. This is a kind of specific and extreme use of fixed-term contracts, concentrating many gaps, as seen in chapter 3.

The second case deals with precarious work in the home care service sector. This is a sector where public procurement is the rule. So it could be linked to chapter 4, as a specific kind of subcontracting. Here the question is not the employment contract (mostly open-ended), but part-time, often dead-end jobs.

The third case deals with part-time jobs in the retail industry (chapter 6.1). This is emblematic of “long part-time” in the French labour market.

The last one, on the cleaning industry, is also related to the process of subcontracting. This combines some gaps such as short part-time work, low wages, and health and safety risks.

All the case studies were carried out with a similar methodology: desk work using data and information (collective agreements, etc.) and interviews with key actors.

#### **What is “social dialogue”?**

The term “social dialogue” is increasingly used in France. In former times, it was little used. The two main terms were *relations professionnelles* and *paritarisme*. The first refers to the classic relationship between employers’ and union organisations or delegates, discussing and bargaining at various levels. The term *relations professionnelles* (here “industrial relations”) is commonly used to refer to the various forms of meeting and bargaining between representatives of the two sides – but not always in equal numbers. *Paritarisme* designates more the forums, the social welfare organisations (social security, vocational training, etc.) where representatives of the employers’ and employees’ organisations meet in equal numbers, in particular to deal with various aspects of social welfare. Among the cases that follow, some belong to “classic” industrial relations, others to *paritarisme*, and still others to a social dialogue expanded to other actors. In modern usage, all these cases can be regarded as falling under the vague but comprehensive term “social dialogue.”

## ***Classic industrial relations in the French system***

Without going into detail here, it is useful to recall some major features of the French system of industrial relations, which appear in some of our case studies.

This system is based on the presence of two families of actors, regarded as representative of the employers and the employees respectively.

On the one hand there are the employers' organisations. There are three major organisations, which sometimes cooperate and sometimes compete: the MEDEF (the most important one, whose members include the largest firms), the CGPME (which covers small and medium-sized businesses, some of which may also be members of the MEDEF), and the UPA, which is more especially concerned with small craft businesses. The organisations are national, but also structured by occupational sectors, which play an important role in the French system. Their representativeness is based on the number of firms who are members and the number of employees, but has so far been subject to no particular measure. It will depend on a future public decision.

On the employee side, the picture is more fragmented, with many, often competing organisations. The most important ones are the longstanding confederations (the CGT, CFDT, FO, etc.) which group unions in firms and sectors covering a large field (Ires, 2015), regardless of occupation. But there are also national unions that have been created more recently (such as SUD, Case 3), occupational unions, "independent" unions, which, in some firms, belong to none of these groupings. The rules on representativeness have recently changed. They are now based on complex calculations applied to the delegate elections. Hence the importance and increased competition around these elections.

The "industrial relations system" is everything that brings these actors into play and into discussion, in a process of construction of rules, implementation and monitoring of their application at various levels (Bevort, Jobert, 2011, Lallement, 1999). A large proportion of these relations are governed by Labour Law (*Code du Travail*). Most observers and analysts agree that the historical construction of this system, strengthened during the post-war "thirty glorious years," has mainly been based on industry and the model of the male worker.

Three main levels are generally distinguished in the "rule-making process": (1) The national, cross-sector (*interprofessionnel*) level, the largest – national – one, producing rules applying to all. This level has become more important since the 1970s. There has been a growing number of national agreements, *Accords Nationaux Interprofessionnels* (ANI), in areas as varied as vocational training, part-time work (Cases 3 and 4), social welfare (social security fund, Case 4), etc. (2) The sector level retains a significant weight in the implementation of the ANIs, but also as a specific arena of rule-making (Cases 2, 3 and 4). It is, however, considered too fragmented (more than 700 sector collective agreement, Combrexelle, 2015), sometimes moribund (outdated and unrevised collective agreements, etc.), and struggling to keep up with new activities (which are also often those where precarious work is concentrated). (3) The firm (and sometimes the group) constitutes the third level, for the application of the higher-level rules and for the creation of specific rules applicable to its area. This is also the level of operation of the bodies representing the staff such as the HSC or the Works Council.



The general principle articulating the levels has so far been that of the hierarchy of norms. A lower level could not derogate from a rule produced by a higher level, except to improve it. There have been exceptions, more frequently since 2004. But this was the structuring principle of the industrial relations system. The recent employment law increases the opportunities for opt outs at the level of the firm on a limited number of subjects, mainly on working time organisation.

Overall, there has often been talk of a French corporatism, but one that is neither the German model, nor that of Northern Europe, still less, of course, that of liberal capitalism (Hall, Soskice, 2001).

One of the key differences lies in the weight of the state, of the law that overhangs the whole system (even if there can be to-and-fro movements). We shall give three examples. The setting of the – relatively high – minimum wage is subject to adjustments which are mainly political acts of the state. The injunction to negotiate on certain topics, which been much used in recent years, leads to ANIs “under duress”: if negotiation fails, the government threatens to legislate. Finally, as seen in Part 1, because of the practice of extension, the scope of the collective agreements is very high. This extension, an act of state, is sometimes decided depending on the content of the agreement.

### **Box 3: About social dialogue**

#### **National Union A**

So something is clearly happening inside and outside firms. The employers’ organisations have to be representative too, of course, and that will soon be the case! I think that inside and outside the firm, we are opening up more and more. Beyond the trend towards decentralisation of bargaining or dialogue, within firms, there’s also a lot of things being discussed, opened up for dialogue, within firms themselves, and at the international level. I think there are things being done, sometimes including at the level of the European Works Councils. Not bargaining in the strict sense, but discussions which may be very useful in big firms; and then, at the same time, representation, through the statutory bodies, of course, the first channel, or through representation by unions in a dialogue more focused on bargaining. It may happen within the firm, down to the local level of the individual plant, and so on, and it may happen on an industry or cross-industry scale at the level of branches or territories, since the territorial dimension is now being opened up for us, ... territorial social dialogue is now an issue for organisations, and that’s fairly recent.

#### **National Union B**

... There’s a shift in social dialogue towards adaptability, with the idea that you need to be closer to the firm... So we need rules than are adaptable, and that comes through social bargaining, collective bargaining, you always need to bear in mind that it’s all systemic... Deregulation doesn’t mean the absence de norms, but placing them at a different level... So the thing is to set them at the level of the firm. But it always has to be seen in the context of the reform of representation through trade unions, and, then that of the employers. How I create a legitimacy for myself through election, 2008, so I come with majority agreements, which are necessarily legitimate, they’re inside the company, but they are legitimate. And the Law of 2013, that’s the point, if you look at the agreements on maintenance in employment, it’s about how the social actors in the firm can handle employment questions....

#### **National Employers’ organisation**

Perhaps the specificity of our country is the role of pre-legislator that the social partners have had since January 2007, with landmark agreements that have been translated into law and created mechanisms that have changed the operation of the labour market, such as the one on the termination of collective agreements, 11 January 2008, or the agreement of 11 January 2013, with many devices for combating precarity, in fact, and the flexibilities brought into the redundancy process, the agreements on maintenance of employment on internal mobility, partial unemployment, etc., or the 14 December 2013 agreement, which transformed the vocational training system and

rebuilt it from scratch, more or less.... And then the recent agreement on unemployment.... I think I can summarise by saying that we've acted at three levels – labour law, unemployment insurance and vocational training....

### ***“Social dialogue” used to name old and new practices***

The term “social dialogue” used in this report is a relatively recent usage. It in fact covers a variety of practices, ranging from rule-making, as discussed above, to the production of “soft laws” involving other actors.

Behind this usage lies the influence of the terminology of the European Union, although the EU often applies it to the same field as that of industrial relations. However, European social dialogue does not necessarily lead to rule-making.

A second component of this usage is political: the emphasis is placed on relations based more on dialogue than on conflict, which is important in France, often seen as a country with a high level of conflictuality, particularly in comparison with Northern Europe.

The same concern is seen at the level of the firm, with a tactical use by HR managers (Giraud, Ponge, 2016).

But it also reflects changes in the industrial relations system and its relation to the political system.

There is the choice made by some unions to promote (CFDT) more discussion and “peaceful” bargaining than open conflict.

There is the promotion of the level of the firm as a space of dialogue and production of appropriate rules, in contexts sometimes less conflictual than those of higher levels.

There is the rediscovery of the importance of small and very small businesses, characterised in particular by fewer formal spaces and forms of discussion than in large firms (Case 4).

Finally, there is also the return to the territories. Political decentralisation has given more power to the regions, on subjects that directly concern the social partners, such as training (Case 2). “Urban policies” often include policies for combatting poverty and exclusion, and tools for integration into the labour market which concern firms and unions. On these complex subjects, new actors are also appearing, such as NGOs.

These changes have led to forms of dialogue involving other actors than those of the industrial relations system. One can speak of tripartism or quadripartism, sometimes leading to rule-making, sometimes not.

## **Our four cases in this framework**

Cases 1 and 2 could be said to belong to an “expanded” social dialogue. In both cases, local or state authorities are involved: Labour Inspectorate, employment agency, local or regional authorities. In both cases, the public authorities take the lead, which fits rather well with “state tutelage.” However, we must disentangle this formal approach.

Case 1 promotes a “non-rule-making” approach. All the actions are on a voluntary basis, aiming on the one hand mainly to provide services both to the employers and to the workers; on the other hand, there are campaigns to reduce the enforcement gap.

Case 2 has a rather similar configuration, but the main funding administration is not involved. And it is rather closer to a rule-making process. The social partners define and fund some training policies.

Cases 3 and 4 are closer to classic social dialogue – mainly bargaining between unions and employers.

Case 3 provides an insight into multi-level bargaining from state-led decision to firm level. In the French context, currently disturbed by the recent debates around the new employment law, the picture could be said to be reversed. It shows how bargaining at major-firm level could set up some more protective rules for part-time workers, but also how opt-out clauses are available for franchised firms.

Case 4 is somewhat similar, with a social dialogue involving mainly the classic actors, employers and unions. The main question on the employers’ side is to attract (and to keep) employees in an industry with a poor image. So there is a mix of rule-making and promotion of better employment conditions.

## 8. The Maison du travail saisonnier (MTS)

The *Maison du Travail Saisonnier* is a case of territorial social dialogue on – as its name indicates – seasonal work, generally on short fixed-term contracts (maximum of a few months). This case is mainly related to Point 3 of Part 1.

### *Methodology:*

To carry out this case study, we drew on earlier work done on the MTS at the time of its creation (Verdier, 2008) and also in 2010 (Amnyos, 2011). This gives a longer view of the evolution of the MTS, the themes addressed, and the configurations of actors.

In 2016 meetings took place with:

Labour Inspectorate

Two employers' representatives (CGPME and UPA)

Two trade-union representatives (CFDT)

A representative of the local administration, who runs the MTS

The interviews, each lasting 1.5 hours, were all recorded. During this visit, progress reports and various documents produced by the MTS in support of its activities were also collected.

### **Features of seasonal work**

Seasonal work is fairly diversified. Some all-year industries have peak periods of activity, related to the climatic conditions. This is the case for construction and road maintenance, in which seasonal workers are used, most often on TAW. Agriculture is clearly also concerned, at the time of the harvests (fruit and vegetables, vineyards, etc.). Retailing also recruits on this type for contract for the pre-Christmas/New Year peak period.

The sectors that more especially concern us are those linked to tourism, mainly in the summer – primarily catering and accommodation (mainly hotels and campsites).

In the region of southern France where the MTS is situated, seasonal activities are mainly concentrated in the summer period and accommodation/catering accounts for 44% of total seasonal employment (in full-time equivalent) (INSEE, 2014). In July 2011, for example, seasonal employment concerned 55,000 jobs (compared with about 750,000 permanent jobs). Annually, 255,000 seasonal contracts are signed (in all activities).

In the zone of activity of the MTS, a region of summer tourism, seasonal employment accounts for 8% of total employment, but almost 20% in summer, employing an estimated 4,000 people. But this area has a

high rate of unemployment (18%). These are mainly low-skilled jobs (waiter, hotel cleaner, etc.) or more skilled ones (cook, activity organiser for adults, youth leader, etc.).

Studies on seasonal employment (cf. in particular Fournier 2010) underscore several characteristics:

- The employees are often younger than average (44% of them are under 25 in the Languedoc-Roussillon region): many of them are secondary-school or university students (INSEE, 2014);
- While the financial motivation is present, seasonal work is not always a second best. It is also sought after and valued for its “different” and festive character (working in a holiday resort);
- But there are many gaps: low wages, sometimes paid entirely or partly in cash, long working hours, health risks related to working conditions, accommodation difficulties, etc. (ORS, 2008).

## The MTS: history and configuration

A unique experiment has been set up here in Languedoc-Roussillon, since this is a *Maison du Travail Saisonnier* – a “Centre for Seasonal Work” – which aims to place social dialogue at the heart of its activity, around employees AND employers. Elsewhere there are *Maisons des Saisonniers*, “Centres for Seasonal Workers,” run for the benefit of employees. This collective initiative cannot be regarded as still in an experimental stage, since it has existed since 2003.

It arose from a “regional employment conference” which brought together numerous and varied actors to engage in collective thinking on seasonal work.

The MTS was initially set up on an experimental basis in 2003, and then consolidated in 2004. Its approach is original:

- It deliberately addresses both employees and employers and, in its steering committee, brings together representatives of both sides, a feature which sets it apart from other initiatives on seasonal work.
- It has evolved towards a form of “quadripartism.” Alongside employers’ and trade-union organisations and representatives of the labour administration, there are also local elected officials, joining in a form of “territorial social dialogue.”
- This “expanded” social dialogue (in the sense of Grimshaw), which first began to be formulated in a common declaration of the social partners in 2008 (Lamotte, Valette-Wursthen, 2016, see also Walter, 2009), is not so much a contractual space in which the parties commit themselves in agreements as a space for cooperation and procedural productions (Verdier, 2010).
- In this sense it is atypical of the French system of industrial relations (Lallement, 1998), which, as seen in Part 1, prioritises four levels of norms: law, cross-industry negotiation, negotiation by sector, and the firm.
- From the outset, it has aimed to combine the closing of gaps (the first priority being the fight against illegal employment and social dumping, quickly followed by the problem of accommodation) with the promotion of “quality” tourism in a zone that had opted to develop mass, “low-cost” tourism in the 1960s and 70s.

- But its activities are not predefined. They evolve according to the decisions and observations of its steering committee, taking a broad approach to gaps, including those in health, housing, etc.

Since its foundation, the MTS has been organised around:

- A steering committee which meets at least once a year and includes representatives of employers' organisations and trade unions, the labour administration, *Pôle Emploi*, local elected officials, etc.
- Working parties, which vary in their topics and operation (currently: health, communication, housing, professionalisation).
- Permanent employees of the MTS, provided by the local authority (*communauté d'agglomération*) (some seconded, others partially refinanced on the MTS budget).
- And the contributions of the organisations (employers and trade unions) which delegate volunteers to staff the premises full-time during peak periods for employees and employers alike.

## **What is changing, and which functions target which gaps?**

### ***A changing context***

While a number of fundamental features persist and justify MTS activities, our interviewees mentioned various changes.

They stress two different employer profiles – those permanently established in the area (hotels, restaurants, campsites), and the “amateurs” who come just for the season (fast food vans, beach and street traders, etc.). It is more among the latter group that problems of illegal employment are found.

With the changes in holiday patterns and the growing number of retired people, the season has tended to become longer. As a result, there are three categories of seasonal workers: the “long contract” workers, who stay from March to October, tend to be skilled (cooks, for example) and often come from the Agde area; the “medium contract” workers, found in mid-season (April to September), with similar profiles; and the “short contract” workers brought in for the peak season (July-August), who are more on the service side (cleaning, etc.).

There are also changes in the profile of the seasonal workers: fewer young people and students, a higher proportion of older unemployed people, even pensioners seeking additional income.

*“You see fewer students; the pool has somewhat changed. There are more and more people aged over 55 and/or retired. They are taken on if they are supported by the MTS. The employers are less reluctant, they are paid the minimum wage, they are local, they are reliable” (administration).*

But there are also more workers from other European countries. This was especially the case with Spanish workers at the height of the crisis in that country, and also Romanians, who are on the margin of illegal employment and seem to compete with the local labour force.

From an institutional standpoint too, the MTS is evolving in a changing world.

With decentralisation, the services of the state (DIRECCTE, Labour Inspectorate) have been reorganised and their staffing has sometimes been reduced – and these were the services that played a leading role in the early years of the MTS.

Anchored in a local area, the MTS continues to enjoy the support of the local authority, but political disputes have held back some initiatives.

Moreover, the creation and then the reorganisation of *Pôle Emploi* on a regional basis have led to a kind of contraction of its contribution to the role of intermediation between labour supply and demand that was at the heart of the MTS. The MTS had equipped itself with specialised software to track seasonal workers but, at the time of our study, was no longer receiving data from *Pôle Emploi*: “*The relationship with Pôle Emploi is unbalanced, it limits the MTS staff to registration activities and not support*” (Labour Inspector), “*It’s no longer a partnership*” (employer).

Finally, the current merger of the two regions of Languedoc-Roussillon and Midi-Pyrénées has reduced the visibility of what the policy of the new region would be.

The contribution of the MTS on the various gaps identified has to be situated and analysed within this changing environment.

### ***From the initial Charter to the current main achievements***

When it was founded, the stakeholders of the MTS defined some common objectives in a Charter, some extracts from which are reproduced here:

“The signatories undertake to play their part in implementing and developing a structuring intervention whose objectives, listed below (not by order of importance) contribute to the sustainable economic and social development of the area:

- Improving the reception, living and working conditions of seasonal workers in the local area;
- Assisting the matching of labour supply and demand;
- Improving the match between the training offer and local needs;
- Enhancing the professionalisation of seasonal workers;
- Seeking and supporting seasonal complementarities and multi-activity;
- Consolidating and improving the employment situation of seasonal workers;
- Enhancing the attractiveness of the various trades through communication;
- Improving the flow of information to employers, seasonal employees and job-seekers about their respective rights and obligations;

- Contributing to the development and improvement of the services provided in the area (developing quality tourism and agriculture);
- Developing an information network covering the whole local area;
- Improving employer-employee relations;
- Contributing to development of the legal framework;
- Encouraging the spread of this approach.”

These very ambitious “non-hierarchised” objectives have evolved over time, but with some constant features, for example as regards housing. They can be analysed in terms of the main gaps discussed in the first part of this report.

In Work	How?	Results
Transitional labour market between seasons to increase employment duration	Coordinate summer season in tourism and spring/autumn seasons in vineyards	Poor. Agricultural sector did not cooperate. Seasons overlap. Different employee profiles.
Transition between winter/summer seasons	Joint employment arrangements with winter resorts	More information exchanged. Should concern about 200 employees. But single contract is legally impossible.
Improving the matching of job supply and demand	Employment forum, full-time reception, reception of job-seekers	650 job-seekers contacted.
Support / Advice	Individual guidance and information on training opportunities	Concerns a limited number of employees. Attempt to track RSA7 recipients abandoned.
Reducing health risks at work	Cartoon booklet on these questions widely distributed among employers. Visits to firms to give advice (25). 1,000 first aid guides printed.	More information and awareness. But not possible to set up an inter-firm HSC. <sup>8</sup>
Social Protection	How	Results
Housing (43% of housing applicants come from outside the département).	Attempt to convert fishing boats into accommodation;  Collecting accommodation offers.	Boat conversion failed: lack of political support, administrative complexity; A hundred accommodation units offered.
Health and welfare entitlements.	Cf. above.	

<sup>7</sup> Revenu de solidarité active: income support welfare payment.

<sup>8</sup> Health and Safety Committee (French: CHSCT).



Enforcement	How?	Results
Main work done on making employers and employees aware of rights and duties.	Information booklets. Advice given during consulting hours.	Less illegal employment; but continuing undeclared hours, paid in cash. According to our interviewees, fewer cases go to the <i>prud'hommes</i> (employment tribunal).
Conflict management	Mediation by social partners.	Some disputes settled without recourse to tribunal.

As can be seen, the MTS has a comprehensive approach to risks, ranging from questions of employment to work, health and housing. The main focus of its activity is on informing employers and employees of their respective rights and duties. It is thus more concerned with awareness and enforcement. Its main results have been in these areas, which correspond well to the characteristics of an expanded, non-contractual social dialogue.

## Contributions and limits of territorial social dialogue

### *A non-contractual but sustained dialogue*

The MTS is now more than ten years old. The social dialogue that it has created has evolved but continues. It presents some singular characteristics.

*“The MTS is a centre for social dialogue, not a joint committee”* (union).

It is a form of “quadripartism” (also developing now in some other domains) involving representatives of the state (Labour Inspectorate, DIRECCTE) and the local authorities alongside representatives of the social partners. The latter often make a strong personal commitment, sometimes beyond the official positions of their organisations. Other actors also take part in the steering committee of the MTS, delineating an “expanded” social dialogue.

While involvement is defined by a Charter, there is no bargaining and contractualisation process involving employers and trade unions over the whole area. The Charter and the operation of the MTS outline a set of procedures that support the involvement of the actors by allowing dialogue to take place.

The permanence of this dialogue is also made possible by material support provided by the local administration and the European Social Fund (which currently provides around 50% of the budget and has, among other things, made it possible to provide some individual support – employment advice, training – for seasonal workers). It should be noted that the means available to the social partners in France do not (or only very little) allow them to offer “service” activities to their members (especially on

the trade-union side). This is especially the case as regards seasonal economic activities in a host of small or very small firms.

While this social dialogue is sustained and sustainable over time, it nonetheless shows some signs of fragility. At the time of our study, the representatives of some organisations, who were often retired and had been present from the outset, expressed concern about their succession.

*“The unions are pulling out, who will take over? Where are the young people?” (IT). “I’ve resigned, but they need a replacement from that sector, not another activity” (union).*

Tensions could also be detected between the role played by “the administration” of the *Maison* and the autonomy of the same social partners.

### ***Contributions and limits of non-contractualisation***

As seen in Point 3, the activities of the MTS are numerous and target several gaps. They have evolved over time, in accordance with the means available and in a logic of consensual choices.

Informing employers and employees is at the heart of these activities. The aim is to enhance awareness of rights and duties and so influence behaviours. This bias no doubt explains why the balance sheet of the activities is little documented. Beyond the numbers received or contacted by the MTS, there are few indicators available to measure the improvement (if any) of housing conditions or the reduction (or not) of industrial accidents. It may also be wondered to what extent this choice, including that of the topics addressed, reflects the difficulty of tackling some subjects, some more “conflictual” gaps, which could break the consensus supporting this social territorial dialogue, especially in a world of small employers, some of whom sometimes operate on the margin of legality.

However, all the actors we met observe that the go-between role of the MTS, the visits to employers, the regular opening hours, play their role. *“There is less totally hidden illegal work” (employer). “It’s more a matter of ‘grey’ work, unpaid hours, paid in cash” (union). “There’s less illegal work, it’s more under-declaration” (IT).* And it is mainly these subjects (together with housing) that are addressed in the consultation hours.

The difficulties of moving to a more contractual logic are also apparent.

On the scale of this local area, the social partners we met the difficulty of constructing spaces of “close” social dialogue, such as for example the creation of a territorial joint employment committee, or an inter-firm HSC. Similarly, the idea of a “label of good practice” for firms has not materialised.

*We need a charter, a label, with criteria, evaluation and training. But it’s too complicated to set up (employer).*

The consequence, at the time of our study, was a sense of relative loss of momentum expressed by some actors who had been among the pioneers.

This loss of momentum is partly linked to the difficulty of replacing the employer and trade-union representatives, who are all now in retirement, reflecting the weaknesses of these organisations, especially in this world of very small businesses. But it is probably also related to the changes in the institutional environment above mentioned, which complicate the work of the MTS.

At the time of our study, one representative of the employers and one of the employees, who had been founders of the MTS and had acted in close coordination, were due to be replaced. This replacement is likely to modify the ways in which the social partners are involved.

### ***Contributions and limits of expanded social dialogue***

The common interest in acting (in which the question of Commons' "futures" seems relevant for the analysis of this case): what makes the "glue" and the possible "working together"? It may be thought, for example, that the question of housing for seasonal workers, which affects both the employers' capacity to recruit and the living conditions of the employees, is one of these common interests, relatively easy to identify, if not to implement.

As Eric Verdier underscores:

"The regional forum that frames this approach – the MTS – (the 'Regional Employment Conference') aims to lead to the identification of problems of collective interest that constitute a local general interest. The improvement of work in tourism and agriculture has thus emerged as a major issue for the 'regional society'" (Verdier, 2010: 7).

In this expanded social dialogue, what are the places and roles of each of the actors?

As has been seen, the social partners are working outside the standard frames of bargaining. They do not have their own means of action. Their contribution is nonetheless important. On the one hand they have "insider" knowledge of the terrain. On the other hand, they bring a form of legitimacy to the quadripartite action.

The state administration and the local administration rely on this knowledge and legitimacy to encourage and materially support the work of the MTS.

## **Conclusion**

Just before the creation of the MTS, a report on seasonal work was commissioned by the Ministry of Labour (Le Pors, 1999). This report, which proposed a set of measures on seasonal work, also recommended the strengthening of social dialogue and creation of *maisons du travail saisonnier*. It undoubtedly influenced the creation of the Agde MTS. Since then, other *maisons* have been set up in tourist resorts. Few of them, however, resemble the MTS in terms of the involvement of the social partners.

A national association for seasonal work has been created. The subject has been a recent issue for the Senate, with the setting-up of a working party and several questions to the Minister. The Director of the

MTS has an active role at national level on these questions, and this has in some ways given a “second wind” to the MTS.

## 9. Intervention régionale pour l'investissement social dans les services à la personne (IRIS SAP)

IRIS SAP is a case of territorial social dialogue (of the expanded social dialogue type) aiming to professionalise and secure the career paths of employees working in personal services. These people often work on part-time open-ended contracts, and the majority of them are women. This sector is called "Personal Services" (*Services à la personne*) but IRIS is concerned exclusively with one sub-sector – home help – where it aims to train and secure employees in their career paths, by building bridges with social and medico-social occupations. Furthermore, the organisations targeted by the action are only those in the not-for-profit home help sector.

Home help accounts for around 65% of the interventions in the sector. IRIS SAP represents the IRIS programme in the Provence-Alpes-Côte-d'Azur region (PACA) in the personal services sector.

### *Methodology:*

To carry out this case study, we drew on previous work on IRIS, done at the time when it was set up (Maisonasse, Richez-Battesti, Petrella, 2013).

In 2016, we met:

the Director of the *Pôle Régional des Services à la Personne*

the Director of the training body

the member of the Regional Council in charge of the file at the time of our study

an employee representative

an employer representative.

The interviews, each lasting between 1 and 2 hours, were all recorded. Various documents were collected (progress reports, cooperation agreements, steering committee minutes, etc.)

### **Features of home help work**

Personal services, and especially home help, are a rapidly expanding sector, because of increased life expectancy in France. This sector comprises activities performed in the homes of what are called vulnerable groups (old people, the handicapped, families in difficulty), enabling them to continue living at home in the best possible conditions. These activities, previously done unpaid and informally by women in their own homes, remain largely restricted to the domestic sphere, marked by the affective, interpersonal and informal character of the activity (Puissant, Gardin, Richez-Battesti, 2013; Puissant, Richez-Battesti, Petrella, 2013).

According to the INSEE employment survey of 2012, these jobs are almost exclusively occupied by women (97%), who tend to be older than the average for other sectors (48% are aged 50 or over) and less educated (44% have the level of the last year of secondary schooling without having the *baccalauréat*). The home help sector has long been seen as a “catch-all” sector, a phenomenon that was strengthened by the law of 26 July on the development of personal services (also known as the Borloo Law), which aimed in particular to encourage employment and economic dynamism in a sector that was struggling to recruit. To do this, the law targeted the creation of 500,000 jobs in this sector but without particular qualification, thereby accentuating the weak recognition and status of occupations in this sector. Still today, when the sector is professionalising itself, the employment agencies (*Pôle Emploi*, *Maison de l’emploi*, etc.) continue to orient unqualified employees towards it, still regarding it as a last-resort sector for unqualified women (Garabige, 2015).

Home help jobs are particularly strenuous and risk-laden, with much drudgery. The majority of employees are on open-end contracts (OECs) (78%) but work predominantly part-time (70% of cases). The full-time employees often work at weekends (48% of them as against 22% for part-time) and evenings (33% as against 17% for all employees). On average, the employees work five hours a day, corresponding to 3.1 daily visits to different premises (Devetter, Messaoudi, 2013). This working time spent in households is spread over an average daily span of seven hours. But the full-timers diverge considerably from this average. The length of the working day rises with the number of visits; and as this increase, so does the length of the gaps.<sup>9</sup> As a result, the working day corresponding to full-time work in home help stretches to 10 hours 30 minutes, with 3 hours 30 minutes spent each day travelling between households.

Moving towards full-time therefore requires an ability to work long hours and sacrifice spare time. The effort demanded by increased working time is not only physical but also eats into the employee’s private life. The extension of the working day also generates unpaid or underpaid travelling time (Garabige, 2015, p.2). Moreover, earnings are low: 51% of full-time home helps earn less than 1,250 € a month and less than a quarter earn more than 1,500 € (compared with 60% of all working women and two-thirds of working men). In addition to a complex organisation of work, these jobs are typical of “very part-time jobs, between ten and fifteen hours a work depending on the estimate, for an hourly rate close to the national minimum wage. This means earnings ranging between 320 and 550 € a month, with, for half of them, average resources of around 850 € a month if additional allowances are included” (Jany-Catrice, Puissant, 2010). Finally, one has to underline the specificity of the wage relation of home helps, who are employed by associations (31%), individuals (32%), private companies (21%) or public employers of the Community Social Welfare Centre (*Centre communal d’action sociale*) type (12%). Many home help employees thus have several employers (roughly one in four). Working and employment conditions vary from one employer to another. In particular they are more difficult for those employed by private individuals (without a written contract), compared with those working for associations, in terms not only of pay but also working conditions, since the latter employees benefit more from labour organisations and collective agreements (Devetter, Messaoudi, 2013).

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<sup>9</sup> Depending on the organisations that employ home helps, the gaps between visits are not counted as working time, or only partially.

In the PACA region in 2010, the non-profit sector alone (benefiting from the IRIS SAP project) employed some 32,000 people (15,800 FTEs) in 1,300 organisations. Average annual working time was 986 hours or 82.16 hours a month, equivalent to rather more than roughly half-time.

## History and configuration of the actors

The IRIS training funds were set up in PACA by the regional council in April 2009, in a context marked by the economic crisis. The PACA region then created an emergency fund to secure career paths, dedicated to vocational training, so as to take into account the most vulnerable people who slip through the net of the existing provisions, regardless of their status. Priority was given to people identified in the following situations: employees most threatened by job loss, particularly the low-skilled; employees on precarious contracts; employees with no existing right to training; and people without employment. Several sectors benefited from these IRIS funds and set up a collective operation targeting these categories.

At the same time (March 2009) the *Commission Régionale Paritaire Emploi Formation Professionnelle* (CPREFP de Provence-Alpes-Côte-d'Azur Corse) for home help was set up.<sup>10</sup> The region then naturally turned to this CPREFP to work on this sector and propose an IRIS fund. From then on the main focus of the committee was on the IRIS SAP project.

The project initially sprang from a political will on the part of the region and the social partners around a shared diagnosis of the crisis and the need to secure the career paths of home help employees. The PACA regional council was the initiator and financial backer of this collective undertaking. It then counted on the *Pôle régional d'innovation et de développement économique solidaire* (PRIDES)<sup>11</sup> for personal services, with which it had already been cooperating on strategic workforce planning and training, and also on the partners of this PRIDES: *ACT Méditerranée* (the regional agency for the improvement of working conditions) and the "accredited joint collecting agencies" (OPCA)<sup>12</sup> for the sector: Uniformation. These actors worked in coordination with the social partners through the CPREFP joint committee for home help. The IRIS SAP project was then also joined by Unifaf (the OPCA of the health and medico-social sector); the public employment services (*Pôle Emploi*); the regional health insurance fund; and the PACA regional observatory for occupations.

The sector is one that recruits on OECs but with very precarious working and employment conditions, as already noted. The social partners work on the basis of a shared diagnosis of the scale of part-time

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<sup>10</sup> The CPREFPs (regional joint committees for employment and training) are regional bodies in which the social partners discuss guidelines and possible projects regarding employment and training of the employees of the sector. They also formulate official opinions requested by the authorities. They are structured around national joint employment and training committees (CPNEFPs), organised by sector of activity.

<sup>11</sup> 27 PRIDES (Regional centres for innovation and solidarity-based economic development) have been created by the council of the PACA region. They are sectoral agencies whose general role is to foster competitiveness and innovation. In personal services, this first involves the management of human resources, especially through training (Puissant, Richez-Battesti, Petrella, 2013).

<sup>12</sup> "Accredited joint collecting agencies" (*organismes paritaires collecteurs agréés*, OPCA) are bodies responsible for collecting the vocational training contributions from firms (0.55% of the payroll for those with fewer than 10 employees, 1% for others) and financing employee training.

employment, the low level of qualification, rapid staff turnover, strenuous work and the lack of social dialogue. While the interests of the employees are easy to understand, the employers for their part have an interest in sending their employees on training courses because of the high incidence of incapacity to work and burnout in this particularly demanding sector.

It is then necessary to secure career paths, improve working and employment conditions, train the (poorly qualified) staff and reduce the amount of forced part-time work. The social partners and the region agreed on these matters on 17 January 2011 when they signed a regional cooperation agreement (Regional Council / CPREFP) on the creation of a regional partnership fund to secure the occupational pathways of employees in the personal services sector. This agreement was signed by all the employee trade unions in the sector (CFDT, CFTC, UNSA-SNAPAD, CGT-FO, CGT) and all the sector's employers' federations (UNA, ADESSA, ADMR, A DOMICILE, FNAAFP-CSF).

The project was then developed to act initially on three axes: reducing forced part-time work, assistance for mobility and upgrading in struggling businesses, the professionalisation and qualification of job-seekers with an occupational project in this sector of activity. On the three axes, the commitments involved a total of 72 firms and 3,300 firms.

Axis 1: Reducing forced part-time work (estimated budget 2.7 million € in September 2010):

- A commitment by the employer to increase the working time of home helps if they wanted it (the initial commitments were to increase it by about 40 hours a month)
- An increase in working time combined with a pathway of training and professionalisation activities over two years
- Financial aid to firms over two years (tapered)
  - o In the first year, the wages of the person replacing the person being trained
  - o Training costs(which gives the employer a year to find new clients and be able to move his employees to full-time).
- A commitment and monitoring of the firm in consultation with the bodies representing the staff.

Axis 2: "Training rather than unemployment": assistance for mobility and upgrading, professionalising in businesses in economic difficulty (with co-financing beyond the legal and negotiated obligations) (estimated budget 900,000 € in September 2010):

- Training plans for organisations in difficulty due to the economic crisis
- Periods of professionalisation for the most vulnerable employees<sup>13</sup>
- Pathways for retraining of those made redundant

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<sup>13</sup> The professionalisation period combines general theoretical (vocational and technology) courses supplied by training organisations or by the firm itself if it has a training department, and practical courses designed to give skills related to competences needed by the firm.



- Employee training aimed at a recognised qualification (to guarantee occupational development inside or outside the firm).

Axis 3: Professionalisation and qualification of job-seekers likely to enter the personal services sector (estimated budget 465,000 € in September 2010);

- Pre-qualifying job-seekers who have an occupational project in the sector
- Offering better-paid professionalisation contracts, which can include training modules in basic skills (reading, writing, etc.).

Subsequently (in 2014), a fourth axis was added:

Axis 4: Securing career paths by building bridges between home help occupations and those in the social and medico-social sectors (e.g. work in old people's homes).

For the employees of firms in the sector, two conditions must be fulfilled. First, the firm must comply with the sector collective agreement, with a view to employer-side regulation and a willingness to promote working conditions and social dialogue. Secondly, it must be a member of PRIDES PSP PACA or undertake to join it (so as to encourage pooling between firms and strengthen the viability of the sector). For job-seekers, the condition is that the person must have an occupational project in relation with an employer (in particular to limit the windfall effects of the system).

### **What reduction of what precarities?**

In this sector, precarity lies not in the FTC – everyone is on an OEC – but in part-time employment and the working conditions (very low wages, very low qualifications), so that some actors speak of “false precarity” or “hidden precarity” to describe OECs of 5 hours a week.

Again using our matrix of the different dimensions of precarity, several types of action have been developed with the aim of reducing the precarity of employment or work.

In Work	How?	Results
Increasing working time	Through qualifying training courses	Increased working hours for the majority 20% of employees then wanted to return to part-time, because of the demands of full-time
Qualification: securing career paths	Training individuals in exchange for move to 30% minimum hours	Many qualifications obtained
Burnout, stress	Risk prevention workshops	Not evaluated
Representation	How	Results
Improving social dialogue	Requiring employers who benefit from Axis 2 to work in coordination with staff representative bodies  By running the CPREFP	Not evaluated but more than 70 firms took part in the project and therefore must have complied with these obligations
Enforcement	How	Results
Compliance with collective agreements	Requiring employers who benefit from Axis 1 or 2 to comply with relevant sector collective agreement	Not evaluated but more than 70 firms took part in the project and therefore must have complied with these obligations
Social protection and integration	How	Results
Combatting unemployment	Supporting firms in economic difficulty to shift their activity  Supporting job-seekers after redundancy	To be followed up (no evaluation à this stage of the analysis)

Altogether, 4,660 people benefited from this programme over three years (2012-2014). It involved 246 organisations out of 1,300 in the region.

## Contributions and limits of collective action

### *What type of collective action and social dialogue?*

In this specific case, we are in the framework of an expanded social dialogue involving four parties (state, region, employee unions, employer organisations), i.e. “quadripartism.” The regional council member spoke of a “regional social dialogue.” From the outset, the following have indeed been present and active: the members of the regional council (who steer the project and partly finance it); the social partners, through the regional joint committee for employment and training in home help (CPREFP), the state (through CNAS<sup>14</sup> funding); the public employment service; the regional agency for the improvement of working conditions; two OPCAs and the PRIDES (all three of which are the technical operators of the project). The regional councillors are thus the initiators, now funding and implementing the project with the OPCAs and the PRIDES. They work in coordination with the social partners (employers’ and employees’ representatives), who are familiar with the sector and its occupations.

*“Their role is important, they are the ones who know, who have a medium-term vision of how their jobs or firms will develop.... They can warn us about impending mergers, ongoing redundancies... recently they worked on the job of the occupational therapist, because in fact increasingly they are working with the social housing office, so that there’s a service provider in the old people’s housing office who could help them visit the home and see how it could be reorganised to prevent injuries and so on. They really are the ones who know how jobs will develop” (director of training body).*

This is an occupational sector in which the social partners “understand each other,” as various interlocutors stressed. They have an interest in acting together. Their positioning in the field of the social solidarity economy and their perhaps more “social” vision is mentioned by some interlocutors as one reason for this.

The special nature of the work done by the employees in this sector plays an important role in structuring the social dialogue and the framework for action. The actors of IRIS SAP have opted to exclude the for-profit sector of home help from the project. Only the not-for-profit sector, mainly focussed on services to dependent persons, is concerned. On the one hand, unlike other sectors, the employers in this sector are unable to employ staff illegally (undeclared) because of the problem of liability in looking after dependent persons, and on the other hand they have an interest in retaining their employees’ loyalty. This stability is also a demand coming from dependent persons and their families. Hence undeclared unemployment and churning cannot be a solution for the employers, and many of them have understood this.

This configuration of actors partly results from two accompanying factors: on the one hand, work in partnership previously existed on strategic workforce management, which sent upstream reports on needs and elements of diagnosis on the sector, to which the region partly resorted in order to find these actors, and on the other hand, as already mentioned, the creation of the regional joint committee, which

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<sup>14</sup> *Comité National d'Action Sociale*

was set up at the same time and was therefore structured in line with this first IRIS object. To do this, in contrast to other French collective projects studied in this report, the actors of the IRIS project have contractualised. Cooperation agreements between the regional council and the CPREFP were signed in January 2011, based on a shared diagnosis centred on employment and working conditions in the sector and the aims of the project.

*“Having representation at the level of the region changed everything compared to the other IRIS I’ve worked on, for example for agribusiness. There I had to go to the national level because there was no regional joint committee to give its blessing, or representative unions at national, who immediately fell back into national postures that prevented agreement. (...) They [the CPREFP] are less set in political postures, obviously! You have to move out of postures, and if you are the unionist involved of course you’ve sold out” (regional councillor)*

The special character of this collective undertaking of territorial social dialogue also stems from the decompartmentalising of its object (Verdier, 2008). From the initial interest of the region in increasing employees’ working time by qualifying them, to the employers’ concern about their financial difficulties in a period of economic crisis, there emerged a common frame of reference around a joint approach combining economic development with quality of employment. The aim was then to train the employees, to qualify them and secure their career paths, while at the same time securing the firms by training their executives and supporting their conversion or development. In the course of this – and this is another specificity of this project, whose object has evolved over time – the home help sector turned to another sector, the health and medico-social sector, with which the CPREFP then designed and constructed bridges for the employees, again with a view to securing career paths. Home helps then had the chance to train for occupations in the health and medico-social sector, to change direction and apply for jobs in old people’s homes, for example, where the working conditions, while not always as “good” as the candidates would like, at least reintegrate them into a work team and sometimes provide better wages.

We thus have here a collective project for social dialogue, aimed at combatting precarity in employment and work, of a rather original kind as regards its configuration (quadripartism, or expanded regional social dialogue, at first sectoral then straddling sectors), its object (decompartmentalising the objects of public policy, an economic and social approach) and its aims (a project targeting employers, employees and job-seekers, a kind of territorial strategic workforce planning).

### ***Contributions and limits of expanded social dialogue***

In terms of the contributions of this endeavour, over the first three years of the IRIS project (2010-12), it should first be highlighted that 3,700 home help employees – a considerable number – benefited from training. These people were able to increase their working time and earn on average 320 € more per month.

At the start of the project, the steering committee expected impacts on several axes in particular. One primary objective was to develop skills and qualifications and to improve working conditions. As regards qualification, the aim was achieved, with a significant number of employees qualified, although there is

some way to go in improving of working conditions. This being so, discussions took place with the employers with a view to better organising the spatial distribution of the employees among households and so reducing the gaps between visits (paid less than working time, as noted above).

The project also expected “more strategic workforce planning, cooperation among actors and diversification of activities to respond to economic difficulties.” On this point too, the aims were achieved and even exceeded expectations, with an opening-up to another occupational sector (health and medico-social), with which the actors in home help built bridges to secure career paths in their respective sectors. This can be seen as a kind of territorial strategic workforce planning (involving employers, employees and job-seekers).

Finally, the IRIS project aimed to improve social dialogue in the sector, which is particularly complex because of the structuring of the organisations and the scattering of the employees over their different workplaces. Another undeniable contribution of this project is that it was able to bring together the social partners, the local authorities, the OPCAs, *Pôle Emploi*, industry networks, training bodies, etc. The joint committee (CPREFP) has been and remains a genuine arena for negotiation, relatively free from national political postures, in which compromises and important advances for the sector can be worked out.

Among the limits, we would stress how much, among the three axes of IRIS, it was mainly Axis 2 that brought people together. Several actors wondered about the extent of the commitment of the sector’s employers, who seem to have been only concerned with “their” axis and showed much less interest in the integration of job-seekers or increasing the working time of the employees of home help organisations, which were not part of Axis 2 (economic difficulties). Did their particular interest take precedence over the collective interest?

Next, this project seems to have primarily benefited the large firms in the sector, and much less the small ones, because of the complexity of identifying them and the isolation of these firms.

*“It was mainly big firms that came to us, they are more development-strategy-minded. The small ones are more focussed on what comes next and don’t think long-term”* (employer’s organisation representative).

Access to the scheme was perhaps not sufficiently well organised to reach its intended beneficiaries, the firms most in difficulty (a well-known access bias of many schemes).

## **Conclusion**

Finally, again regarding the beneficiaries, a phenomenon that reveals the complexity of the sector was emphasised several times: among those who underwent training and then increased their working time, some 20% could not cope with full-time work and asked to revert to part-time.

*“There were employees who signed full-time contract thanks to IRIS and then six months later told their employer they wanted to go back to part-time. It’s exhausting. It’s not that we don’t*

*want to work, but it's awful! Never mind, we qualified them, we got them a diploma... (...) It must have been 20% of them. It was a question of fatigue. You might say, they agree to increase their working time because for that period they're going to be trained, so they can relax... And then after six months they realise they have to lift up old people, clean homes, travel around, well, they can't take it!"* (Director of the training body).

Fatigue and burnout and the impossibility of achieving a proper work-life balance (single mothers make up a high proportion of this workforce) explain this step back. It may be wondered whether full-time work is impossible for them. In any case, these results, which were known to all the actors in the project, were never discussed and did not give rise to other initiatives to improve working conditions. The working conditions then did not allow an effective campaign against part-time work, and even made it impossible for a significant proportion of the employees to move to full-time.

IRIS was above all driven forward by the regional council and one member in particular. The elections of December 2015 brought a change of majority in the council, and the project lost a key actor, the councillor who had championed it. Questions arise as to the durability of IRIS and the feasibility of pursuing the project. Moreover, the agreements formalised between the CPREFP and the region were signed in 2011 and in 2013 but since 2015 there has been no further contractualised political partnership.

This being so, even if the contract-based IRIS project may not survive, the various actors continue to work together within the CPREFP, and a kind of common framework of reference seems to have emerged, albeit fragile and in need of nurture, around, on the one hand, the importance of qualification and working conditions, and on the other the usefulness of moving towards cross-sector, territorial projects. Moreover, while the region was the lead actor of IRIS, the OPCA has supported and continues to support it, in particular encouraging cross-sector projects. In this sense, IRIS has opened up new perspectives for the actors in the sector.

## 10. Part-time employment in large-scale retailing

Case “Big Retail” is a case of social dialogue in the strict sense (negotiation between the social partners with a view to an agreement) on part-time work in retailing and specifically large-scale retailing. The cross-industry and sector agreements were studied, and a particular focus was placed on a large-scale retailing chain, which we shall call firm Big Retail.

### *Methodology:*

To carry out this case study, we studied the negotiations and agreements at national cross-industry, sector and firm level.

In 2016, we met:

The Director of Human Resources (DHR) (France) of Big Retail

A regional DHR of Big Retail

The former Director of Industrial Relations (France) of Big Retail

One CFDT trade-union representative in Big Retail

One SUD trade-union representative in Big Retail

Two CFDT trade-union representatives in another big firm

The interviews lasted 1 hour 30 minutes and some were recorded. During these visits, we also collected various documents produced by the firm.

### **Sector negotiations and agreements on part-time work in large-scale retailing**

Part-time work, often described as under-employment (Milewski, 2013), is an undeniable factor of precarity. Lower wages are accompanied by reduced welfare entitlements (and even their absence, below certain thresholds): lower basic and complementary retirement pensions, reduced unemployment benefits, lower sickness benefits, lower redundancy payments, etc. Because welfare entitlements are linked to wages, part-time work leads to “partial rights” (CFDT). Increased working time thus directly leads to increased welfare entitlements or gives first access to them.

While a distinction is often made between forced and chosen part-time, studies have shown that “chosen” part-time is often “chosen” for lack of an alternative (Neuville, Sirugue, 2013), mainly by women. According to one of the trade-union representatives we interviewed, this distinction is in any case a false problem. The real question lies in the rate of unemployment and the particular employment region: *“In employment regions where there is low unemployment, all the employees are full-time, because no one would accept part-time”* (CFDT of a large firm not part of Big Retail) (e.g. stores close to the border of higher-wage countries, flight of labour). According to the DHR of Big Retail, 50 to 60% of

employees would be interested in working more hours. But for the trade unions the figure is much higher:

*“90% of the employees want full-time. Precarity is above all a question of wages... At each round of the MAN<sup>15</sup> we put forward proposals to increase people’s working time” (CFDT, Big Retail).*

*“The great majority want full-time, but if we are offered 30 hours, we take it, it’s that or nothing. There’s a kind of resignation among some people, but then we unions move forward, progressively increasing the working time.... And even on full-time, you can’t live on 1150 €, so on part-time.... After paying 500 € rent you can’t live, there’s permanent stress” (Sud Big Retail).*

For this reason, it was decided to reverse the trend and, after a period of encouragement of part-time work to reduce unemployment, the authorities decided to combat forced part-time work, because limitation of part-time work has been recognised as one of the bases of the fight against precarity. Thus in 2012, a guideline document was presented by the government to the national social partners, urging them to negotiate on the theme of securing employment and the competitiveness of firms. As regards part-time work, the aims were to improve the situation of part-time employees and to move towards greater occupational equality, because it had been observed that, especially for women, the growth of forced part-time is a factor of precarisation and a source of major constraints for employees. After four months of negotiations, on 11 January 2013 the social partners arrived at a national cross-industry agreement (ANI, *Accord National Interprofessionnel*) signed by three employers’ organisations and three trade unions (CFDT, CFTC and CGC). Two trade unions (CGT and FO) refused to sign the agreement, which deals with several questions relating to securing employment and career paths, including more security for part-time employment. It should be noted that:

*“The article in the agreement relating to part-time [was] constructed in a separate negotiation with the large firms in cleaning, distribution and retailing” (MEDEF).*

It emerges from the preparatory work for the law that followed this agreement that the trade unions who signed the agreement were not entirely satisfied with the provisions adopted on part-time work, but saw it as urgent to set a minimum working week of 20 hours so that part-time employees could enjoy some welfare entitlements (unemployment benefit, sickness benefit, pension, etc.). The unions that did not sign, while sharing this view, considered that there were too many possible derogations from this minimum working week. One of them (FO) wanted the 24-hour threshold to be untouchable, guaranteed as a matter of public policy; the other (CGT) had proposed that a right to full-time work be declared for an employment region for employees combining several part-time jobs. In addition to substantive rules, which will be set out below, the agreement requires sectors where at least a third of the employees work part-time to start negotiations to organise the conditions governing this work (31 sectors, only four of which had already set a minimum working week, large-scale retailing being one of them).

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<sup>15</sup> Mandatory annual negotiations (see below).



A law of 14 June 2013 on the securing of employment<sup>16</sup> essentially adopts the provisions of the ANI on part-time work, in particular the obligation to negotiate for the sectors making most use of part-time work. Substantively, it lays down for the first time a minimum weekly threshold of 24 hours, from which a sector agreement may derogate, and a pay supplement of 10% from the first additional hour. As of 19 March 2015, 48 sector agreements on part-time had been concluded. 44% of the part-time employees in France (1.4 million) are now covered by a sector agreement, including 78% of the employees of the 31 sectors employing at least 30% of their staff part-time. This represents clear progress, inasmuch as, before the ANI and the law of 2013, only a few sectors had a minimum working week rule (in particular large-scale retailing and cleaning firms). However, almost all the sectors that had reached an agreement on part-time had made use of the opportunity offered by the law to set a minimum working week of under 24 hours. Only five sectors adopted 24 hours as such: fast food, cinemas, social housing, pharmacies and large-scale retailing; the latter in fact moved to 26 hours. In contrast, the cleaning sector (cf. Case 4) derogated from the law with a 16-hour minimum, estate agencies with 8 hours (DGT, 2015).

As can be seen, the aim of the national social partners and the legislators – to reduce forced part-time work – is far from being achieved, even if some people see in these agreements “the balance sought by the legislators, who wanted to take satisfactory account of the sectors concerned, while guaranteeing employees a minimum number of hours” (DGT, 2015). All in all, it can be observed that the majority of sectors made use of the derogations allowed by the law. Even if a minimum working week is provided for by the agreement, it may be hypothesised that this should not radically change the status of the employees in these sectors. Thus, only the employees in the five sectors which decided not to derogate from the minimum working week of 24 hours, and those not covered by a sector agreement, benefit from this rule. This situation may seem paradoxical, since employees not covered by a sector agreement would then be in a more favourable position than those working in sectors covered by an agreement.

But it should be noted that the sector level was the one that all the partners as well as the legislators regarded as the most legitimate, given the great diversity of sectors of activity and their specific characteristics. It may be concluded from this that part-time work may be unavoidable in some sectors. The levers for combatting forced part-time should perhaps be looked for elsewhere than in lengthening the duration of work.

## **Part-time work in large-scale retailing**

Commerce and more especially large-scale retailing is a sector that recruits massively, at all levels of qualification. There is nonetheless a significant churning on the least qualified jobs – the FTC and temporary staff recruited for time-limited operations (pre-Christmas, clearance sales). The great majority (83%) of the employees in retailing are shop assistants, manual workers or delivery staff, 8% are supervisors and 9% are managerial staff (Rieucan and Salognon, 2013). The employees are relatively younger than the average for all sectors, and relatively less qualified. This population, mainly hired on OECs, is 60% female (66% in the categories “assistants, manual workers, delivery”) although only 28% of

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<sup>16</sup> Law no. 2013-504 of 14 June 2013, *Journal Officiel*, 15 June 2013.

the managerial staff are women (Rieucou, Salognon, 2013). One woman in three in large-scale retailing is employed part-time as against less than one man in ten (ibid.).

The working conditions are difficult, starting with irregular and unsocial schedules. Almost nine in ten employees work on Saturdays and/or Sundays regularly or occasionally (Bodier and Vidalenc, 2011). A cashier receives her work schedule on average 8 to 10 days in advance, and overtime “without warning” is commonplace. The working day often extends over more than nine hours (De Troyer, 2012). Moreover, the occupations often involve hard physical work, particularly because of the predominant activities of lifting and carrying often heavy objects, repetitive actions, prolonged standing, etc. The DHR of firm Big Retail acknowledges that:

*“Large-scale retailing is physically demanding, it’s hard to reconcile working and personal time. It’s an action job, every day is different, you have to adapt (...). People should have no illusions when they come here, the job is about selling.”*

In this sector, pay levels are relatively low: median gross wages (full-time, including all bonuses) are around 1,600 € a month for an assistant or cashier, around 3,300 € a month for a store manager (ibid.).

Retailing is one of the sectors that make most use of part-time work, in order to adapt to the fluctuations of footfall, mainly concentrated in the evenings and weekends. In France large-scale retailing employs 652,200 people, of whom 34.7% are part-time (at 31/12/2010). Unlike other sectors using part-time work, the large-scale retailing sector had already set a minimum working week of 22 hours in 1993. This can be explained partly by the need to retain staff loyalty. Part-time employees are indispensable to enable stores to cope with fluctuating demand, and their loyalty can be secured in particular by increasing their working hours if wages cannot be increased. The part-time/full-time question also arises in the constrained context of Social and Environmental Responsibility (SER), which requires stock-exchange listed firms to deal with these questions in order then to develop in other countries: *“The shareholders want labels, charters...”* (CFDT).

In 2008, several factors led the partners in the sector to come to a new agreement:<sup>17</sup> strikes in large-scale retailing (Milewski, 2013), the economic crisis, which made it impossible to increase wages as previously, and the surge in the number of single parent families (DHR Big Retail). This agreement imposes a minimum working week of 25 hours and a set of rules on the organisation of part-time work: a higher rate for extra hours, structuring of gaps in the day, the possibility of a modulation of working time over the year (on a contractual basis of 28 hours a week, with the possibility of four hours more or less with pay evened out on the basis of 28 hours with adjustment at the end of the year). To allow an increase in working time, the agreement opens up the possibility of setting up “polyactivity” in the firm, whereby the employee is assigned to two posts. According to the agreement, “polyactivity differs from occasional, temporary cover and from the multi-activity necessarily practised in small shops.”

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<sup>17</sup> Amendment 25 of 17 July 2008 to the collective agreement for the mainly food wholesale and retail industries. Signed by the CFDT.

Following the ANI and the law of 2013, a new sector agreement was signed by the majority of the partners in 2014,<sup>18</sup> restating that “full-time work must remain the standard legal form of employment practised in the sector.” Essentially the agreement lays down the rule of a minimum working week of 26 hours and otherwise takes over the provisions of the law. The partners in the sector did not make use of the opportunities offered for derogations (in particular on a higher rate of pay for extra hours or on breaks in the day). *“Between the need for flexibility in order to operate and the managers’ demand for lean flow, we have this compromise on 26 hours”* (DHR Big Retail). The partners took advantage of this to negotiate on the possibility offered by the law to agree amendments on additional hours, which should be dispensed “fairly” among the employees.

## **Firm Big Retail: configuration and social dialogue**

Big Retail is a firm in the large-scale retailing sector. It belongs to a large French group which has stores in many countries. It employs 30,000 people, of whom 72% are women and 38% work part-time, among whom 32% work less than 22 hours. The average wage of the latter is 800 € a month. The firm makes little use of FTCs – mainly to replace absent employees. Also, each year, 300 to 400 people who work regularly on FTCs are transferred to OECs. Firm Big Retail wants to maintain staff loyalty, which in particular involves occupational training and the creation of work-study contracts to support recruitment. It has also undertaken various initiatives for employment with external actors (work with foundations or associations to assist groups in most difficulty in entering the labour market). Regarding working conditions, in addition to setting up an organisation of part-time work (examined in the next point), it has for example integrated into its annual budget the report of an ergonomist for each renewal of furniture or the purchase of additional equipment to simplify shelving operations and reduce physical exertion. On remuneration, the firm has developed “social status packages” including the basic wage, above the legal minima, and various bonuses and benefits (profit-sharing, holiday bonuses, meal vouchers, a “quality” insurance scheme, etc.).

Big Retail has set up a mixed retailing network of franchised stores (where 1/3 of the staff is not Big Retail employees) and integrated stores (where 2/3 are employees). This means in particular that the working conditions described above only apply to the staff of the integrated stores and not those of the franchises (therefore of the employees). The franchises are run by independent managers, who must apply the commercial policy of the chain but are free to set their own employment policy, since they are not subject to the firm agreements. Equally, depending on the size of their staff, they are not subject to the collective agreement for large-scale retailing but that of the grocery sector. The regional HR directorates also intervene in these stores for staff training and legal and welfare advice. A contact person oversees compliance with a number of employment rules. In these stores, staff representative bodies are rare:

*“It’s quite out of line what happens in franchises, but I can’t intervene in those stores. I was told recently that that if a girl makes a five-euro error on the till, she has to make up half an hour’s*

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<sup>18</sup> Amendment 48 of 17 April 2014 to the collective agreement for the mainly food wholesale and retail industries. Signed by the CFDT, the CGC and FO.

*work... No one says anything, they are too scared. I tell them: call the Labour Inspectorate, it's your right, but they won't do it. The managers do want they want. Three-quarters of the time there is no staff delegate. They are required to organise elections but some of them cover up the notice on the board with other papers, so they can say they displayed it but no one saw it. In terms of industrial relations, franchises are something quite different" (CFDT Big Retail).*

The integrated stores are run by a manager employed by the firm, in accordance with a conventional hierarchical organisation, with a national directorate and regional directorates. These stores are subject to the collective agreement of the large-scale retailing sector<sup>19</sup> and all the agreements signed in the firm. The regional HR directorates supervise compliance with all the agreements.

This organisation is also found in some competitors. Others have opted for "all integrated" or "all franchise." In some groups, the development of franchises, through the opening of new stores or acquisition of existing stores operating under another brand name, makes it possible to bypass the firm agreements, which are more favourable to the employees, and only apply the sector agreement. What the unions call the "loss of social status" is, as they see it, becoming more widespread with the development of franchises.

In 2004, Big Retail announced a move over three years from a weekly minimum of 22 hours to 26 hours. They have negotiated several times on the part-time question. A chronological overview of the agreements shows more clearly the linkages between firm, sector and national cross-industry negotiations.

#### ***Chronology of agreements***

2001: 12/07: Sector collective agreement (extended on 26/07/2002)

**2008: 12/06: Part-time agreement in Big Retail: pilot study on increased working hours combined with polyactivity**

2008: 17/07: Sector part-time agreement

**2009: Part-time agreement in Big Retail – not applicable (opposed by two unions)**

2013: 11/01: ANI on securing employment

2013: 14/06: Law on securing employment

2014: 17/04: Sector agreement on part-time

**2014: 1/07: Firm Big Retail agreement (compilation of agreements in the framework of modification of the company statutes)**

In firm Big Retail, the part-time question is regularly addressed in the mandatory annual negotiations (MAN), a statutory requirement to negotiate on certain points, mainly wages. It then seems to give rise

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<sup>19</sup> Collective agreement for the mainly food wholesale and retail industries.

to no particular difficulty, since it consists in offering the employees increased working time or a part-time to full-time transfer without any other change in their contract. This is acceptable to the unions, which want all employees working on forced part-time to be made full-time.

However, a real long-term policy to reduce forced part-time work would require a specific agreement. Because it is not possible to make all part-time contracts full-time, new arrangements had to be found.

*“In 2005-2006, we had more single women with children.... It was also linked to the economic crisis. Before, they were earning a top-up wage, then when the father was made redundant, something had to be found. Since we couldn't increase the wages, we increased the hours. And the solution we found was multi-activity” (DHR Big Retail).*

For this reason, an agreement was signed in 2008 by four trade unions (one refused to sign).<sup>20</sup> This agreement set up a pilot phase in nine stores to “identify good practices and the appropriate method to develop full-time employment.” A diagnosis was made, using a number of indicators linked to part-time work and based in particular on questionnaires sent to the employees. The agreement provides in particular for the development of “polyactivity” as an accompaniment to the extension of working time. A monitoring committee, made up of representatives of management and representatives of the trade unions that had signed, met several times during the lifetime of the agreement. In addition, ARACT (the Regional Association for the Improvement of Working Conditions) was asked to evaluate the pilot before it was rolled out. It was also invited to the meetings of the monitoring committee.

After the trial period, which lasted eight months, the social partners met again to work out a new agreement to roll out the pilot on a larger scale, in the light of the recommendations of the ARACT. This agreement was signed by only two unions (CGC and FO). Three (CFDT, CFTC and CGT) refused to sign and two of these (CFDT and CGT) invoked their right of opposition, on the grounds of the introduction of polyactivity. The agreement is therefore not applicable.

As can be seen, firm Big Retail seems to carry weight in the large-scale retailing sector, since it is sometimes ahead of the national agreements in its measures and, in other cases, does not make use of the derogations permitted in sector agreements. In particular, the introduction of polyactivity is provided for in a firm agreement which came a month before the sector agreement, and along the same lines. Thus, the sector agreements, negotiated in part by Big Retail, are imposed by extension on all firms in the sector, including those not belonging to the employers' organisation for large-scale retailing.

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<sup>20</sup> Agreement of 12 June 2008, signed by the CFDT, the CGC, the CFTC and FO. Not signed by the CGT.

**Table 9: Main provisions currently applicable: from the ANI to firm agreements**

	<b>ANI 2013 / LAW 2014</b>	<b>Sector agreement 2014</b>	<b>Firm agreements at 01/07/2015<sup>21</sup></b>
<b>Minimum working week</b>	24 hours But derogations possible: - Employees of individual employers, employees on parental leave, employees on therapeutic half-time, etc. - Employment contracts for maximum 7 days - FTC and temporary contract to replace an employee himself absent for less than 24 hours - At request of employee - Provided for by sector agreement	26 hours  28 hours if length of working week varies over year.	As sector agreement
<b>Gaps in day</b>	Maximum 1 gap. Maximum 2 hours, unless provision to the contrary in sector agreement, with guarantees.	Maximum 1 gap. Maximum 2 hours, 3 hours if the store closes in the middle of the day, with compensation in the organisation of work + length of day limited to 12 hours, allowing for travelling time.	As sector agreement
<b>Additional hours</b>	Maximum 1/10th of hours specified in contract, unless derogation by sector agreement. 10% supplement. For hours beyond 1/10th, 25% supplement. Derogation possible by sector agreement, but minimum 10%.	Maximum 1/3 of hours specified in contract. 7 days' notice (3 in exceptional circumstances – e.g. unexpected absence) 10% supplement for hours up to 1/10th of hours specified in contract, 25% beyond this.	As sector agreement
<b>Additional days</b>	A sector agreement may authorise temporary increase in working days by amendment (maximum 8 amendments per year per employee), with guarantees for the employee. This new rule was adopted at the request of the employers, to legalise a practice judged illegal by the Court of Cassation.	Possible to assign additional hours “fairly” among employees, pay supplement only on hours specified by the amendment.	As sector agreement

## The gaps:

<sup>21</sup> A compilation of the rules applicable in the firm was drawn up on that date, but the agreements came earlier.

- Low wages because dependent on working time
- Limited welfare benefits because linked to wages
- Stress
- Difficult work-life balance.

## What evolutions, what levers for what gaps?

In Work	How?	Results
Longer working time	Polyactivity Negotiation	Longer working time Fewer part-time employees
Improving working conditions	Reducing overall length of working day  Reducing gaps in day Working close to home Working in product section	Imposed by sector agreement in large-scale retailing  Difficult  Difficult in small stores
Social Protection	How	Results
Welfare entitlements	Longer working time	Weak at sector level Positive in large-scale retailing

Several levers have been devised by the social partners and/or management to reduce these gaps, by reducing forced part-time. Because it is not always possible to increase wages, it was decided to offer increased length of part-time work or transfers from part-time to full-time. The levers are the ones provided for by the various agreements studied (national, sector, firm):

- Moving beyond the threshold of 20 hours a week to gain access to some welfare benefits (unemployment benefit, pension, sickness benefit, etc.). It was for this reason that some trade unions signed the ANI of 2013 although they judged it inadequate.

- Increasing the working hours of part-time employees: the retail sector realised early on the precarity of part-time employees. Many firm or group agreements are more favourable in this respect than the sector agreement. One firm belonging to another group than firm Big Retail has set a rule of a weekly minimum of 30 hours. Several levers are then used to make this increase possible, such as staff turnover: *“When an employee leaves, we increase another employee’s hours rather than hire someone else”* (DHR Big Retail).

- Developing full-time work: in the MAN, shifts from part-time to full-time are regularly offered.
- Modulation of working time over the year, so as to guarantee more annual working time for employees (the sector agreement provides for 28 hours a week) and ensure a better match of working time to the foreseeable variations in activity.
- Polyactivity (Big Retail Agreement 2008 and sector agreement 2008): 2 posts maximum / same occupational classification / one line manager as main interlocutor / two-week adaptation period with opportunity to reverse decision / training if required.
- Work in section team: this involves creating a team of several employees who organise themselves to work out their schedules. This formula is more appropriate for hypermarkets. It is difficult in supermarkets, where the teams are smaller.
- Working also in a second store, within a 25 km radius. This makes it possible to complement part-time, but it is difficult to set up.
- Working close to home. This reduces travelling time and in particular makes it possible to go home during gaps in working day.
- Reducing the overall length of the working day and number of gaps in it: part-time is inherent in the activity of some sectors, so employees should have the opportunity to complement their part-time work with work for another employer.

### ***Contributions and limits of collective action against precarity***

The negotiations at different levels have led, on some points, to a clear improvement in the situation of part-time employees in large-scale retailing: a minimum working week of 26 hours, shorter gaps in the day, grouping of hours in the week, etc. They have *“made it possible to organise part-time work, to imagine being able to ask for a half-day or a day off, which was inconceivable before”* (CFDT of other big firm). The constraints inherent in the sector have nonetheless not disappeared and the levers put in place by the employers sometimes encounter resistance (as is the case with polyactivity, for example).

Polyactivity was trialled by Big Retail in 2008 in some pilot stores and then encouraged by the sector agreement of that year to increase the working time of part-time employees. While it is regarded by management as a lever to combat the precarity of part-time employees, it has not always been welcomed by the employees and trade unions. The CFDT representatives in firm Y acknowledge that while polyactivity must be obligatory in order to function, it is very badly received by the employees, who experience it as a deskilling, with less autonomy, a loss of “their” product section, which can lead to reduced motivation, sometimes reflected in work being less well done or increased absenteeism. Moreover:

*“When you’re less used to it, you work slower, you do it less well, you’re less attentive to some things that the people used to a section will notice. It was a real mess, price labels were missing, products were missing, there were complaints from customers.... We tried to be scientific about*



*it, to do things more effectively with polyactivity, hiring fewer people, it was completely stupid”* (Sud, Big Retail).

This is why three unions refused to sign the 2009 agreement in Big Retail. The firm had, however, declared that “this addition of hours on another post in particular enables employees to enrich their work and personal skills and increase their pay. Moreover, by diversifying the tasks, polyactivity helps to address health at work issues (...). Polyactivity is quite different from polyvalence [versatility], defined as the employee’s capacity to occupy all posts in the firm.”

*“My store was chosen as a pilot in 2009, when they launched the ‘all shopkeepers’ operation. In fact they want everyone to be a ‘polyactive salesperson’ and now everyone is hired on that status, there are very few checkout staff like me for example. In ten years there won’t be anyone on the tills in any case, that is what they are counting on. The trial was a real disaster. Some girls didn’t want to go to the fish section, others didn’t want to work on the checkouts, it’s not the same hours at all. When we got the results of the trial, I made an evaluation but they took no account of the opinion of the expert who was against it. They always run trials, every time there is a change in organisation, they run pilots, but they roll it out anyway, whatever the results”* (CFDT Big Retail).

In its report evaluating the setting-up of polyactivity in Big Retail, ARACT observes that it had a negative image at the start (it was seen as deskilling), but that the problems of organisation and management were overcome in the stores studied. It nonetheless recommends “an effort to raise awareness and to find organisational measures to ease its introduction.” Polyactivity needs to be “valued and recognised”; it “has to be part of a larger project to develop skills and mobility.” Finally, “more allowance should be made for the reconciliation of working time and the demands of family life.” Since that evaluation, polyactivity has been extended to other stores:

*“It’s work we’ve been doing for years on the job of the salespersons, who develop expertise in two areas... There were some fears at the start, which arose in part from some abuses. We don’t assign anyone to more than two posts and we organise it properly”* (DHR Big Retail).

In Big Retail, in 2008, employees on 30 hours were invited to move to 35 hours with the introduction of polyactivity, and one in two refused. Likewise, during the polyactivity trial period in 2008, only 50% of the employees said they wanted to work longer (ARACT). Several factors shed light on some employees’ refusal to increase their working time: first, personal reasons, because of the large number of single mothers (need for time outside work); then economic reasons, with, beyond 30 hours, a number of welfare benefits no longer being available; and finally reasons related to working conditions and stress, since, as already mentioned, these occupations are arduous and burnout is commonplace (many cases of incapacity for work after age 50).

Finally, as regards limits, the unions which signed the ANI in 2013 did so, on the question of part-time, mainly because they wanted as many employees as possible to work at least 20 hours a week and so have access to welfare benefits. Overall, only a few sectors lay down a minimum of 20 hours; in the others, it is lower. In terms of the reduction of precarity, it is nonetheless very limited.

## ***Contributions and limits of social dialogue***

The social dialogue studied here can be regarded as “classic”: the social partners negotiate at cross-industry, sector and firm levels. On the question of part-time, it was found that sector negotiation in large-scale retailing made it possible to make gains for the employees relative to the statutory requirements (minimum working week, grouping of hours in the week, higher rate of pay for additional hours), when they were accompanied by a degree of flexibility in work organisation to cope with the fluctuations in footfall (gaps in the day, amendments providing for additional hours at certain times of the year, multiple activities).

In the firm Big Retail, the DHR considers that the current period is favourable to social dialogue (setting aside the conflicts over the El Khomri Bill) and the trade unions also remark on the quality of the social dialogue. The topics for negotiation are pushed forward either by one of the trade unions or by the management.

Negotiation takes place in the MAN, although according the DHR of Big Retail, *“in the MAN, you can’t really negotiate, we talk about wages and it is inevitably tense, very formal, ritualised, there’s a lot at stake; those are not moments of serenity.”* According to the CFDT representatives, *“some points are never signed in specific agreements but in the MAN, because those agreements have a limited lifespan – so it’s a way for management not to let a gain become permanent.”* While sometimes decried by the various actors in the firm, these NAO nonetheless make it possible, step by step, to significantly improve the employees’ working conditions, because it is here that, for example, requests for increased working hours are negotiated: *“Each year in the MAN they give us a little bit”* (Sud, Big Retail).

A follow-up committee is set up for each agreement, which makes it possible to *“cultivate a permanent dialogue with the trade unions”* (DHR Big Retail):

*“The committee is forward-looking, we talk about needs, it comes after the agreements, it’s a forum for exchanges, negotiation comes later. It’s more favourable because we present balance-sheets, we share benchmarks, we discuss together what we are doing.”*

In a general way, the DRH of Big Retail considers that her role is mainly to *“ensure constant communication with the social partners, in co-construction.”* She explains to them what comes down and listens to what comes up. *“There’s feedback from management but also from the unions. That has always been the culture of the firm.”* *“We don’t need formal structures to listen to one another”* (DHR Big Retail).

One of the limits on high-quality social dialogue mentioned by the DHR is the increasing complexity and proliferation of legislation; the succession of laws – and the implementing decrees which come later – are not conducive to social dialogue: *“You negotiate less well under pressure of time.”* Moreover, the complexity of the negotiations leads the management to send the union delegates on training courses. Then, with training, follow-up committees and negotiations, the union representatives complain they cannot not spend enough time on the shop floor.

## Conclusion

The retail sector realised early on the extent of the precarity of part-timers. Everyone agrees that a 26-hour week contract does not provide a sufficient wage. But the solutions put forward by either side do not always lead to agreement. When the unions wanted all employees who wished to do so to be able to move to full-time, the employer replied that this was not possible in view of the activity of the stores, linked to the flow of customers, and instead set up “polyactivity”). The management wants to advance by stages, whereas the trade unions want all part-time contracts to be made full-time.

Store size has an impact on compliance with the rules (trade-union presence or not, constraints linked to lack of staff, etc.). The CFDT emphasises that the agreements are less well applied in small stores, where the trade-union presence is weaker and the managers have less room for manoeuvre with small staffs. It still happens that an employee is called in at a moment’s notice to replace an absent colleague. By contrast, large stores apply the agreements – for it should not be forgotten that this is the retail sector, dominated by the aim of customer satisfaction. Thus the CFDT regrets that *“HR and the operational managers don’t talk to each other enough, they don’t speak the same language. HR wants to look after its employees, the operational manager wants productivity and flexibility.”* And while the negotiation takes place with the DHRs, it is done in the light of the imperatives laid down by the operational managers.

There are also large disparities in franchised stores, which are not required to apply the firm agreements, and where everything depends on the manager. They are not required apply the firm agreements and, depending on the size of their staff, they are not subject to the collective agreement for large-scale retailing but that of the grocery sector, which is less favourable to employees.

The question of franchised stores remains open, not only in terms of working and employment conditions but also – and this is connected – social dialogue. The trade unions of the integrated stores cannot intervene in the franchised stores (their mandate does not allow it) and in three-quarters of these franchised stores there are no employee representatives and no union. According to the unions we spoke to for this case study, the employees work in fear and would not dare to contact the Labour Inspectorate to report violations of Labour Law. This question raises that of the inequalities within one and the same group (Big Retail); it may be supposed that on first applying for work, employees think they are being hired in a conventional (i.e. integrated) store.

As regards the linkage between negotiations and the norms that result from it, this case is particularly interesting in the current context of the turbulent passage of the new employment law (*“loi travail El Khomri”*), which encourages firm-level agreements on questions of the length of the working week (Law 2016-1088 of 8 August 2016). We have here a firm which, through negotiation or unilaterally, adopts a certain number of rules, and which then, by virtue of its place in the only employers’ organisation in the sector, can influence sector-level bargaining. Moreover, we have seen that on the question of part-time work, large-scale retailing was one of the few sectors consulted in the ANI negotiation of 2013, which led to the law of 2014. Firm-level social dialogue thus feeds into sector-wide social dialogue, imposing rules

on all firms in the sector, then into national cross-industry social dialogue, imposing rules on all sectors, which can lead to a law imposed on all.

# 11. Complex and difficult social dialogue in the cleaning industry

This fourth case differs in part from the previous ones since it does not single out a specific situation or action involving social dialogue. It rather aims to present, at the level of a region, various themes and spaces where forms of social dialogue have developed, sometimes formalised, sometimes not, sometimes conflictual, sometimes not. It is located more in the register of restricted dialogue, mainly involving the classic actors of the industrial relations system (employers and employees). It shows the range of possible levels of this dialogue. As will be seen, the cleaning sector presents a certain number of particular characteristics with regard to gaps, one being that it is not particularly marked by atypical forms of employment.

## *Methodology*

As with the other cases, we draw on the academic literature concerning the sector and on statistical data from INSEE and also from employers.

At the level of the broad southern region, we met:

- the delegate of the development fund of an employers' federation
- two CEOs (with 50 and 250 employees respectively)
- representatives of the trade-union federations covering this sector (6 in a focus group)

## **Major characteristics of the sector**

### ***Main economic data***

The cleaning sector here mainly covers firms providing cleaning services for premises: offices, shared parts of buildings, shops, hospitals, other facilities open to the public (airports, schools, etc.). We here adopt the definition of its scope covered by the collective agreement going back to the early 1980s, which does not include, for example, services provided to households, waste collection, etc. On this definition, at national level it includes around 480,000 employees working for just over 11,000 firms.<sup>22</sup> While some large national or international groups belong partly or entirely to the sector and weigh heavily (1% of the firms have more than 500 employees and account for more than 50% of the employees), the majority of firms are medium-sized or even small businesses (66% of them have fewer than ten employees, but altogether account for only 6.6% of the employees).

In the South region, cleaning accounts for more than 50,000 jobs and more than 2,000 firms.

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<sup>22</sup> In this sector, there has been a strong growth of *auto-entrepreneurs* (around 14,000 with a turnover). Their economic weight is, however, marginal. Most of them serve households and do not fall under the definition of the collective agreement.

The sector is expanding, mainly as a result of the outsourcing of cleaning activities, both by private businesses and by the main public institutions. It is undergoing significant technological changes (mechanisation, new products to meet environmental requirements, etc.), but remains a labour-intensive sector (manual work accounts for 80% of its costs).

### ***Employment and work***

After a dip due to the crisis in 2008-2009, employee numbers have been growing strongly (+10% in six years). As previously indicated, more than 80% are on OECs. The sector concentrates a set of very specific characteristics. It is strongly feminised (66%), with a high proportion of women (over 80%) on basic cleaning posts (*agent de service*, at the bottom of the classification and accounting for more than 90% of the jobs). Part-time predominates: over 80% (particularly among women). Within this part-time group, just over half the employees work more than 24 hours a week. 30% of the employees are foreign, much higher than the national average.

The great majority of the employees are unskilled (86%), although this proportion has been declining. The average monthly wage is around 750 €, making the employees of this sector “poor” workers (Barnier, 2011).

Length of time in jobs is rather low, because of the strong presence of workers with several employers (36%). Half of them have a job in other cleaning firms; the other half work, for example, for private households, home-help organisations, etc., where it is likely that they are also engaged in cleaning activities. For the multi-employer workers of the sector, this phenomenon is linked in particular to the implementation of Article 7 of the collective agreement, which provides for the re-employment of the employee when there is a change of contractor.<sup>23</sup>

The combination part-time/multi-employer nonetheless reflects the firms’ pursuit of flexibility to cope with market fluctuations. Multi-employer employees may then work part-time for each firm and sometimes more than the legally allowed working hours.

Many observers agree that there has been an intensification of work (despite and/or because of mechanisation) with larger surfaces to be covered in a given time. There are fewer accidents at work but still far more than the national average (Barnier, 2011). There is also a high prevalence of MSD-type occupational injuries.

It should also be noted (we return to this page 114) that a significant proportion of the work is done in unsocial hours (early morning, late evening), especially in office cleaning, sometimes with breaks between work on two sites.

Altogether, the sector is sometimes analysed as one of “relegation,” combining work in a dirty environment with gaps linked to the working conditions.

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<sup>23</sup> An employee who works, for example, twice ten hours, on two sites linked to different contracts: her firm loses one of these contracts; she is taken on by the new firm for the same number of hours as the previous contract, i.e. 10 hours.

## What configuration(s) of actors?

### ***An employers' organisation that is active but struggles to federate?***

The employers' organisation is the *Fédération des Entreprises de la Propreté* (FEP), which belongs to both the MEDEF and the CGPME. It has regional structures (unlike many sectors of industry in France), including that of the “*grand Sud*” (southern part of the country).

The *FEP grand Sud* has some 250 member companies, including one very large one (in general, the largest companies are registered in the Paris region, where they have their headquarters). Together they account for about 10% of the cleaning firms in the region but probably the bulk of the turnover of the sector.<sup>24</sup>

For the region, and following the national model, in addition to the employers' federation in the strict sense, a number of associated organisations occupy the same premises.

They are:

- The FARE (to which we shall return), a development fund prescribed in the industry-wide collective agreement
- An industry-wide joint body which collects the funds for ongoing training and offers training activities for firms and employees
- An initial and lifelong training body, which offers specific training courses for the sector and houses an apprentice training centre
- A technical body, which works in the field of new cleaning technologies and makes its expertise available to firms
- A certifying body, which awards “quality” certification to firms and validates the qualifications of the sector (CQP, see below)
- An employers' grouping which hires employees entering the sector and makes them available (on timeshare) to employers.

The whole cluster thus constitutes a structured employer-side hub which presents itself strongly as the “showcase” of the industry.

### ***Dispersed trade-union organisations***

On the trade-union side, as usual the major national union organisations – FO, CGT and CFDT – are found. It is important to note that for some of them cleaning is integrated into a larger federation. While the “cleaning” section has a degree of autonomy, this represents an isolating factor (Denis, 2009).

One should also note the presence of two unions which do not belong to the major representative confederations, and which could be classified among the more left-wing and “militant.” On the one hand

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<sup>24</sup> Given the number of small or very small companies, this apparently low rate of membership is not really surprising. It should be noted, moreover, that in the French system, and in view of the procedures for extension of collective agreements and the absence of an opt-out clause, non-member firms are obliged to observe the provisions of the agreement.

there is the SUD union, partly formed from ex-CGT activists, and on the other the *Confédération Nationale des Travailleurs* (CNT), which is seen as being of anarcho-syndicalist tendency. The strength of these two unions is very variable according to the region and the site. The CNT is particularly strong on some large sites in Paris and Lyon, less so in the southern region studied here.

In the strategies of the trade unions the question of the places and forms of unionisation arises. Historically, some unions have been reluctant to enrol immigrant employees (Nizoli, 2013). Should cleaning employees working on large sites be integrated into the unions of the client company? Some organisations are attempting this, especially since, on some airport sites in particular, for historical reasons the employees of outsourced cleaning still come under the collective agreement of the site.

### ***Classic paritarisme, also marked by the rules on the taking over of contracts***

With some exceptions, most of the firms and employees in this sector are covered by the collective agreement of the cleaning sector. While large firms have their own, often better, agreements, this agreement sets minimum standards for all small and medium-sized businesses.

A study of the latest version, dating from 2011, shows that on many subjects it simply takes over the main provisions of Labour Law (*Code du Travail*), with some modulations/adaptations to the sector.

As regards the minimum wage applicable to employees at the lowest levels of the classification (the majority). The employers' position is that they track changes in the national minimum wage (SMIC), but with a "small premium" of the order of 2%. This is done to enhance somewhat the attractiveness of jobs whose image remains severely devalued.

Article 7 of the agreement sets out in detail the conditions of the take-over of employees by the "incoming" firm when there is a change of contractor, for both private and public contracts. Working time and wages must remain unchanged. The employee retains his/her length of service (which can affect the wage level). These conditions contain two restrictive clauses. The first stipulates that the employee must spend at least 30% of his/her working time in the outgoing company and on the contract in question. The second requires that the employee should have been working for at least six months on the contract. Because of the rapid turnover and the fragmentation of working times and contracts (Devetter, 2016), these restrictions can mean that many employees are excluded from the "right to be taken over." In fact many labour disputes are focussed on this question.

Since 1995 (provisions confirmed in 2011), the collective agreement has required an obligatory contribution by employers (0.15% of the wage bill) to finance the FARE. These pooled contributions must be used to finance the activities that the FARE promotes and supports (see below).

While the collective agreement generally transposes the provisions of the *Code du Travail*, some points (gaps) are matters of concern for the actors in the sector:



- Awareness of the risks to health at work (in particular, muscular and skeletal disorders, MSD)
- A policy to create and give access to vocational certifications for the sector (CQP), which are partly aligned with the qualifications awarded by the Ministry of Labour and are positioned on the wage scale
- Integrating illiteracy-related issues into the policy of the sector
- Declaring support for the introduction of a continuous working day
- But also derogations on the organisation of working time, in particular regarding the European directive requiring a minimum rest period of 11 hours a day.

Several gaps concerning the employees in the sector are thus brought to light.

## **What actions for what gaps?**

### ***The FARE as the “armed wing” of the sector employers’ policy (and collective agreement policy)***

The FARE has the status of a non-profit association (and is thus formally independent of the employers’ federation). As noted above, it is financed by an obligatory contribution from the firms.

It works on a number of initiatives, often connected with and stemming from the national collective agreement (although this was never mentioned in our interview...).

Among these actions, we can pinpoint some of them dealing especially with some gaps.

- Reducing the extent of the working day by promoting work in social hours and if possible with continuity between two (or more) workplaces. In the case of SmallClean, this policy has been developed over a long period, by choosing local clients. Very recently, an agreement has been signed with the regional administration (with the employers’ association) in order to include in public procurement bids a clause for “day/continuous” work. At the time of this report, we cannot say what the enforcement of this agreement will be.
- Promoting vocational training for newcomers in this labour market. On the one hand, this implies some additional funding for apprenticeships (including some funds for housing facilities for the apprentices). On the other hand, the FARE also provides additional funds for the “employer’s group for insertion” (roughly 50 workers) namely in order to develop short term training courses preparing for a sector qualification.
- Offering some services in the field of health and safety: an internet tool to assess the risks in firms, training for employers and/or employees’ delegates.

The FARE in the region is also promoting actions for the employment of disabled workers, and other training initiatives for employers.

At the time of our survey (and without the unions’ current point of view), these actions fit well with the national collective agreement (so included in a kind of social dialogue) but concern low numbers of firms and of workers. They seem to be a kind of showcase for the sector, both for the administration and for

the workers, in order to give a more attractive look to a sector which is a low pay one facing great difficulties in recruitment.

### ***The mediation commission***

As prescribed by the collective agreement, the FEP Sud has a mediation commission which can intervene in the event of employer/employee conflict (cf. also Case 1), before the matter is referred to the employment tribunal. This commission, on which all the unions are represented, is chaired in alternate years by either an employers' or an employees' representative. In particular it intervenes to resolve conflicts related to the application of Article 7 of the collective agreement and seems to be an example of effective social dialogue. The union representatives we met underscored the importance of this commission, which handles about 50 cases a year in a dozen or so meetings. Only in the absence of conciliation by the commission does a case go to the employment tribunal.

### ***The trade-union point of view***

The trade unionists whom we interviewed, although belonging to large firms (the smallest had 110 employees) with staff representatives and an internal social dialogue, unanimously underscored the great difficulty of organising the sector and dealing with the many problems that arise. For one of them, *"Cleaning is the Far West."*

They confirm the strong presence of immigrant women workers, many of whom speak little French. These employees are dispersed, isolated in their workplaces, working only a few hours in the morning and/or evening, for several employers. The problems of communicating with them, the unions' lack of knowledge of what happens in some workplaces, the employees' own ignorance of labour law, and the very high turnover all hold back the work of the unions. Most of the employees are unaware of the collective agreement. *"We find some who have no employment contract and can only show us an amendment."*<sup>25</sup> By contrast, in the large firms from which our interlocutors come, they can *"make a tour of the sites, to report problems and give information... There's none of that in small firms."*

Isolated in her workplace, the employee has, in everyday reality, *"two bosses – her employer and the client, who always wants more."* This direct relation with the client is highlighted as one source of the stretching of working time (additional hours, but unpaid) and sometimes the expansion of tasks beyond what was prescribed: *"She does the washing up, which is not in the contract... He takes out the garbage.... In general, they don't dare refuse, someone has to step in."* And sometimes the client demands a different cleaner, *"sometimes because he just doesn't like the look of her,"* which may lead to dismissal, or a "forced" resignation by the employee, who is moved to another site, with impossible hours or travelling distance from home. These questions of housing, time, the cost of travel for two or three hours' work on a site, are factors that fragilise a mainly female population (often single mothers) living in the suburbs. Significantly, none of our interlocutors mentioned the work of the FARE (of which they seem unaware). A continuous working day seems impossible given the proportion of multi-

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<sup>25</sup> These amendments, setting out the conditions of work on a given site, may change over time for different sites. The initial contract no doubt exists but has been forgotten.

employer situations. And they generally themselves sign away their right to the 16-hour rule in the collective agreement.

Among the many examples of trade-union intervention mentioned, which are indicative of the gaps and generally concern individual situations, we note first the problem of unpaid hours and non-payment of bonuses. Then come interventions concerning working, *“the little things that make life impossible.”* The lack or inadequacy of work attire (no non-slip shoes, which can lead to accidents) is mentioned. The question of the availability of cleaning materials is recurrent:

*“They scrape savings on everything. There is a budget for cleaning materials but it’s used up by the middle of the year.”*

*“I see cases where the employees buy their own materials. They’re humble people, they don’t dare complain.”*

On this same question, which then connects with that of unpaid working time, there are situations where the employee has to go and collect her materials from the firm’s premises, without this being counted as working time. The trade-union representatives are also led to intervene on the risks of accidents at work, which still remain frequent.

*“On one client’s site I had to stop operations that required the use of a ladder. Another client wanted his windows cleaned by leaning out from inside.”*

On these questions of risk, the union sometimes alerts the HSC of the client firm, which may then intervene. It sometimes also informs its representatives in the social security administrations, in particular when they sit on tenders committees.

And, as regards tenders, the public sector behaves no better than the private sector. *“The state is a cowboy employer that squeezes prices and has no respect for the employees.”* This is confirmed by the CEO of a cleaning firm whom we also interviewed.

The overall impression is one of great difficulty in ensuring compliance with the texts, whether it be the Labour Code or the collective agreement. There is no social dialogue at regional level (in contrast to Case 2) and the representatives complain of the weakness or absence of the Labour Inspectorate, which does not respond to their referrals. *“They only intervene on big cases.”*

## **Two case studies of firms**

The two firms that we investigated are managed by women (as is often the case in this sector), who are active members of the employers’ association. So they probably also belong to the “showcase.”

### ***SmallClean***

SmallClean, with about 30 employees, works exclusively over a local area, for various private firms (including a small industrial site). All the employees are women, most of them with children. As already

indicated, SmallClean has been fully committed for some time to the “continuous working day.” According to the managers, precarious work is mainly linked to the work/family constraints of these women and to social protection. *“Women prefer part-time work, with hours that fit in with family constraints and with a balance between longer working time and social welfare advantages (especially for single mothers). So most of them work part-time in the early morning and morning and do not ask for more hours.”* SmallClean is atypical as it pays the travelling time between two workplaces as working time. This implies additional costs and has led to the loss of some clients. But it is a choice of the management, which fits well with rather low staff turnover. Working hours are planned over the long run, are stable and take account of the “multi-employer” status of some employees.<sup>26</sup> Another particularity of SmallClean is a kind of joint venture with a not-for-profit association, offering cleaning services for individuals. This not-for-profit association is interesting for the individuals, as it offers some tax exemptions. And, for SmallClean, it is a way to expand its market and to provide additional hours for its employees.

What is the social dialogue in SmallClean? Due to its size (and the part-time work), and as is usual in most small firms, there are no formal institutions such as a Works Council. In the past, one employee was an official delegate. However, she has resigned and, according to the employer, nobody wants to be a delegate. *“It takes two to have a social dialogue.”* So it is done informally, through an annual meeting with all the employees.

### **MediumClean**

MediumClean is atypical by virtue of its size. With 450 employees (200 FTE), it is much bigger than average for the sector, although it is not one of the biggest. It is implanted in several cities in southern France.

Its CEO presents it as a company *“that deals in quality, wants to retain loyal clients, has a social policy and is socially responsible.”* So she seeks clients for whom these things are important: those who have particular health demands (hospitals, schools, and also banks, for their ATMs, etc.) and those *“who are like us, who want to be exemplary (clean offices and sanitary facilities for the office staff, etc.). We also offer a multiservice, with things like changing lightbulbs, refilling printers in the morning... We work in every area except hotels. That’s not compatible with employment law (payment by the room).”* This strategy also leads her not to position herself too much on public calls for tender, where the prices are squeezed, except for some “niche” contracts.

Even more than the average for the sector, MediumClean uses OECs (about 90%), considering fixed-term contracts are more expensive. The majority of the employees are women at the bottom of the qualification and wage scales. But MediumClean also employs men, often more qualified (machine drivers, window cleaners). It is on these more skilled jobs that she sometimes encounters difficulties in recruitment. At the bottom end, there are many applicants, with a strong “word of mouth” effect. The average length of time in the job is higher than average for the sector.

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<sup>26</sup> This rather contradicts the hypothesis of women who do not want to work more.

Part-time is often “pseudo-part-time” (in the firm as in the sector, according to the CEO, who is also one of the directors of the FEP Sud). Combinations of jobs (MediumClean + another cleaning firm, or + household cleaning, or + night security, for the men). *“Some even exceed the legal working week, without admitting it, which is a form of precarity.”*

These multi-job situations are also sometimes an obstacle for the application of Article 7; some cleaners refuse to be taken over because they cannot work more hours, as offered by MediumClean.

Like SmallClean, MediumClean is trying to develop continuous/all-day work, but this at present concerns only about 20% of the staff. The majority work discontinuously, in the early morning and evening. The clients would not obstruct the development of continuous work. But according to the CEO, many employees refuse this pattern. Their refusal is explained by the multi-employer situations and the problems of mothers who cannot afford child care, but also by a reluctance to work under other people’s eyes.

According to the CEO, precarity in the cleaning sector is due to many factors. One of the most important is housing and the distance from home to the worksite. The employees are concentrated in the lower-rent working-class suburbs, which is not the case for the worksites. Public transport is poor or even non-existent when they need to get to work. This leads to recurrent problems for those who have no transport of their own.

Another problem stems from the proportion of employees who are of foreign origin and sometimes illiterate. This has led MediumClean to provide cartoon booklets explaining the use of the cleaning materials, risk prevention, and quality standards. *“This is appreciated by the staff and their delegates, and also by the clients. For example, some of these instructions are also attached to the material. The client can see it. And if we have to send in a replacement, she knows what to do”* (CEO). But although the FARE offers literacy courses, these are often difficult to follow, outside working time, given the situations of multi-activity.

Family situation (single mothers, women battered and threatened by their partners) is another source of precarity.

Social dialogue in MediumClean is organised in the classic way, with staff delegates, union delegates, a member of the Works Council and a member of the HSC. The CEO stresses the importance of the delegates, who serve as a relay in view of the dispersion of the worksites and the staff. A recent example is that of the “failed” change in work clothing. The material was too warm. The delegates quickly intervened on this question.

Housing problems are frequently mentioned by the representatives, particularly in the Works Council. The management sometimes refers cases to the housing organisations and is now diversifying the distribution of housing allowances (“Action logement”), to increase opportunities if possible.

While there are no major problems in terms of risks related to cleaning material (these are all eco-certified), social dialogue has considered the question of movements and postures at work (and

therefore MSD). A three-year plan has been launched with the HSC, partly financed by the sickness insurance fund, with focus groups and changes in smaller equipment.

The role of social dialogue around the question of complementary health insurance should also be highlighted. Implementation in this sector (and in the firm) is complicated by the multi-employer situations. The sector agreement provides for an employee contribution depending on the number of hours worked in the sector. But this is not always the case in other sectors, in which those who have several may also work. Setting up complementary insurance has therefore sometimes created a form of “double jeopardy” – the obligation to contribute to several funds but with only one fund reimbursing costs (benefits cannot be combined). We find again here the question of gaps in a welfare system not adapted to fragmented employment situations.

### What actions for what gaps?

The table below summarises for each gap the action undertaken at the level of the FEP Sud and those found in the two firms studied.

In work	How (FARE/collective agreements)?	Results	How in firms?	Results
Low qualifications	Funding for training	Sector qualifications (CQP)	*	*
Health/safety	Support for initiatives in firms, training of safety officers	Fewer accidents at work and less MSD in the sector	Three-year plan in one (HSC)	Changed working postures
Working time/schedules	Promotion of continuous working day	Inclusion of principle in public invitations to tender	Discussion with employees and clients	Increased in one and travel time paid, 20% in the other
<b>Social protection</b>				
Social security fund	Contributions based on hours	Does not deal with question of fragmented employment	Monitoring collective agreement	Problems for multi-employers
Housing	Financial assistance for apprentices	Additional help some apprentices	Initiatives to help with housing	Some cases supported; closer worksites
Integration into labour market	Grouping of employers for integration	Some 50 employees in the grouping	Agreement with training bodies	Interns taken on for re-integration
<b>Enforcement</b>				
Labour disputes	Joint mediation committee	Fewer cases for the employment tribunal	*	*

## Contributions and limits of social dialogue

This case reflects rather well the difficulties in ensuring compliance with the rules in a sector subject to intense competition on prices and marked by multiple fragmentations – first, between the large firms, where there are forums for social dialogue, and the host of small firms; then, fragmentation of the workforce, with contracts for a few hours and multi-employer situations; and fragmentation related to effects of gender, origin, language difficulties, and unawareness of rights; and fragmentation due to the volatility of outsourcing contracts and the heavy turnover of the workforce.

In these conditions, it is possible to see the contributions, but also the limits of a national social dialogue, centred on the collective agreement not readily extensible at the local and firm level. The relative weakness of trade-union movements split into several organisations, often lacking the means to act on behalf of employees belonging to the most deprived fringes of the population, means that the enforcement of already low norms is a serious problem. And the invisibility of a workforce that, simply to survive, is often ready to accept all kinds of situations, sometimes even illegal ones, does not incite the authorities to intervene. Moreover, the public authorities are often themselves clients and often try to push down prices, in spite of the welfare clauses sometimes written into the invitations to tender.

## Conclusion

Tools exist to respond to the difficulties of the employees in the sector, including consultations for employees at the office of the union at *département* level, and the mediation commission which can help to resolve some individual situations. The union we spoke to, which is regionally well implanted in this sector, is even now trying to work in partnership with the unions of the clients, through the HSCs where they may work together.

This said, we observed in a collective interview that the union representatives in this sector, who all belong to the same union, do not communicate much with one another, and this leads us to raise the question of yet another fragmentation: that of the union representatives themselves. Even in large firms with staff representation, different worlds seem to coexist without really knowing each other. The work of the trade unions goes on, but in a fragmented way, and it also tends more to strive to enforce labour law than really to improve working and employment conditions.

## 12. General Conclusion

This French contribution to a comparative study of six European countries has followed a common approach. In the seemingly expanding universe of precarity, we first identify the gaps in protection between groups of workers, in different dimensions. We then analyse the contribution of social dialogue to reducing these gaps.

### The protective gaps approach

This approach has several merits. It forces us to go beyond the question of employment status. Most of our findings indeed show that this status does not fully account for the gaps: a person may be on an OEC but suffer bigger gaps than someone on an FTC. Work (in the broadest sense) rather than employment is the source of often cumulative gaps. Short and interrupted working time is often more penalising than continuous working time. Health risks and the rate of accidents at work are often good indicators of situations that combine lack of control over one's work with weakness of the preventive institutions, itself linked to the weakness of the trade unions. Constant forced mobility in pockets of high turnover is an obstacle to the development of skills and the construction of a career. This is what partly explains the growing number of "poor workers." The widening of the focus to social protection gaps shows the existence of cumulative gaps in work and "outside work." The steady rise of "universal welfare tools" or those aimed at securing trajectories seems to be often overtaken by new forms of precarity in work.

One of the initial hypotheses of this study was that it is also necessary to include the gaps in employee representation and the gaps in the actual implementation of rights (enforcement); and this brings us back to social dialogue.

On the first point, representation, the French situation clearly stands apart from that of the UK or Denmark.

Eligibility for employee representational rights is strong: the right to join a trade union, to stand for election as a workforce representative, etc. Nevertheless, the French paradox is well known: trade-union density is among the lowest in the OECD but the rate of cover by collective agreements is one of the highest. Although union density is low, trade unions are present and active in firms, and employee participation in the elections of representatives is still significant. For their part, the employers' organisations (whether at national or industry level) are highly structured. And since collective agreements are extended to all workers in the relevant industry, there is little incentive for individual firms to leave their employers' organisation. Nevertheless, the main gaps in representation result from sectoral and size effects. First, the various obligations (works councils etc.) are weaker in small firms. Secondly, employee representatives have less presence in small firms. These size effects are further reinforced by a sector effect (e.g. retailing, domiciliary care, hotels and catering) and, in part, by employment status and employee category (temporary agency workers, part-timers, etc.).



On the second point, enforcement, it seems that this where the heart of the problem is, to some extent, to be found. The net of legislation and agreements is often closely-woven, but its implementation and monitoring are often lax. This relates, of course, to the gaps in representation, but also to the roles and capacities of the various monitoring institutions – the social security organisations, the Labour Inspectorate, etc. It is often in the most ill-defined situations (posted workers, multi-employer situations, etc.) that these institutions are most powerless. There lies a grey zone, on the margin of the rules, a zone which increases the protective gaps.

## **The blurring of precarity**

It is no simple matter to understand what now defines the precarity of workers or the characteristics of what might delimit groups of precarious workers. The boundaries are increasingly blurred, at several levels: among so-called “stable” jobs on the one hand, between waged work and self-employment on the other, and among individuals.

Even among so-called “stable” jobs, different levels of precarity are to be found. The civil service in particular by no means employs only civil servants. The state civil service, for example, increasingly employs workers on FTCs and even OECs, thereby creating sub-categories of staff with different degrees of protection. Likewise, even among stable jobs in the private sector one finds groups of workers with strongly contrasting characteristics, whether in terms of pay, social protection or access to training. There are many configurations in which the apparent stability of employment status in fact conceals a more uncertain future and precarious working and employment conditions. Employees in small firms or franchises are not in the same position as those in big firms (especially as regards social advantages or staff representation, for example), those who do not work on the premises of the firm are often socially isolated and less well-armed to defend their rights (we are thinking here of domiciliary care employees, for example, or seasonal workers in hotels and catering), deprived of the strength of the collective and contact with their peers, etc. So behind the employment status of full-time OEC lie realities marked by deprivation of rights. Finally, employees on very short part-time who have an OEC increasingly live below the poverty threshold. Moreover, growing numbers of workers are also employed by several employers, with several small part-time contracts, which may bring them over the maximum number of working hours authorised by the Labour Code, and again raises problems of access to rights (training time? rest time? etc.).

The boundaries are also blurred between waged and self-employed work, with the emergence of auto-entrepreneurship for example and “self-employed” workers who are economically dependent (“bogus self-employment”). Two tendencies can be observed at this level. On the one hand employees are increasingly “responsibilised” by their firms, having to work autonomously, with more and more target-oriented project management. On the other hand, “self-employed” workers have activities that are increasingly rationalised by tenders and specifications, prescribed and monitored, which may even become situations of economically dependent “self-employment.”

Finally – as a last level in the blurring of the boundaries of what defines a precarious or non-precarious work situation – employment trajectories are increasingly complex, less linear than in the past. Some

work situations are then temporarily precarious and are in reality springboards to a stable, high-quality job whereas, for other people, the same situation will be lasting. A series of short contracts is not always synonymous with precarity, and one must then differentiate the short contracts of skilled workers, whose incomes are distinctly higher than the average of those of the least skilled workers living permanently below the poverty threshold.

## **A new productive landscape**

This blurring of boundaries cannot be understood independently of the structural changes induced by the dynamics of the productive systems (in the broad sense, including public activities).

The recession and the crisis in some industrial sectors continue to erode the “core” of the model. We saw in Chapter 2 (p. 21) that some sectors of activity, which are often expanding, are also those that concentrate the most gaps and in part contribute most to the new “churning” segment. They are mainly service activities (cleaning, personal services, etc., but one could also include sport, culture, etc.). Part of their growth derives from increased demand – with or without the means to pay – from households. Another part comes from the processes of outsourcing of these services by firms and administrations. In this report we have not examined the most skilled categories, although they are concerned by these movements (e.g. casual workers in the entertainment industry). Nor have we dealt with the phenomena of “uberisation,” except indirectly through auto-entrepreneurship. We have concentrated rather on the least skilled sectors, which in France have long been regarded as the most vulnerable. The case studies on the cleaning sector and domiciliary services in Part 2 in a sense “give flesh” to the observations in Part 1.

They illustrate here – but in simple, direct cases – the complexity of the triangular relations between the contracting client, the firm which contracts to provide the service, and its employee, who in fact works on the premises of the client (the case of cleaning), or in the home of a beneficiary who is not the contracting client (domiciliary services). Similar configurations are found in temp work and also for example in the construction industry, with the lengthening of the outsourcing chain and the corresponding diversification of statuses (cf. the case of posted workers, especially on large sites). This contributes to the blurring not only of precarity but also of the notion of the firm and the employer: who really bears the employer’s responsibilities?

Such situations are found, from another perspective, in retailing, with franchised stores which must observe strict specifications (also applying to their employees) but which make use of exit options that do not always come under the same collective agreement as their competitors.

The contradictions of the public authorities should also be mentioned. In contexts of tight budgets, the local authorities, which finance personal services for example, may be tempted to “squeeze” the prices of the services they purchase and so increase the gaps. And inserting social clauses in some public contracts may prove contradictory or even counterproductive.

## The contribution of social dialogue

Collective bargaining (which lies at the heart of our expanded definition of social dialogue) remains active in France, despite the crisis. This dimension of social dialogue has been incorporated into several national agreements that have subsequently passed into law, although they do not explicitly relate to precarious work.

Thus the focus has shifted somewhat towards issues linked to the securing of life-course trajectories. The measures being proposed are intended to make it easier to maintain rights or guarantees when workers change employer or become unemployed, to change the unemployment insurance regime in order to take more account of seesawing between short periods of employment and unemployment, and to extend some complementary social protection schemes (in SMEs in particular), while at the same ensuring that they remain partially in force during periods of unemployment or that greater account is taken of the arduousness of individuals' work in determining pension rights. At company level (but usually in the larger ones), agreements have been concluded that seek to restrict the use of FTCs and to improve the induction of young workers. One industry-level agreement now provides for a permanent contract in temporary agency work (although its impact remains very limited).

Nevertheless, it seems that these negotiations are in difficulty. In general terms, it has become harder to negotiate: there are more and more topics on which compulsory negotiations have to be held and the actual task of bargaining is becoming increasingly complex. The increase in atypical employment has led to a more complex labour code (with many exemptions demanded by employers), so that the social partners need additional skills to defend increasingly difficult work situations. More specifically, it has also become more difficult to take account of the most precarious, those who are caught up in a never-ending cycle, moving from unemployment to employment and back to unemployment.

Finally, in France, for several years, a sort of paradigm of "employment at any price" has prevailed, so that the social partners and legislators are more worried about precarious employment than precarious work.

Examples of "extended" social dialogue, particularly at regional level, do exist, however, with the aim of reducing risks and improving support for those with disjointed careers.

The various case studies presented in this rapport reveal some initiatives that are interesting in terms of the forms of social dialogue and what it contributes. Two major tendencies coexist in the forms of social dialogue studied here: on the one hand the production of contractual rules (classical negotiation?) and on the other hand a more informal mobilisation of actors to respond to new issues around information campaigns for example. While the choice of one or the other depends on the context, this does not make the effectiveness of the action any more predictable.

In the case of the MTS, the originality lies in the capacity of the employer and union actors to seek jointly to reduce the gaps in a sector that concentrates many (housing, illegal work, enforcement, etc.) in a given territory so as, at the same time, to improve the quality of the service. The IRIS project, initially designed to increase the working time of domiciliary aid employees, eventually led to the building of

bridges to secure the occupational trajectories of very precarious employees. The more classic case of social dialogue in large-scale retailing nonetheless raises questions about the pertinence of the levels of negotiation in firms and indirectly reveals the extreme precarity of employees in franchised stores. Finally, the cleaning sector also concentrates numerous gaps (low wages, absence of employment contracts, etc.). The union actors, while firstly concerned to ensure compliance with labour law, seek to reduce these gaps which are partly linked to the dispersal of the workplaces (and its consequences for compliance with the law) by trying to work with the union representatives in the HSCs of the client firms, for example. Thus, approaches through common interests, through the territory or through new forms of trade-union organisation, are used to cope with the blurring of boundaries discussed above.

Thus, the various actors in social dialogue, at various levels, attempt by various means to combat the different gaps identified in this study (in employment, representation, enforcement, social protection). These actions, aimed at reducing some risks of precarity for employees, sometimes lead to the emergence of other risks that have less traditionally been the objects of union struggles, such as problems of housing (in the cases of the MTS and cleaning), means of transport, or illiteracy.

### **And finally...**

This study ultimately raises more question than it answers.

The first is the capacity of our data to grasp the multidimensional complexity of precarity. This challenge, recently addressed by an INSEE working group, is especially great because it requires dynamic analyses over the life cycle.

The second is that of contrastive analysis. At this stage, our work on France has not yet benefited from feedback from other countries. Societal analysis has highlighted the interdependence of institutions, categories and the actors within them. From the ongoing exchanges with our partners, we note, despite – or thanks to – a common approach to gaps, different contours of precarity, with an approach anchored on employment status (Spain, for example) or in industrial relations (Denmark). Relations to law or to industrial relations systems do not readily allow for a univocal approach to social dialogue.

The third is that of the – nonetheless fairly common – trends, which mean that some sectors, some categories of employees, are more massively affected than others. Deregulation (or re-regulation) of labour markets is dependent on their articulations with economic and budgetary policies: the norms of the labour market alone are not sufficient. These articulations are often little examined.

The fourth concerns social dialogue. Social dialogue in a broad sense is lively and sometimes innovative in France. The cases we have analysed are rather far from “insider/outsider” debates. But beyond local successes, the long-term sustainability of this dialogue, its capacity to produce generalisable solutions, remains a real challenge.

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