

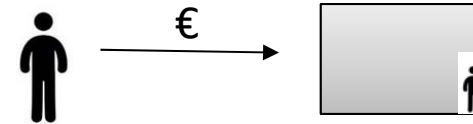
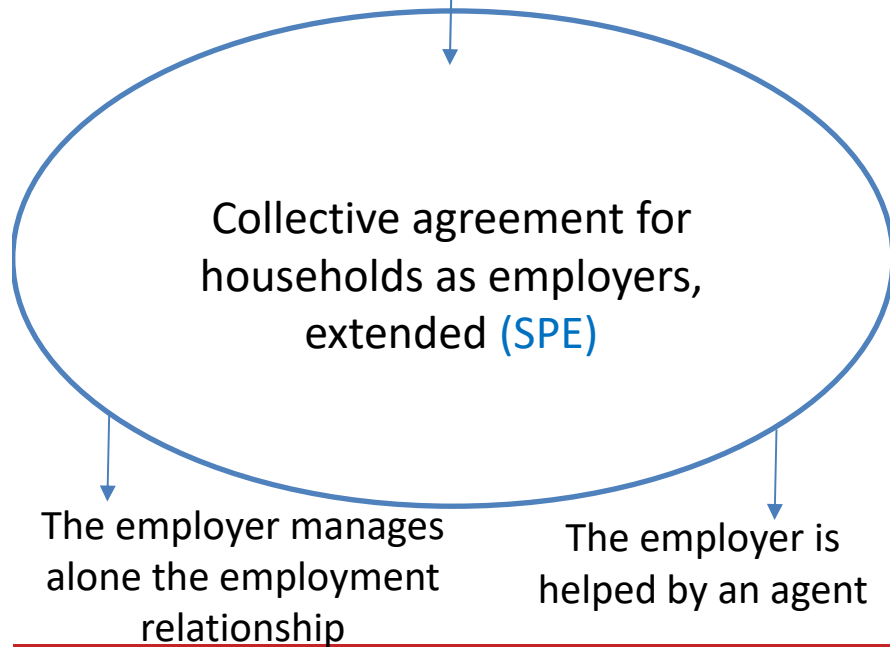
CLÉMENCE LEDOUX AND RACHEL KRUPKA UNIVERSITÉ DE NANTES

The French social dialogue in the PHS sector : institutionnalised and professionnalised social partners ETUI Seminar 2020

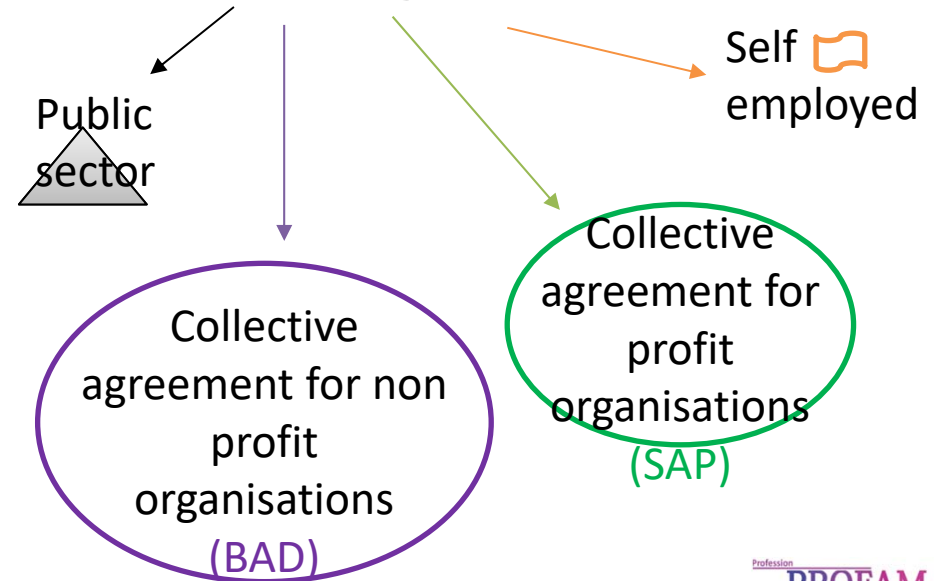
Different statuses of the workers



Declared Private employment



Provider organisations



Profession
PROFAM
Famille
Entre profession et famille,
les transformations du travail d'aide aux personnes âgées

Registered PHS workers by applicable employment statute.

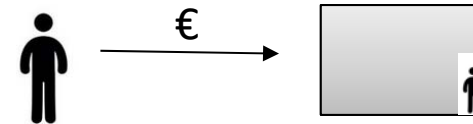
Employer type	Percentage of all hours worked, 2016	Labour Code applies in full?	Applicable collective agreement
Private domestic employers (directly or through agent)	56%	No (employees are covered only by Part VII of Labour Code)	Collective Agreement for Private Domestic Employees (SPEs)
<i>...of which : through agent</i>	6%		
Public bodies	4.10%	No (employees are covered by Civil Service Code)	Public law
Non-profit associations	24%	Yes	Collective Agreement for the Home-Help Sector (BAD) (Non Profit)
Private entreprises, exc. self-employed	15.50%	Yes	Collective Agreement for Employees of Personal Service Enterprises (SAPs)
Self-employed	0.40%	No	Self-employed status
Total	100%		

Source : Own interpretation and Kulanthaivelu, Eric. 2018. « Les services à la personne en 2016 : L'activité se stabilise ». *DARES résultats*, n° 17 (avril).

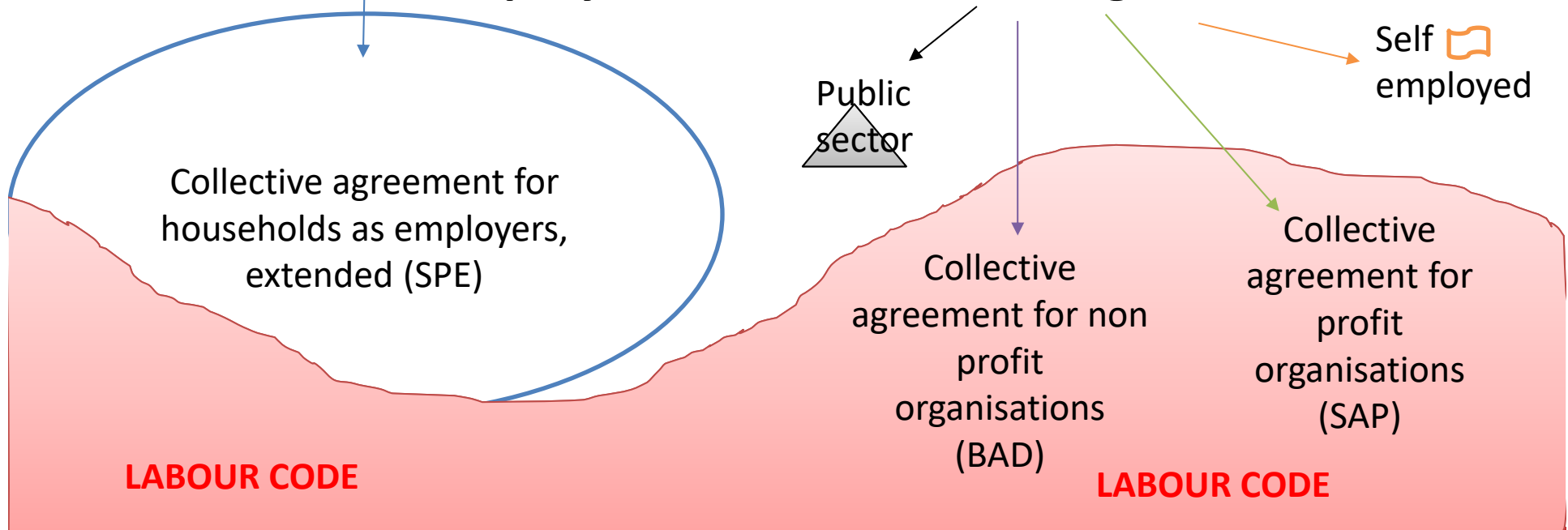
Different statuses of the workers



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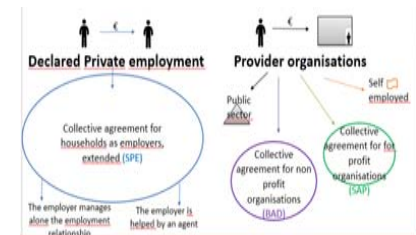
Provider organisations



Different forms of protection by the Labour Code

- **SPE**

- ⇒ do not benefit from most of the protective provisions in the Labour Code
- ⇒ **the collective agreement for SPEs** and its codicils introduced employee's rights in a number of areas in which they were exempt from general Labour Code.
- ⇒ But in certain cases, the social partners have **neglected to systematically track the evolution of general law** or have even remained far removed from general law



- **BAD** (ie non profit providers) and **SAP** (for profit providers)

- => Affected by **French labour law reforms over the years**, which have gradually transformed the hierarchy of standards

Worker's rights : Definition of work and remuneration of working hours:

The **SPE's** agreement still provides for three forms of remuneration at below the statutory minimum wage for “attendance” duties:

- hours of “**responsible attendance**”, remunerated at 2/3 of the hourly rate of pay for effective work.
- hours of “**night attendance**”, remunerated at a rate of 1/6 of the contractual wage. The SPE collective agreement states that this is “compatible” with daytime employment.
- “**nursing duties**”, remunerated at 2/3 of the hourly wage for effective work

By contrast, the extended provisions of the two other collective agreements (**BAD** and **SAP**) do not include such arrangements.

Worker's rights

	SPE	BAD	SAP
Travel between clients / employers	not considered as working time	travel time considered as working time (under certain conditions)	travel time considered as working time
	no mileage allowance	mileage allowances paid (at 0,35€/km)	mileage allowances paid at 0,22€/km
Training : levies, as percentage of the gross wage	0,35%	2,04%	1,40%
Unemployment and pensions	Difficulties to be entitled for an important part of the workers => supplementary pension fund negotiated (but average pension of this fund : 112€/month)	Less difficulties to be entitled to social insurance benefits than SPEs (more working time)	

Representativeness of social partners in the three branches

Collective agreement	Legal status of agreement	Trade union federations	Employers' organisation(s)
Private Domestic Employees (SPEs), 1999	Extended branch-wide in 2000	<ul style="list-style-type: none"> - CGT Commerce (39.24%) - CFDT Services (20.05%) - FGTA-FO (19.51%) - FESSAD UNSA (21.20%) 	- FEPEM (100%)
Non-Profit Home-Help Branch (BAD), 2010	Approved in 2011, Extended branch-wide in 2012 (Approval of the Ministry of Social Affairs required before extension procedure)	<ul style="list-style-type: none"> - CFDT Public Health (47.42%) - CGT Social Action (38.46%) - FDTA-FO (14.11%) 	<ul style="list-style-type: none"> - USB Domicile (100%), made up of: + ADMR + UNA + Adessadomicile + FNAAFP/CSF
Personal Service Enterprises (SAPs), 2012	Extended branch-wide in 2014	<ul style="list-style-type: none"> - CGT Commerce (15.63%) - CFDT Services (39.45%) - FDTA-FO (14.29%) - CFTC Public Health (30.63%) 	<ul style="list-style-type: none"> - SESP (44.3%) - FEDESAP (32,3%) - SYNERPA (13.7%) - FFEC (9.8%)

Conditions of social dialogue

- **Approval and extension of collective agreements :**

Agreements covering non profit organisations (**BAD**) must be

- approved by the **Ministry of Solidarity and Health**
- before they can be extended by the **Ministry of Labour** to apply branch-wide.

⇒ In order to avoid approvals being refused, once a year the **Ministry of Solidarity summons the social partners and outlines what overall payroll bill increase it will accept in the coming year** (=hidden hand of the State behind collective bargaining)

This approval is not needed for the two other collective agreements (**SPE** and **SAP**)

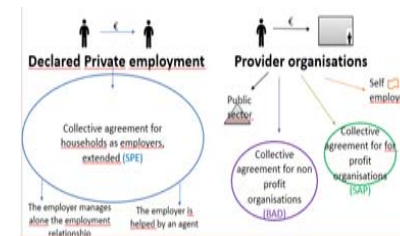
- kinds of actors empowered to negotiate or to block agreements due to their representativeness.

In France, representativeness depend upon the **audience of these organisations.**

- ⇒ Some trade unions lost their capacity to negotiate the collective agreements (CFTC in the BAD and SPE)
- ⇒ new arrived (UNSA)

Conditions of social dialogue

- The social partners in the three branches of negotiation **have negotiated additional branch funds** meant to increase
 - the structuration of the sector,
 - a better knowledge of the agreements and
 - the development of social dialogue.



⇒ Roughly 50% overall goes to the employer's organisations and 50% to the unions (more in the BAD), according to their representativeness

	SPE	BAD	SAP
Percentage of levies allocated to codetermination fund by social dialogue (in % of gross wage)	0,22%	0,04%	0,10%

Importance of the social policies financing the demand

- Social benefits
(APA, PCH, CMG)
- Fiscal benefits
(tax credit : 50% of tax credit, up to a ceiling of €12 000 of expenses)
- Reduced VAT rates
- Social insurance reductions
- Voucher : - declarative Cesu
- prefinanced Cesu (which can be used by local authorities, staff councils...)

=> Important incentives to declare the workers

Role of social dialogue

SPE	BAD	SAP
<p>Social partners able to include a set of worker's rights in the collective agreement from which they were excluded in the Labour Code => but incomplete « catching up » process, many area of general labour law not applying</p>	<p>Little room of manoeuver (hidden hand of the State behind collective bargaining) importance on training for social partners put</p>	<p>Influence of the SPE rules during the negotiations of the national collective agreement => But professionnalised and institutionnalised trade unions able to refuse or suppress rules they consider as unfair</p>

Conclusion

In France, very view debate on C189, which hasn't been ratified but

- Social partners very institutionalised and embedded in the French industrial relations
- A system where trade union membership (but votes) isn't so much determining in order to give unions the power to negotiate collective agreements