

The Dynamics of welfare markets in the home service sector. The role of employer's organisations

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Introduction

Employer organisations have been the subject of much study for many years. They are central actors in economic governance and employment regulation in many countries (Goberman, Hauptmeier, and Heery 2017; Bevort and Jobert 2011). These organisations have been identified as playing a major role in reforms opening up new market opportunities for private providers (Leimgruber 2012; Naczyk and Palier 2011; Pieper 2018). Firms seek profits, market share and the survival of their organisations (Fligstein 2001; Pieper 2018). They can therefore see opportunities in the welfare state, and try to organise and influence policy decisions regarding welfare markets (ibid). These attempts may nevertheless induce costs, since political activity consumes resources and can put them at risk of attacks on their legitimacy. But it also brings benefits, with the possibility of changing the rules of the game in a direction that conforms with their interests, particularly when it comes to intervening in strongly regulated markets (Pieper 2018).

Firms active in (welfare) markets can rely on two sources of power. Firstly, their economic characteristics (such as their growth, the number of employees, and their role in national finance...) can be a source of power and suggests that having a greater number of firms active in welfare markets would necessarily involve businesses' representatives gaining more powerful positions. Companies' power can also depend on the organisational characteristics of the structures representing them, such as their capacity to amass financial resources, to be included in elite political and economic networks, and to provide rare expertise to policymakers.

In a significant part of the literature, the constitution of organisations representing companies is not really questioned, as if there was a perfect coherence between the interests of firms' members and the interests of employer organisations. Nevertheless, the representation of business interests should not be considered as "natural" but rather as the result of deliberate political efforts by employer organisations (Offerlé 2010). This work involves four main interrelating domains of action: 1) getting firms interested in becoming members of the organisation, by providing services to them, such as information, training and advice, 2) speaking on behalf of the members, 3) participating in formal concertation arenas, in the economic and social domain, and 4) participating in the negotiation of interprofessional and branch employment regulations (Bevort and Jobert 2011). However, we can also expect employer organisations representing firms active in welfare markets to be specific, since the interests they represent are related to the welfare state. This specificity can concern the interests they defend but also the ways they express their interests.

The objective of this paper is to analyse how employer organisations active in welfare market politics organise themselves, and to question their role in welfare market policy dynamics by examining the case of the French home-based service sector. How do the existence of welfare market policy dynamics interact with the dynamics of these interest groups? The French case is a good example to study, as the country has been a forerunner in the development of "new" instruments regulating this market, accompanied by a dynamic of firms organising themselves and structuring their own representative organisations.

In France, financial, regulatory and informational policy instruments have progressively taken importance in the market for home services in the 1990s. Concerning the **financial dimension**, demand-side instruments have gained importance, through direct allowances and tax breaks. On the one hand, direct allowances have been entrenched within huge debates concerning the situation of people in situation of handicap, elderly people (Frinault 2009; Le Bihan and Martin 2010), and families with children (Sineau and Jenson 2003; Morel 2007). On the other hand, tax breaks have been developed incrementally, contributing to define home services as welfare goods the state should encourage people to buy (Guiraudon and Ledoux 2015). The expansion of these incentives has been characterised by multiple periods of rapid change, followed by periods of slower expansion: from 1991, only the services paid for via direct employment by families and via non-profit organisations could be subject to tax reductions; from 1996, private companies' clients could also benefit from tax breaks.

In 2002-2003, a law and a decree introduced a specific compulsory authorisation (delivered by a local authority, the *départements*) in order to be able to deliver services to fragile populations in their homes. Organisations providing home services henceforth had to get administrative authorisation to have access to these populations; but at that time, the authorisation only concerned care services in handicapped or elderly people's homes, and was not necessary for other populations. The access to these groups was thereby limited and the new policy made it impossible for provider organisations to make profits by selling home-based care services to the elderly: the authorisation system also conveyed a logic of local public planning and gave the *départements* the capacity to set the tariffs of the authorised structures.

Nevertheless, in 2005, a new legislative reform introduced a dual regime: the *authorisation system* was maintained, but the legislator also created a new *approval system* (organisations had to get an "*agrément*"), which was less regulated and much more oriented towards free market practices, shaped to boost business activity in the home service sector at the national level. The two systems coexisted and provider organisations could opt into either the *authorisation system* — which meant a contractual relationship with the *département*, responsible for fixing tariffs,- or the "*agrément*" system, which involved price competition and welfare state financing (through care allowance and tax breaks). The 2005 reforms therefore opened the door to private businesses which subsequently mushroomed in the elderly care sector.

Ten years later, in 2015, the option of choosing between the liberal regime of the "*agrément*" granted by the state, and the more regulated departmental authorisation in the elderly and handicapped sector was suppressed. The *authorisation system* controlled at the local level by the *département* is currently the sole regime operating, even if, as we will see, it is now more flexible than the original system introduced in 2002. Also, tax breaks have constantly been on the rise for home services in general (Guiraudon and Ledoux 2015), with tax reductions having been transformed into tax credits.

Regulatory instruments aimed at coordinating exchanges between providers and beneficiaries of home services and fixing norms and standards accompanied these changes and conveyed an industrialist vision of home services, considered to be easily interchangeable and duplicable (Weber, Trabut, et Billaud 2014). A voucher system was created in 1994 and transformed in 2005 with the aim of facilitating the declaration of social contributions and the management of services. Before 2005, vouchers could only be used for paying workers directly employed by families; but from 2005, the new *Chèque Emploi Service Universel*, or CESU, a prepaid cheque

distributed by firms and the state, could be used to pay for all home-based services, whether provided by provider organisations or by directly employed domestic and care workers. Some *départements* consequently began to distribute their elderly care allowance through a prepaid voucher. Following this logic, the beneficiaries of the elderly care scheme, the APA (*Allocation Personnalisée d'Autonomie*) the elderly care scheme introduced in 2002 to fund care for dependent elderly people, are seen as consumers who are given the freedom to choose a provider organisation or a directly employed home-based care worker and who have exit options in their relationship with the provider or carer. State norms and standards have also been developed, with differences according to the kind of population concerned. Organisations working with non-fragile populations have to be declared in order for users to benefit from tax reductions, but this certification implies very few obligations other than reporting their activities. On the other hand, organisations working with fragile populations (children, handicapped and elderly people) have to have either official approval (an *agrément*) (for children) or authorisation (for elderly and handicapped people). The authorisation procedure requires proof that the organisations have sufficient means to provide a quality service and that their objectives are compatible with those of the *départements*. These procedures go hand in hand with internal and external evaluation procedures which have to take place regularly and involve users.

Communication instruments have also been developed. In 2005, the introduction of the Borloo plan was accompanied by a large communication campaign aiming at informing the public about the new policy instruments concerning home services. An agency in charge of the sector was created (*Agence Nationale des Services à la personne*), but later abolished in 2014. In 2008, this Agency launched a far-reaching publicity campaign presenting the different services eligible for tax reductions as products, which nonetheless did not mention ways in which carers and home workers were employed (Jany-Catrice 2015). Unlike the way tax breaks have been used by a “submerged state” in the United States (Mettler 2011), in France, after 2005, communication instruments aiming to develop a welfare market culture and legitimise the commodification of welfare services were developed, meaning tax breaks were not totally invisible in the public space for home services.

To sum up, the policy instruments targeting the welfare market for home services changed a lot between 1991 and 2019. Nevertheless, three main characteristics can be observed throughout this period: in France, these instruments have been increasingly demand-side oriented, involving quality regulations for specific populations, and, since the mid-2000s, large

communication strategies aimed at establishing a welfare market culture. Table 1 shows that these policy instruments structure the welfare markets for home services differently: while some of them are specific to certain populations, others cover all home services.

Table 1: Scope of the different policy instruments intervening in the home service welfare market in 2019

		Elderly and handicapped people	Children	Others
Financial instruments	Demand-side targeted financial instruments	Allocation personnalisée d'Autonomie (APA) and Prestation de Compensation du Handicap (PCH) + specific threshold for income tax breaks	Complément de libre choix du mode de garde (CMG) + specific threshold for income tax breaks	-
	Demand-side financial instrument	Income tax breaks		
Regulatory instruments	Regulatory instruments	Voucher (Chèque emploi service universel)		
	Regulatory instruments	authorisation	<i>agrément</i>	declaration
	Regulatory instruments concerning the employment relation	3 collective agreements : - One for households as employers - One for non-profit providers - One for profit providers		
Communication instruments		One common institution (CNSA)	Family Funds	-
Communication instruments	Communication instruments	Common agency (2006-2014)		

Parallel to these developments, for-profit firms providing services in the home sprung up in the 1990s, as did employer organisations representing their interests: the SESP (*Syndicat des entreprises de services aux personnes*) in the 1990s, which was a member of the biggest national business confederation, the CNPF (*Conseil National des Entreprises Françaises*), later called the MEDEF (*Mouvement des entreprises de France*). In the 2000s, new organisations appeared: the SESP was integrated into a larger federation, the FESP (*Fédération du Service au Particulier*), also a member of the MEDEF, representing the interests of a greater number of

agencies active in home services (households directly employing domestic or care workers). The FEDESAP (*Fédération Française de Services à la Personne et de Proximité*), a member of the employers' confederation of Small and Medium-size Enterprises (SMEs), the CGPME (*Confédération Générale des Petites et Moyennes Entreprises*), was also created, as was a European organisation, the EFSI (European Federation for Services to Individuals).

These organisations appeared in a landscape where there were already employer organisations representing individual household employers or non-profit provider organisations. The oldest national organisation representing individual employers of home service professionals is the FEPEM (*Fédération du Particulier Employeur*). The FEPEM has existed since the 1950s, and represents a long tradition of female Catholic employers, whose main objective, -until the 1990s, was to better define employment conditions. These women were concerned by their employees' social situation and wanted to protect them. This led the federation to sign a national collective agreement applying to the employment relationship¹ between households and domestic workers, making France one of the few states in the world where there is a collective agreement of this nature extended by the state.

Federations representing non-profit providers of home services had also already existed in the 1990s for a long time (Devetter, Jany-Catrice and Ribaut 2010; Ledoux 2011). Among them, were bigger federations, such as the UNADMR (*Union Nationale des associations d'Aide A Domicile en Milieu Rural*), and the UNASSAD (*Union Nationale des Associations de Soins et Services à domicile*) -later called the UNA-², but also smaller ones, like the left-wing FNAAFP/CSF, (*Fédération Nationale des Associations de l'Aide Familiale Populaire*), a member of the *Confédération Syndicale des Familles*, or the FNADAR (*Fédération Nationale d'Aide à Domicile aux Retraités*). These two organisations constructed their role as representatives of home-based care associations, which are also employers, differently. Parallel to their role as negotiators of collective agreements, these federations also participated in the national debates concerning the situation of elderly people (Frinault 2009).

¹ *Convention collective des employés de maison*, 1982, which has become, since 1999, the National collective agreement of wage earners directly employed by households (*Convention collective des salariés du particulier employeur*, *Journal officiel de la République française*, n°3180).

² These two federations are not the only ones but the most important ones

Table 2: Employer organisations in the home service sector in France

Kind of employers	Organisation	Date of creation	Member of... (national level)	Member of... (European level)
Households	FEPEM	1948	-	EFFE
	SPE	2009	- the FESP (created in 2006) - the MEDEF	EFSI
Non-profit providers	UNASSAD (later UNA)	1970	USB Domicile	-
	UNADMR	1945		COFACE
	FNAAFP-CSP	1954		-
	Other small federations (FNADAR, later called A domicile...)	1973...		-
For profit providers	SESP	1995	- the FESP (created in 2006) - the CNPF later called the MEDEF, the largest confederation of main businesses)	EFSI
	FEDESAP	2007	The CGPME (confederation of SME)	-

How have the dynamics of welfare market policy and the development of employer organisations (representing for-profit providers) interrelated? Since no for-profit firms providing home services existed in France before the mid-1990s, it is important to understand how these organisations emerged and structured themselves, in order to better understand their role across time in the shaping of the dynamics of welfare market policies.

In order to understand these dynamics, we will first analyse the context in which the first employer organisation was created in order to understand how it later determined the evolution of welfare market policies and dynamics. In a second part, we will distinguish the different repertoires of action developed by employer organisations in France across time, and in a third part, we will see how these organisations succeeded in sustaining the development of firms as welfare market actors and in being recognised as representative actors.

1. From the creation of an employer organisation to the development of welfare market policies

In many welfare markets, representative organisations of firms active in welfare markets appeared after the rise of for-profit providers in these markets, and after these firms became constituent parts of a partially privatised welfare state (Pieper 2018). In such configurations, policy instruments regulating the welfare market indirectly shaped the increase of firms active in welfare markets and later of structures representing them. However, in France, the emergence and development of an organisation representing the interests of businesses providing services in the home service market emerged before the existence of such firms. The main employer organisation was created from above, by the largest business confederation, the MEDEF, before firms able to organise it actually existed. It is therefore very important to understand why and how the MEDEF created it, since the structuring of this interest group also determined the positions and actions it later adopted. We will first analyse how welfare market policies raised interest in a new structure among actors who were members of already existing businesses confederations (1.1.), before analysing how these actors mobilised within these confederations (1.2). We will conclude by showing the ability of these actors to constitute a wide coalition in favour of the interests of for-profit providers selling home services (1.3).

1.1. When welfare market policies attract the interest of the existing businesses movement

In France, tax breaks for home services have existed for a very long time. Targeting an insignificant number of people after the Second World War, these policies were gradually expanded by the political and administrative elite, enlarging the group of beneficiaries through small changes. New justifications appeared in the 1980s: home services policies were seen as a way to support “*free choice*” for families, as an answer to the growing participation of women in employment, which gave them the possibility to better reconcile work and family life. Viewed as a “mine for new jobs” (“*un gisement d’emploi*”), it was a sector where many people doing previously undeclared work could be encouraged to pay taxes and social contributions, and where unemployed women could easily find employment. Policy changes appeared during the mid-1980s increasing the size of tax breaks for the two groups already concerned by socio-fiscal measures (elderly people and parents with children) (Guiraudon and Ledoux 2015).

It is in this context that a major and abrupt expansion of income tax breaks for home services was enacted in 1991: the *loi sur les emplois familiaux* enlarged the public targeted, and

increased the size of the tax breaks. The policy instrument applied to all households wanting their home to be cleaned and / or needing care services, whether through direct employment or approved third sector organisations, with 50% of expenses reimbursed through income tax reductions.. Non-profit care organisations worked mainly with poor families and/or with fragile members to look after and elderly people.

These non-profit organisations had a very long history in the social sector and were used to establishing contracts with local authorities and operating through a tutelary mode of regulation. In contrast, direct employment dynamics depended on local markets, where there could be a greater or smaller amount of competition. The development of these policy instruments attracted the attention of some members of the main employer organisation, the *Conseil national du Patronat Français*, the CNPF, whose asked themselves, “Why shouldn’t we enter the home service sector?” (*interview with a former member of the SESP, May 2006*). But these actors had a specific position within the CNPF.

1.2. Battles within the CNPF

The CNPF, until the 1990s, was dominated by the industry sector. At the beginning of the 1980s, criticism among the confederation's members emerged regarding its representativeness. At the end of the 1970s, different businesses federations and enterprises created a group within the CNPF aiming at developing collective reflection on services: the *Comité de Liaison des Services* (Offerlé 2013: 171). The first president of this group was the founder of Sodex(h)o, an enterprise which began with in the restaurant industry and later developed other “quality of life” services all round the world. At the end of the 1980s, he gave up his seat, which passed to the director of a car-rental firm, Georges Drouin, rooted in the representation of businesses at local but also at national level: he was already a member of the executive body of the CNPF (*ibid*). According to Georges Drouin³, the aim of the *Comité* was to give services the same power as industry, which was represented by a powerful federation, the UIMM (*Union des Industries et Métiers de la Métallurgie*). At that time, the UIMM was central to the decisions taken in the name of the CNPF concerning social affairs: “*the UIMM was not interested in economic questions, it was very concerned by social protection, social regulation, it was calling the shots*

³ *interview with a former member of the SESP, October 2018*

*in this domain*⁴. This was problematic for firms providing services, since their interests were radically different from those in the industry sector: they employed many more workers, who were younger and more skilled than in industry (Offerlé 2013: 301). Georges Drouin and the Service Committee focused generally during the 1990s on how they could improve the representation of services within the CNPF, leading Georges Drouin to present one of the most radical proposals for reforming the CNPF in 1996 (Offerlé 2013: 35).

It is in this context that the *Comité de Liaison des Services* also began to be interested in the home services sector. In 1993, already, the representatives of the *Comité* had a meeting with the right-wing Minister of Labour and Employment, Michel Giraud, about the sector. The *Comité* saw that the Minister could support the development of this sector and the presence of for-profit firms, since he saw it as a way of raising the employment rate and having more taxes paid. After this first meeting, in 1994, the *Comité* published a first report, describing a gap between existing services provided to individuals and demand (Comité de Liaison des Services, 1994). Several solutions were proposed, to which the organisations adhered in the following years: the possibility for households to use a voucher system and/ or benefit from tax breaks for household services when they were paying for the services of a for-profit provider, and the possibility for these firms to have reduced VAT, like in other sectors, such as the restaurant sector (from which Sode(h)exo benefited). The report, inspired by economist Michèle Deboneuil, also already conveyed the idea that the sector should be “industrialised” (Comité de Liaison des Services, 1994: 4)

This report was adopted by the executive body of the CNPF, even if some federations (such as the commerce and construction federations...) were opposed to it: they saw these activities as competing with their own⁵. It was only after winning this internal battle that the *Comité de Liaison des Services* could launch a lobbying campaign outside the organisation and order a more precise statistical analysis of the demand, which was later published (Demoscopie 1996). Parallel to this, in 1995, the *Comité* created a proper employer organisation representing the interests of firms providing household services, the *Syndicat des Entreprises de Services aux Personnes* (SESP). Among the first members was a firm proposing household services that received no funding from the state (*Age d’or services*) and another one proposing school

⁴ interview with a former member of the SESP, October 2018

⁵ interview with a former member of the SESP, October 2018

homework support (today called *Academia*)⁶. When the CNPF was transformed into the MEDEF, the power share of the different business member federations and organisations changed, and the SESP gained its voice within the executive body of the confederation (Offerlé 2013).

The lobbying campaign in the mid-1990s also targeted Jacques Barrot, the new right-wing Minister of Labour and Employment who succeeded Michel Giraud, and also the *Comité économique et Social*, a national organisation representing the civil society and social partners. In June 1995, the *Comité* discussed with the minister the possibility of changing the existing regulations⁷, and in January 1996, the *Comité économique et social* adopted a report identical to that published by the *Comité de Liaison des Services* (CESE 1996). Service firms had managed to build coalitions and to obtain the approval of larger organisations in favour of their cause, even if they were, up until this date, excluded from welfare market dynamics.

These lobbying strategies succeeded: in 1996, a law and a decree⁸ opened up the “*agrément*” procedure necessary for tax breaks to for-profit firms proposing home services, and the thresholds for the tax breaks were increased. The way was consequently open for firms to sell domestic services to households benefiting from tax breaks, but for-profit firms were still excluded from the market of elderly households benefiting from social aid. In 1996, the prepaid lunch voucher system (*chèque déjeuner*) provided by Sodex(h)o was proposed by the SESP as a model in order to introduce a domestic service voucher, which allowed works councils or employers to purchase prepaid tickets (for their employees) to buy household services. Between 1997 and 2005, 550 firms received an *agrément*.

1.3 The coalition around the creation of the employers' organisation representing for-profit home service providers.

The emergence of an organisation representing the interests of for-profit firms providing home services was characterised by an attempt by one of the main business confederations to organise them from above. Far from being a bottom-up mechanism, the creation of this structure was embedded within a conflict between the services and industry actors present in the confederation. However, this conflict involving organised firms providing services also

⁶ interview with a former member of the SESP, May 2006

⁷ interview with a former member of the SESP, Spring 2018

⁸ Decree n°96-562 of the 24th June 1996

facilitated exchanges between them. The actors in favour of the development of firms in a welfare market of home-services succeeded in this way in finding allies within segments of the main business confederation. It also meant that the services provided by Sodex(h)o were taken as a model, and that France was the first country to propose a “domestic service voucher” to pay for the services of domestic cleaning and care providers. The first enemies of this new configuration were the non-profit organisations. This structuring of the employer organisation had consequences for the developments that followed.

Développer sur l'importance du clivage gauche droite ?

2. The different actions and repertoires of action developed by the employer organisations

2.1. Organising firms

After its creation, the SESP tried to identify the companies providing home services in France. According to a former member of the SESP, during the mid-1990s, the SESP directors called the state representatives in the *départements* and asked them to give them the names of the for-profit providers of home services. The directors of the SESP then called the firms and invited them to Paris, in order to get to know them and exchange views. At the time, the functioning of the organisation was top-down: the headquarters of the SESP tried to collect information which it then transmitted to its members. It was only later on that information began to circulate in both a top-down and bottom-up direction.

2.2. Lobbying and influencing the legislator to expand the (producer-driven) market

Employer organisations have developed lobbying activities through different channels: 1) through the development of expertise used to influence politicians and the administration 2) through personal contacts with politicians, particularly those on the right.

1) Some for-profits (Oui care, former O2) recruited researchers, but the means used by the FESP and EFSI are much more developed. They fund a significant amount of external consultancy work, like that provided by Cabinet Wyman and Idea Consult, sometimes to the tune of more than a study per year. This expertise has been used to demonstrate that tax breaks are a very important tool for avoiding undeclared work and are less costly for society than paying unemployment benefit. The spreading of this expertise seems to be effective: public administrations at national and European level refer to the interest group's studies in their documents. For instance, the National socio-economic social and environmental council

defends tax breaks by quoting research done by Cabinet Wyman estimating the number of people in undeclared work. Equally, this expertise enables them to discuss or contest every government proposal (Guiraudon and Ledoux 2015).

2) The results of all this consultancy work come easily to the ears of decision makers, since the SESP and the FESP are very well integrated in elite networks. This integration is due to their membership of the national federation of large businesses federation, but also to their close relationship to the entity organising services within the MEDEF and to their active policy. Since the mid-1990s, actors representing the SESP constantly organise meetings with ministers. This has been particularly true during periods of right-wing government. In an interview, a former member of the SESP explained that “*everything in the Borloo plan came from here [the SESP], from the company directors. When there was a topic on hairdressing, we sent a business manager from one of our hairdressing firms, when it came to home care, we sent a business manager from one of our home care firms. As if by chance, they came from our board of directors (...) When the Borloo plan began, we were already in contact with the Ministry of Labour Affairs, we had many meetings with the technical counsellor of the Minister*”⁹. Later on, in order keep these relations within the political milieu, the FESP recruited a former member of a Ministry Cabinet as its director.

2.3. Using legal arguments to liberalise welfare markets for home services

1) French for-profit firms use European law in order to diminish the limitations they encounter in specific segments of welfare markets, and to influence policies developed in France for all home services. After the mid-2000s, developing a European confederation representing the interests of home services (EFSI) became a deliberate strategy. The FESP used the 2006 directive on the free movement of services to fight the authorisation procedure, arguing that it did not comply with European law and therefore discriminated against for-profit organisations. As we explained before, the “*agrément*” system had already been established at that time, but the authorisation system was accused of allowing unfair competition. The two systems coexisted in the same territory. For example, in 2015, in the *Loire Atlantique département*, 16 entities were authorised by the president of the local administration (*président du conseil général*) and could deliver the same services as 134 providers approved by the state (with an “*agrément*”) but proposed different tariffs. Also, the hourly amount of APA they received per

⁹ *interview with a former member of the SESP, May 2006*

beneficiary was superior (up to 23€ to check) to the structures with an “*agrément*” (around 19€). In the first group, the tariffs were fixed by the *département*, while the 134 providers were free to fix their tariff (not withstanding certain thresholds of price growth defined by the state). After 2015, the *départements* were in charge of authorising all the providers intervening at elderly and handicapped people’s homes, but were not obliged to fix the tariffs of all of them.

The FESP filed a complaint with European Commission in 2013 and has testified several times in this matter, as has the FEDESAP. As well as these attacks, the EFSI also organises regular meetings between its members, and with political or administrative actors. These meetings can serve as platforms for its members to make their interests better known, when they can express them in an acceptable European form. During a symposium at the European Economic and Social Committee, the director of O2 affirmed that French entrepreneurs would mobilise in favour of a Frexit if the European Commission did not intervene in order to defend the freedom of establishment, against the project of abolishing the *agrément* procedure.

2) Federations of employer organisations and French for-profit firms also used European legal arguments in court to diminish the power of the *départements*. In the legislative reform of 2015-2016, the French legislator abolished the dual system based on choice, maintaining only a reformed system of authorisations controlled at the local level, by the *département*. In this new system, all providers (profit or non-profit) of services must have an administrative authorisation to be able to deliver services. Providers are obliged to take care of elderly (APA) or handicapped (PCH) people receiving benefits, and cannot choose their clients. They also have to respect a set of national standards, and sign an umbrella contract with the *département* at the local level, establishing objectives and means for a period of several years. Moreover, the *département* has, in this new system, the power to control all entities (public or private). Not willing to become dependent on the *département*, perceived as historically reluctant to facilitate the expansion of for-profit private entities in the sector, a federation (the FEDESAP) filed an action to revoke the decree of 2016, arguing, to put it simply, that this new system does not conform to the 2006 European directive on services in the internal market. In an important ruling on 6th December 2017¹⁰, the highest administrative court of justice, the *Conseil d’Etat*, decided that, except when they are mandated by the State itself, services to elderly and handicapped people,

10 Conseil d’État, 6 décembre 2017, n°402260.

or others needing personal assistance at home, are in the scope of the European directive on services. This general statement is clearly in favour of employer organisations and their federations which advocated this for many years. However, the consequences are not quite those expected by the claimant. On the grounds of article 9 of the European directive, Member States can facilitate access to a service activity through an authorisation scheme, when the following conditions are satisfied : “*the authorisation scheme does not discriminate against the provider in question; the need for an authorisation scheme is justified by an overriding reason relating to public interest; the objective pursued cannot be attained by the means of a less restrictive measure, in particular because an a posteriori inspection would take place too late to be genuinely effective*”. Considering these three conditions to be satisfied in the case in question, the *Conseil d’Etat* rejected the claim of the Federation and confirmed the validity of the decree maintaining the new authorisation regime controlled by *départements*. It is too early to know how the *départements* will cope with their new responsibilities. From the perspective of employers organisations, *départements* now have the power to regulate the sector through authorisations (which seems to be a defeat), but the *départements* will also have to respect competition principles, with no possibility for example to pay non-profit entities more than for-profit ones if the quality of service is the same (which is a little victory in the name of avoiding discrimination).

2.4. Becoming a representative actor able to adopt a national collective agreement

Being able to negotiate a collective agreement has been a very important step for the constitution of the FESP as a recognised actor representing home service provider organisations. In an interview, a former member of the SESP told us “*you are nothing in the welfare landscape if you don’t have a national collective agreement and a training course*”¹¹. At the same time, it can also be used in order to develop advantageous employment relations for firms, as long as these can be justified as also being in the interest of workers. In line with this argument, constructing a national collective agreement obliges firms to establish standards for workers but can also be used to stabilise business models.

¹¹ interview with a former member of the SESP, Spring 2018

Building a national collective agreement has nevertheless not been easy, since other organisations considered that the home service sector belonged to their activity and that there was no justification for the development of a specific national agreement for home services.

Firstly, the for-profit firms delivering home services had to face the non-profit organisations, which did not want to see the emergence of for-profit providers. Secondly, other for-profit federations had already signed agreements including home services in their existing field. That was the case in 2007 of the for-profit employer organisations representing institutional care, who also wanted to cover in their agreement the companies providing home services; and of cleaning firms, who had signed an annex to the national agreement of cleaning firms in order to incorporate in their regulations firms providing cleaning services in the home (Lefebvre 2013). This did not discourage the FESP from defining a specific field of agreement for for-profit firms providing home service and participating in the construction of a single welfare market including all home services.

In order to obtain the support of the trade unions, the FESP, later joined by the FEDESAP, relied on the division of the trade union movement, and on the divisions within each trade union itself. At that time, there were 5 trade unions automatically capacitated to sign collective agreements. Among them, the CGT was against the development of a for-profit sector, but the position of the others was more complicated. Within the trade union Force Ouvrière (FO), the federation for social action was against the development of a collective agreement for for-profit firms providing home services while the one specialised in agriculture, food, tobacco and other services was in favour. A representative of this federation argued that after the Borloo Plan, the service sector was going to develop and the agreement could not be avoided¹². In another trade union, the CFDT, there was also a huge conflict between the services federation and the Social-Health Federation¹³. Here again, the social-health federation was against the idea of for-profits developing in the elderly home care sector –and negotiating with its representatives- while the services federation, more used to negotiating with for-profit firms, was favourable to it. In the end, the CFDT (a confederation) decided in favour of the services federation. The different employer organisations (FESP and FEDESAP) managed to achieve an agreement with three trade unions in 2007 on the definition of a new field of collective negotiation: the field of for-

¹² *interview with a member of FO, april 2006*

¹³ *interview with a member of the CFDT, june 2011*

profit firms providing home services. The first collective agreement, defining new rights in this field, was signed in 2012. Nevertheless, these collective agreements had yet to be extended by the minister of labour affairs, and applied to all providers active in the field of the agreement and to all their employees. It took for years to obtain the extension of these rights to all organisations and individuals covered by the newly negotiated field.

Nevertheless, this agreement was also a means of introducing rules giving more flexibility to employers than allowed in the provisions of the labour code. During the negotiation of the new collective agreement, a large for-profit firm providing home services tried to include the possibility of developing a different kind of employment contract (- already and partially used in practice-): a “flexible part-time contract”. It would have enabled employers to sign employment contracts with a limited number of hours per week and to increase the working hours without paying for overtime. According to the firm, it would have given workers the possibility “not to be obliged” to work in households they did not want to work in¹⁴ but it also involved – in the same way as zero-hours contracts used in others countries in Europe -, reducing workers' protection, maintaining them in more insecure employment situations. In the end, trade unions (CGT, CFDT) brought this firm to criminal court and finally won. Employing workers in such conditions is not, as stated by the defendant, an interpretation of the provisions of labour law, but is clearly a violation of this law¹⁵. The CFDT, which was ready to sign the agreement, in the end refused to do it with the flexible part-time contract clause.

Despite these practices, it is interesting to see that the interests of workers and the question of employment and service quality are not neglected in the discourse of employers. For example, the director of this large firm explained that 94% of his workers were satisfied with their jobs, that he carries out satisfaction polls among his workers and that the aim of his firm was to have “*a worker satisfied with his situation, because it means a 99% chance of having a satisfied client*”. For him, the “flexible part time contract” only introduced the option for workers to work as much as they wanted, with the clients they wanted. Even if the situation might be slightly different, it is interesting to see that in the end, these employers know they have to legitimise their activity through reference to the well-being of their (female) workforce. This

¹⁴ *interview decembre 2013*

¹⁵ Cour de cassation, Chambre criminelle, Audience publique du 5 avril 2018

injunction to show that firms are good employers can also be seen in the creation of a new solidarity fund by the large firm “Oui care”, dedicated to fighting against sexual violence.

3. The results: the construction of a new actor.

3.1. The dynamics of welfare market policies: the dynamics of employer organisations' success?

After their first successes, employer organisations lobbied the government to develop further policies aimed at diminishing the differences between non-profit and for-profit organisations' obligations, in home services in general, but also in the more regulated care sector.

Firstly, the SESP lobbied the government in order to obtain reduced VAT for their services, which it won in 1999. Before 2005, the voucher could only be used for paying people directly employed by households. This changed in 2005: the new *Cheque Emploi Service Universel*, CESU can now also be used as a prepaid voucher to pay for providers' services. Firms and public authorities can distribute these cheques to their employees or beneficiaries of the welfare state) to pay providers or the net wage of directly employed people. After 2000, the FESP also lobbied the government continuously and behind closed doors in order to maintain or increase tax breaks. During the following years, it achieved the transformation of tax reductions into a tax credit and an increase in the threshold for tax breaks (Guiraudon and Ledoux 2015)

Secondly, this engagement of the employer organisations has increased in one of the most regulated welfare markets, the market for care services to the elderly. After the introduction of the authorisation reforms, the SESP obtained the right to opt for an authorisation or an *agrément* in 2005. Consequently, some *départements* now distribute the APA through a prepaid voucher, to which they give a specific name, for example in the *département* of Gironde, the “*Chèque solidarités Gironde*”. Following this logic, the beneficiaries of the APA are viewed as consumers, who would be given a real choice between provider organisations or directly employed home-based care workers, and who would have direct exit options..

3.2. The growth of for-profit firms

The previous policy decisions contributed to creating organised markets (Aspers 2014) and also to shaping labour markets and employment conditions related to the service markets.

One of the other major changes related to these policy decisions has been the rapid expansion of the welfare market, with the development of for-profit providers, not only in the sector of domestic services but also in the specific domain of care especially after 2005. For example, the number of for-profit providers in home services increased from 296 in 2002 to 16 400 in 2012 (Table 2).

Table 2: Number of for-profit providers in the home service sector

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of for-profit firms	296	412	573	1 126	2 174	3 973	5 100	8 000	12 700	14 900	16 400

Source: Thierus 2014 and Ould Younes 2010

In 2014, private companies represented 36.3% of the home services sector, compared to 23%.3 in 2011 (Table). Within these for-profit firms, some of them have developed almost in an oligopolistic manner; and very large companies have emerged, such as O2, which has more than 180 agencies and more than 40 new franchised agencies. Parallel to this movement, direct employment of home workers has diminished, from 81% of the hours worked in 2002, to only 58% in 2014.

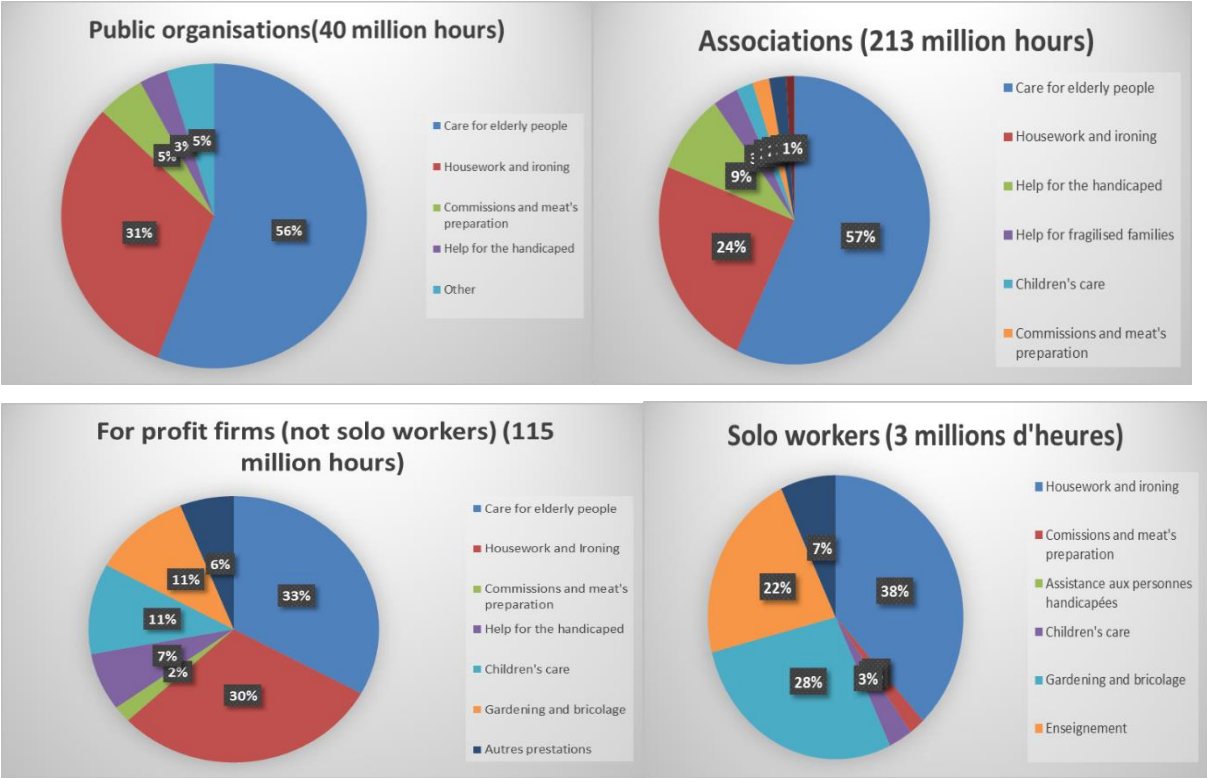
Table 3: Share of the percentage of workers by different types of providers in the household and home-based care sector

	2011 (second semester)	2014 (second semester)
Associations	64.8	55.7
Public organisations	8.9	8
Private companies	23.3	36.3
<i>.... including solo workers</i>		1.5
Total	100	100

Source : Thierus 2016 and Ould Younes 2013

In France, there is no national statistic allowing us to evaluate the percentage of home-based care services financed by the APA and provided through for-profit firms. However, statistics do exist concerning the repartition of hours of home care provided by each type of organisation (Graph 1). These statistics show that for-profit firms do not work as much in elderly care (“*assistance aux personnes âgées*”) as associations do, but that, nevertheless, 33% of their activity is now concentrated in this field. Associations have lost their monopoly in the cities, and firms are now also proposing home-based care / aid services to APA beneficiaries. Interviews with for-profit entrepreneurs also confirm that they see development in this field.

Graph 1: Repartition of the provided hours depending on the type of organisation



Source: Thierus 2016

After their structuring and at the beginning of the 2000s, the federations representing for-profit providing organisations began to lobby to be allowed to provide home-based care services sustained through the main long-term elderly care allowance, the APA. Through their actions, the rationale behind the APA progressively changed. In some departments, the APA is now delivered through a prepaid voucher. Whereas the voucher as a policy instrument was previously confined to the home-based service sector, it is now also used in the distribution of the main elderly care allowance in the home. In some *départements*, this voucher is only accessible to individual beneficiaries directly hiring their employees; in others, the prepaid voucher can be used to pay both carers employed directly by families and provider organisations. It gives elderly people the choice of the service provider. Firms like O2, which were historically active in household services, now operate in the domain of long-term care, and have, at the same time, developed a franchising strategy. For such a firm, it is important to lobby at European level in order not only to influence French policies, but also to meet other

European firms and to try to develop in other countries: O2 care services is currently expanding in Spain. These strategies also influenced the repertoire of contention.

Concerning employment relations, Christelle Avril and Marie Cartier (Avril and Cartier 2014) show with the 2011 Labour Force Survey, that the populations of workers doing home-based care/ aid and house cleaning jobs are not exactly the same, even if they intervene in both situations; the structuring of the two policy instruments and sector still has an impact on the working populations today. Those doing house cleaning are more dominated and in more insecure situations than those involved in care of the elderly, and their educational attainment is not the same: 65% of aides for the elderly have some level of qualifying diploma compared to only 41% of house cleaners; immigrants are heavily overrepresented among domestic cleaners, while their numbers are low among home aides to the elderly (Avril and Cartier 2014: 616).

3.2. Representative organisations

With the reform of employer organisations and their representatives, the government introduced a new legal way to test their representativeness, also basing it on social criteria (Bérout, Le Crom, and Yon 2012). A first campaign was launched, in which the employer organisations attempted to show their representativeness. In the results published in 2017, it came out that 109 354 for-profit firms had answered the employers' federations, in order to show their representativeness, and 43% of respondents of this campaign declared their belonging to the SESP, and 33% to the FEDESAP. Through this procedure, the federations also obtained an official and legal proof of their representativeness and the right to speak and act in the name of the for-profit providers of home services

Conclusion

French Employer organisations representing for profit providers of home services have emerged through the mobilisation of the biggest national businesses organisation (the CNPF) and is the result of a greater coalition of services employer organisations and firms. These organisations have been active in several domains in the fifteen last year and have been characterised by a proximity to right wing government and have positioned themselves as preoccupied by the welfare of their employees. They managed to obtain series of policy changes in favour to for profit providers of home services, which grew in the domestic sector but also in the elderly and handicapped one.

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