



# Relaunching Collective Bargaining Coverage in Outsourced Services

RECOVER POLICY PAPER

## Outsourcing dynamics and regulatory framework in France

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# POLICY PAPER: FRANCE

## INTRODUCTION

France is a country with a high level of coverage of workers. The National Collective Agreements protect the majority of workers, despite the fact that in recent years, the collective agreement has lost weight in detriment of the company level agreement. Along with this, outsourcing causes the progressive lack of definition of the limits of the sectors, which makes it difficult to identify the outsourced workers with their collective agreement.

The French Labour Code provides protection clauses in case of business transfer, although these clauses are applied in a few cases since 80s. Instead, some national collective agreements include clauses that regulate contract transfers between the old supplier and the new supplier, although with a lower level of protection than one included in the French Labour Code.

On the other hand, in the outsourcing scenario in France providers tend to multi-technical/multi-services offers or even FM offers (greater range of services offered). In many cases the application of collective agreements less advantageous for workers is observed.

In summary, the regulatory framework in France supposes a system of guarantee of minimum rights for workers, although outsourcing can generate a loss or deterioration of the working conditions of the outsourced workers, especially in comparison with the non-outsourced workers in the same activities developed.

# INDUSTRIAL RELATIONS RECKONING WITH OUTSOURCING

## 1. COLLECTIVE BARGAINING COVERAGE

France is a country with a high level of coverage, in comparison with most of European countries. The general level of coverage is 98% (ICTWSS, 2012). Even so, the dynamics of outsourcing appear related to certain problems in the coverage of the workers involved in them.

The national collective agreements are the main reference in the collective bargaining. In some sectors, regional collective agreements replace the national collective agreements. Anyway, they are the reference in the regulation of labour conditions. Even so, in the last years, several reforms of the labour law promote the company level agreements above sectoral collective agreements. Among them, the El Khomri Law (reform of French Labour Code in 2016) and the last reforms of Macron's Government get priority to the company level. Accordingly, in the last years there is a progressive concentration of bargaining at the company level. This regulation affects salaried workers, leaving other forms of employment unprotected, such as self-employed workers.

## 2. THE EXTENSION, REGULATION AND FORMS OF OUTSOURCING

The outsourcing dynamics affects the regulatory framework in several ways. First of all, it generates a change of relations between companies. The market relation between clients and providers becomes the labour relation, in the sense that labour conditions are conditioned by services market. The progressive lack of definition of "the frontiers" of companies and sectors generates problems of communication and representation for trade unions. In this case, collective agreements represent an inclusive mechanism to guarantee a minimum set of rights for outsourced workers.

The main problem of outsourcing is related to business transfers. In this case, theoretically, the transfer of a service between the old supplier and the new supplier is covered by the French Labour Code under the article L. 1224-1. Even so, from 80s it does not apply between providers. According to the French Labour Cassation, in the majority of cases this article does not apply correctly. Instead, the labour contract transfer is regulated under several articles included in sectoral collective agreements. In general, these articles (*transfers conventionnels*) are less advantageous for employees (fewer employees covered, fewer retained premiums or complements, etc.).

Nowadays, the 27.8% of French companies claim to be involved in outsourcing processes (European Company Survey, 2013). The main reasons for this outsourcing are a better economic adjustment (reduction of costs) and a greater flexibility in the organization of work. Another reason for outsourcing is the transfer of risk and uncertainty to outsourced workers. These outsourcing processes refer to core activities of industrial and service companies. But the outsourcing of non-core activities of companies has also increased in the last two decades.

In France the main outsourcing forms are the following: the Outsourcing by activity model, the Multi-service/Multi-technical model, and the Total or Global FM model. In 2015 the outsourcing by activity model was used by 46% of companies, while the multi-technical/multi-services model was used by 33% of them. The Total or Global FM was used only by 7%. The rest of companies (14%) used an internal model of provision of services (non-outsourcing model) yet.

### **3. FACILITY MANAGEMENT COMPANIES**

In France, the FM market is still very small. Although the first FM contracts began in the 90s, it is not until after mid-2000 that the FM market develops. These companies compete with multi-technical companies (technical maintenance, building maintenance, energy management) and multi-services companies (hygiene, cleaning, reception, catering, security, courier services).

According to 2012 data from INSEE the FM market is growing by 8.70% in turnover

with more than 100,000 contracts between 2010 and 2012. Within the sector of support activities by service providers, Building and General Services accounts for 66% of employees, followed by the 16% of employees in Administration and Finance.

There are several challenges of French FM companies. The first challenge is to increase the market of Total FM in two ways: by one side, in order to expand the activity in the soft services; and by the other side, in order to include the management of services in the FM package. The strategy of FM companies is to pass from a subcontracted company situation to a management services situation. The second challenge is to respond to the service offered taking into account the increasingly aggressive economic demands from clients. The French FM market is still a prices-based system. Taking into account the limitations of savings, FM companies and FM organizations try to leave this model in order to develop a more cooperative, relational and informational model moving away from the model based on cost reduction.

There is no specific collective agreement for FM companies. They are regulated under the different national collective agreements in France, according to the main activity developed by the FM company.

## **OUTSOURCED ACTIVITIES AND FACILITY MANAGEMENT COMPANY CASE**

### **1. CLEANING**

The cleaning provides general cleaning services for companies and buildings. The cleaning is one of the activities with the highest outsourcing rate among the complementary services of the companies. Within Services related to buildings and landscaping 84.6% of those carry out cleaning activities.

The main form of outsourcing is the outsourcing by activity model (cleaning companies), multi-services companies and, finally, FM companies. The resource to TAW agencies is minority. The use of the self-employment is reduced to specific cases such as the particular cleaning of isolate offices or households.

The main challenge shared by social partners is fighting against the demands of costs reduction by clients. By the side of employers the challenge is to find the balance between the low margin of adjustment (less than 3% in the cleaning sector) and the reorganization of the service, taking into account that the wage bill represents at least 80% of the price of the provision of service. By the side of trade unions the main challenge is to protect workers in case of business transfer, in order to avoid that this reorganization of the service generates a worsening of working conditions. There are also problems of communication and articulation of trade unions due to the fragmented and isolated workplaces, which hinders their actions of representation and communication between workers and their representatives

The cleaning collective agreement regulates at the national level and integrates clauses of protection against transfers (Article 7). Even so, the agreement does not regulate certain working conditions that are used by the suppliers to adjust the service at the price's client. In case of transfer, the supplier must maintain the same agreed working hours (in part-time workdays), but can displace workers to other workplaces of the same provider (with a geographical limit and always in the same time slot in the case of part-time).

## 2. IT ACTIVITIES

Outsourcing of IT activities is the support of the information system of the client by an IT service supplier, with or without transfer of client resources (workers and infrastructure), with or without relocation (*infogérance*).

One of the main characteristics of the sector in relation to outsourcing is the high competitiveness among suppliers under different outsourcing practices. Under the main practice, workers of an IT supplier than gains an call tender develop their activity on the client site. But there are other outsourcing practices more related to the individualization of work: self-employment and intermediation companies (*portage salarial*).

According to estimates, currently 20% of outsourced workers are in a situation of

*portage salarial*. The self-employed worker is a marginal figure, although the free-lance figure increases. While the worker linked to the *portage salarial* is covered by the recent collective agreement of *portage salarial* (since 2017), self-employed and free-lance workers are not covered by any collective agreement.

According to social partners, the main challenge shared by them is to “neutralize” the trend based on price reduction. By the side of employers, the main challenge is to fight against the loss of loyalty of workers due to the high movement of workers between IT companies. By the side of trade unions, the main challenges are: 1) Fight against “in cascade” outsourcing. 2) Fight against the formulas as the work by deadlines that increase the workload and can generate psychosocial risks. 3) Improve the articulation of the union action; and 4) the effective application of the national collective agreement.

The national collective agreement that regulates IT activities (SYNTEC agreement) is an especial agreement that includes a wide range of different professions (informatics, engineers, scientists, consultants, HR managers, conventions & exhibitions, translators, etc.). It is one of the most recent collective agreements and one of the agreements that include a greater number of workers involved: approximately one million of workers.

### **3. FACILITY MANAGEMENT COMPANY**

The selected FM company (FMC) is a multinational company, that entered the French market in the mid-90s. As other FM companies, FMC is initially developed as a service provider, mainly the cleaning activity. Subsequently, it developed a multi-service model of services provider, expanding its market currently to the FM market (Total FM model of outsourcing). Even so, FM market is still a limited market for the company. The provision of cleaning services continues to be the main market of the company (50-52% of the activity of FMC approximately), although revenues have dropped a lot in recent years

The business strategy of FMC is to overcome a client-supplier relationship based on price, betting on an increase in the quality of service, based on a better relationship and communication with the client, within what some cleaning employers’ organizations call a “helpful and integrating model”. Therefore, FMC seeks to stop being a simple



provider of services (a subcontracting situation within the outsourcing chain) to be a company that manages equipment and processes towards integration and focus on added value. For this reason, FMC is currently committed to the development of its FM section, being able to offer the main services (cleaning, reception, space management, etc.) linked to the maintenance of buildings

The main client is the private sector, with little weight from the public sector (although increasing in recent years). In relation to the size of the clients, large companies, especially large international groups, prevail, although there are also small and medium clients. Large clients are committed to FMC due to their network of companies that have in the territory.

The problems detected in the FM case study are related to the transfer of a service in relation to the possible imbalances between the cost demanded by the client and the labour cost of former workers who become workers of the new provider. Faced with this situation, there are several scenarios that affect workers: 1) reorganization of work, with displacements of workers between workplaces of the same provider; 2) changes of working conditions (schedules, workdays, etc.); 3) the dismissal of workers.

## **POLICY RECOMMENDATIONS**

For the French case, the existing regulatory mechanisms, both the collective agreement and the transfer clauses included in them seem to be acceptable mechanisms to guarantee the coverage of the workers involved. In some cases, conflicts over outsourcing are more related to the failure of these mechanisms than to the fact that this phenomenon is not sufficiently regulated. In this sense trade unions defend the strict compliance of the collective agreements. Other figures such as self-employment are outside of these mechanisms, but they do not seem to be the most used figures in the activities studied.

The main demand shared by unions and employers is the fight against the trend based on price reduction. All social partners interviewed agree that the main responsible for the increase in precariousness in outsourced activities is related with the downward

trend in the price of the service. This tendency has been progressively accentuated, reaching levels difficult to assume by the suppliers.

Some unions defend a regulation of prices that prevents this high competition, which forces drastic reorganizations of work. By the side of the employers' organizations, campaigns are carried out that seek to stop this trend of the price to the downside.

One of the critical moments is the moment of business transfer. Trade unions demand greater control over transfer processes and over the signing of new contracts related to the entry of a new provider. In other cases, the reinsertion of outsourced workers to the client is requested.

Other more general strategies are related to the demand for more resources against aspects that can increase the negative effects of outsourcing processes, in terms of non-coverage, in order to achieve a better identification of workers (especially those in isolated workplaces) and in order to achieve a greater communication and the capacity to represent outsourced workers.