New forms of employment
Collaborative employment, France

Case study 10: Policy analysis

The French employment mechanism of portage salarial – usually translated into English as 'umbrella company' – is complex and has little in common with the conventional concept of umbrella companies. This article examines this innovative form of employment and its exclusive use by executives, placing them half way between salaried and independent work.

Introduction

Recent evolutions in the labour market show that the way people relate to work and their employing companies has changed considerably over the past few decades. Within companies, working methods have evolved towards more outsourcing. To respond to these changes, new forms of employment have developed on the labour market.

The French mechanism of *portage salarial* is a concrete example of a new employment form. Usually translated into English as 'umbrella company', *portage salarial* differs in certain aspects from the English concept of umbrella companies and remains complex to understand and use, as it is atypical in its characteristics and development history.

Portage salarial literally means that people using this type of employment are 'carried' or supported by employee status and its respective rights. *Portage salarial* can indeed be defined as an innovative form of employment, dedicated exclusively to executives and placing them half way between salaried and independent work.

This innovative form of employment is based on a triangular relationship. The umbrella company, in French '*entreprise de portage salarial*', hires a worker, the so-called co-contractor (in French '*salarié porté*'), under a traditional employment contract and this co-contractor performs work for clients. Clients pay invoices issued by the umbrella company for the services provided and co-contractors are paid a wage by the umbrella company. Independent workers that do not use umbrella companies are paid in the form of a fee paid directly by the clients.

Likewise, the fact that a co-contractor is employed by the umbrella company under a contract of employment grants them employee status and its corresponding rights, such as the right to professional training or social protection. This makes this form or work more secure from the worker's perspective than independent worker status. However, co-contractors maintain some characteristics of independent work, the main one being the very weak hierarchical relationship between the co-contractor and his employer, the umbrella company. This is described further in the 'characteristics' section below.

Drawing on these observations, *portage salarial* fulfils the duality of new forms of employment: client companies can enjoy more flexibility by outsourcing a part of their workforce and independent workers enjoy more security as they benefit from employee status.

French law allows for other new forms of employment that might help implement the concept of flexicurity. For instance, *groupements d'employeurs* is a mechanism which gathers together several companies willing to recruit workers but which do not have the actual capacity, often financial, to recruit them. The groupement d'employeurs hires the workers and distributes them across its member companies (see case studies 11 and 12 on French groupements d'employeurs: Eurofound, 2015a and b).

This report presents in more detail the global features of the *portage salarial* mechanism in France. It sets out the main reasons why companies use this mechanism, the various changes the scheme has undergone, and its improvement potential based on the current strengths and weaknesses.

Various stakeholders were interviewed when conducting this analysis – experts, academics, social partners and members of umbrella companies. The analysis also draws upon a case study conducted in January 2014 with an umbrella company in France, ADPartners (Eurofound, 2015c: case study 9). A selected bibliography and various specialised websites were also been used as sources of evidence to support this analysis.

Background and objectives of *portage salarial*

Considered as an innovative form of employment, *portage salarial* was created in France in the 1980s and has already experienced various evolutions over the years. Since 2000, the legislation that regulates it has changed and it has therefore gained more visibility.

In the 1980s, *portage salarial* was invented in an associative form by the AVARAP ('*association pour la valorisation des acquis professionnels*' – association for the valorisation of professional experiences) and by the alumni of a well-known business school. The objective was to help experienced former students with high qualifications seeking work to find consultancy commissions (Fondation ITG, 2013). This idea has quickly evolved for the benefit of executives and senior workers who have been laid off as an alternative to unemployment and job-seeking (Lenoir and Schechter, 2011).

Portage salarial is considered as an alternative to independent work and is aimed at encouraging former employees to continue their activity with the autonomy of independent workers, while still benefiting from the security of the status and rights of dependent employees. Until *portage salarial* was formally regulated by legislation in 2008, umbrella companies were acting outside the law and infringed the legislation on unlawful labour lending and illegal subcontracting (Casaux–Labrunée et al, 2006).

However, until the 1990s, they were not very developed and, despite some illegal aspects of their operation, they were considered to be effective and necessary because of their laudable objective of securing career paths.

During the 1990s, the number of umbrella companies started to grow and various stakeholders advocated their legalisation.

This process of creating a legal framework was encouraged by umbrella companies themselves.

In 2000, discussions started and initiatives were taken to collate umbrella companies' best practice. ITG, one of the leading umbrella companies, together with the CFDT trade union, the French Democratic Confederation of Labour, encouraged the presence of employee representative bodies in order to develop company-level negotiations to set general conditions for *portage salarial*, such as working conditions, distribution of obligations between the three parties and so on.

In April 2004, the very first company collective agreement was signed in the ITG umbrella company.

Building on this experience, between 2004 and 2007, 13 other umbrella companies concluded a collective agreement applicable to their company.

In 2006, the *Observatoire Paritaire du Portage salarial* (OPPS – joint observatory on *portage salarial*) was created. It gathers social partners in the field of *portage salarial* together to promote negotiations in this field. The partners are SNEPS, now PEPS, the Professionals in *Portage salarial* Employment, CICF, now CINOV, the employers' federation in the consulting, engineering and digital industries, employee representatives CFDT, the French Confederation of Christian Workers (CFTC), and CFE-CGC, a French trade union in the field of management.

Following two years of discussions and negotiations, a first collective agreement at the sectoral level of consulting was signed in 2007 by three representative trade unions (CFDT, CFTC and CFE-CGC) and employers' organisation SNEPS. However, as the SYNTEC-CINOV employers' organisation refused to sign this agreement, it was not possible to extend it to the national level. It meant the scope of the agreement was considerably limited as it was only applicable to the signatories in the consulting sector.

Eventually, in 2008, the government asked the social partners to negotiate *portage salarial* within the framework of the national cross-industry agreement on the modernisation of the labour market. However, social partners operating specifically in the field of *portage salarial* were controversially left out of the negotiations because the temporary work sector had lobbied the government to take the lead in the

negotiations, hoping to take *portage salarial* within their field of activity. Portage salarial was considered by temporary work agencies as a potentially lucrative new activity.

This national cross-industry agreement was enshrined in Law No. 2008-596 of 25 June 2008 on the modernisation of the labour market. Article L. 1251-64 of the Labour code now provides a legal definition of *portage salarial*, which is 'a set of contractual relationships organised between an umbrella company, a co-contractor (*personne portée*) and client companies'. Under this definition, the co-contractor benefits from the employees' status and is remunerated by the umbrella company for work performed for clients.

Article L. 8241-1 of the Labour code says that the use of *portage salarial* can no longer be considered an offence: 'Any profit-making operation exclusively aimed at lending workforce is forbidden. However, those provisions do not apply to temporary agency work, *portage salarial* and job sharing (*travail à temps partagé*).'

The 2008 law legally recognises the existence of *portage salarial*. However, it did not precisely define its features and the conditions under which it can be applied and instead entrusted social partners with this task.

As a consequence, new negotiations were launched, again led by the temporary work sector. The social partners in the field of *portage salarial* were consulted but were not authorised to make decisions. After two years of tough negotiations between unions and employers' organisations an agreement was eventually reached in June 2010. The main point of contention related to the exclusivity of *portage salarial* activities, as described in the 'characteristics' section below.

This agreement established that, in order to be applicable, it had to be extended to the national level to include all workers and companies in the field of *portage salarial*. However, the then Minister of Labour commissioned a report from the Inspectorate General of Social Affairs on the future and the regulation paths of *portage salarial* (Lenoir and Schechter, 2011). After considering the findings of this report, the Minister decided against proceeding with the extension.

It was only in May 2013, after a new government was elected, that the June 2010 agreement was eventually extended. This extension has the effect of imposing the 2010 agreement on all umbrella companies within the French territory, no matter which sector they are working in. As a result, it is only recently that *portage salarial* in France has been regulated by a general set of common rules and conditions.

Characteristics of *portage salarial*

Portage salarial is a hybrid form of employment which combines characteristics of independent work and other forms of employment commonly found in salaried work. It is also a triangular form of employment between a worker – the co-contractor, an employer – the umbrella company, and a client company. The co-contractor is hired by the umbrella company under a standard employment contract. As the legal employer, the umbrella company performs the main obligations of an employer – it hires the co-contractors, pays them and guarantees their rights to benefits such as training. However, the key distinguishing feature of the *portage salarial* mechanism is that the umbrella company does not have the obligation to provide work to the co-contractors. Co-contractors will compete for clients and negotiate directly with them the tasks to be performed and the corresponding price. Once this negotiation is done, there is no formal link between the client company and the co-contractor, who remain independent from each other. The relationship is sealed by the conclusion of a service contract between the umbrella company and the client company, which contains the previously negotiated conditions.

Restrictive criteria

Portage salarial is exclusively limited to executive-level workers. Services to individuals or cultural performances are excluded from the field of *portage salarial*. To qualify, co-contractors have to be paid at least €2,900 per month gross on a full-time basis. Even though *portage salarial* was initially created to help workers who were dismissed from their previous job, it does not constitute a mandatory condition to have access to *portage salarial*.

It is not fully clear why and how these criteria were established. One reason that could explain this limitation is that, as the umbrella company does not provide work for employees, it is up to the co-contractors to secure clients and tasks, and to negotiate the price of those missions. Therefore, this requires that the co-contractor

builds a solid network of contacts and disposes a high level of expertise, qualifications and organisational skills that enable them to work autonomously.

Distribution of obligations

One of the most interesting features of *portage salarial* is that the co-contractor is in charge of finding his or her own employment within a host company. As the co-contractor is hired by the umbrella company under a traditional contract of employment, this peculiarity is rather surprising. In France, the primary obligation of the employer when concluding a contract of employment is to provide work for his employees. In the framework of *portage salarial*, this obligation has been shifted on the employee.

Co-contractors can also organise their work as they want. The umbrella company cannot impose working conditions such as working hours or working locations, and neither do the clients. Consequently, the hierarchical dependency between the umbrella company and the co-contractor is relatively weak. The umbrella company has no control over the work performed by its co-contractors. The only requirements made of the co-contractor is that they must report their activities to the umbrella company and that they must negotiate a fee equivalent to at least €2,900 per month on a full-time basis.

The 2010 collective agreement established that co-contractors can be employed by the umbrella company under a fixed-term or a permanent contract, and that the duration of a mission within a client company can last for a maximum of three years.

The issue regarding the type of employment contract that can be concluded between the umbrella company and the co-contractor has given rise to many debates about the purpose of *portage salarial*. Initially, *portage salarial* was mostly seen as a transitory measure that could be used by senior workers at the end of their career to avoid unemployment, or more generally as a means for people willing to create their own company or to work independently to test their project's viability within the framework of an umbrella company. However, by allowing umbrella companies to hire co-contractors under permanent contracts, the 2010 agreement makes it possible for co-contractors to build their entire career – or a significant part of it – while working in the framework of *portage salarial*.

French legislation has specific rules for hiring individuals under fixed-term contracts. Usually, a fixed-term contract cannot last for more than 18 months and can only be used within the limits set by law. They include:

- to replace an absent worker;
- to fill vacancies caused by a temporary increase in the company's activities;
- for seasonal work.

These rules are not consistent with the role of umbrella companies, since they hire workers on fixed-term contracts for the duration of a mission within a client company. The 2010 collective agreement attempted to introduce a new way of concluding fixed-term contracts but this was excluded from the agreement in 2013. Given that work missions in *portage salarial* can last for up to three years, the 2008 law made it possible to conclude a specific type of fixed-term contract 'with a defined objective' for up to 36 months, exclusively for executive workers or engineers (Fabre, 2010). These contracts are applicable to *portage salarial*, but can also be used outside this framework.

The co-contractor is in charge of negotiating the price that is to be paid for the commissions performed. However, the client company cannot pay the co-contractor directly as there is no legal link between them. In accordance with the service contract established between the umbrella company and the client company, the umbrella company invoices the client. Once the client has paid the invoice, the umbrella company pays the co-contractor, less the umbrella company's administrative fees (between 10% and 15%), general social contributions paid by all companies and business expenses.

The umbrella company has to provide liability insurance to cover its co-contractors. As there is no legal link between the co-contractor and the client company, the umbrella company is held responsible for any conflict or accident. The umbrella company also provides training for its co-contractors in line with the standard training rights enjoyed by employees'.

If the co-contractor is hired by an umbrella company under a permanent contract, the latter must give support in the development of the co-contractor's activity to help it become sustainable and lasting. However, there are no formal details about the type of support the umbrella company should provide. In general, this support

consists of help and advice, access to information, sharing of experiences and/or contacts provided by the umbrella company.

The client company has to respect the terms of the service contract concluded with the umbrella company. This contract mainly establishes:

- the identity of the co-contractor;
- a description of the work to be performed;
- the expected length of the commission;
- the price to be paid on completion, as negotiated between the co-contractor and the client company.

The client company is also in charge of checking and validating the skills of the co-contractor for the mission, to make sure that the co-contractor is capable of performing the mission, and to control quality of the work.

This is another peculiarity of *portage salarial*. In a typical employment contract, these obligations rest with the employer and should therefore be covered by the umbrella company. Despite these duties, which suggest that the client company has some sort of authority over the co-contractor, in practice the co-contractor still benefits from considerable leeway. In their relation with the client company, the co-contractor is acting like an independent worker or a subcontractor. They have to perform the mission established in the service contract but may do it in any way they wish, as long as they do complete it. The client company cannot require the co-contractor to observe its working conditions.

Demarcation of *portage salarial*

Because of this triangular relationship, sealed by an employment contract between the co-contractor and the umbrella company, and a service contract between the client and the umbrella company, *portage salarial* can be mistaken for temporary agency work.

However, *portage salarial* remains clearly different from temporary agency work.

Originally, temporary agency work was created to respond to the needs of companies looking for a temporary workforce, whereas *portage salarial* was created to respond to the needs of executive workers who were unemployed and wanted work that would preserve their employee status while being independent.

Unlike temporary agency work, the co-contractor in the *portage salarial* scheme benefits from complete autonomy. They can work when and where they want, for the clients and price levels they themselves choose and negotiate.

The 2010 agreement has strictly established the difference between temporary agency work and *portage salarial*. Article 1.2.1 of the agreement states that 'the activity of *portage salarial* can only be exercised by companies exclusively dedicated to the *portage salarial* and indexed under the correct code of the NAF (French Nomenclature of Activities)'. This provision was subject to fierce debate during the negotiations. Representatives of the temporary agency work sector were willing to move *portage salarial* into the field of temporary agency work so that its agencies could benefit from this lucrative market (Fabre, 2010). However, the employee representatives insisted that *portage salarial* should be separate from temporary agency work. Temporary work companies that wish to operate *portage salarial* have to create a specific subsidiary dedicated exclusively to this form of employment.

Representativeness of *portage salarial* activity

Portage salarial is viewed positively by the social partners and they are making great efforts to promote its development.

Social partners took the initiative of negotiating on *portage salarial* in order to make it legal. These negotiations help to make *portage salarial* better known at the national level. This process is all the more facilitated by the existence of the *Observatoire Paritaire du Portage salarial* (OPPS – joint observatory on *portage salarial*). This observatory was created in 2006 and gathers representatives from both the employers' and the employees' side. Its missions as an observatory are:

- to study the realities of the *portage salarial* and provide general information about the *portage salarial* mechanism;

- to identify the different practices on *portage salarial* and report on whether these practices are evolving in the direction imposed by the law;
- to promote the development of *portage salarial* by making propositions for its evolution – for instance, the OPPS who took the initiative of implementing the first collective agreement at the sectoral level of consulting in 2007.

Outcomes

There were an estimated 300 umbrella companies in France in early 2014, and between 30,000 and 50,000 people employed under a *portage salarial* contract. There is no general trend in the field of *portage salarial* in France. Some umbrella companies remain very small and employ just a few co-contractors, whereas others constitute important businesses. Some stakeholders claim client companies resorting to *portage salarial* are in fact large companies that need the punctual services of a specialised consultant. But that is a very general statement; SMEs or even small businesses can also call upon umbrella companies for short and specific missions.

Macro level

Portage salarial has two main effects on the labour market. It is considered as a measure for promoting both job retention and job creation. Despite some of its aspects being at the edge of legality, it was created as an effective form of employment for dismissed senior workers. Senior executives who are dismissed often encounter difficulties with finding a permanent position in a different company. Even if they are highly qualified and benefit from valuable previous years of experience, companies typically prefer to employ younger workers.

Portage salarial appears to offer a reliable alternative that assists job retention for senior executives, in the sense that they can continue to work in their area of expertise without experiencing long-term unemployment before reaching the age for retirement.

At the same time, *portage salarial* may also have an impact on the labour market in the sense that it can potentially create jobs and reinvigorate the labour market. Umbrella companies can act as a 'testing platform' or a stepping stone for people who are willing to become independent workers but are not entirely sure whether their project is viable and whether they have sufficient skills and financial resources to undertake a specific activity.

While working as co-contractors, they have the opportunity to develop business relationships and consolidate their network of contacts and, once they feel ready, they can create their own company. Even if it often leads to the creation of self-employment, it can also result in the creation of a new company hiring employees. *Portage salarial* can therefore be an incentive for the development of new activities and business opportunities.

Micro level

Portage salarial also has an impact on the working conditions of the co-contractors. While dependent employees are placed under the authority of their employer who decides how work is organised, co-contractors enjoy greater freedom, autonomy and flexibility in the way they are working.

Co-contractors benefit from the rights and protections linked to employee status and from the General Salaried Regime described in the 'strengths and weaknesses' section below. This means that they receive general social protection (sickness leave and pay, holiday pay, contributions to pension schemes and so on) and if the umbrella company has subscribed to a complementary health insurance system, co-contractors can also benefit from it.

Since the 2010 agreement, co-contractors can also be employed by the umbrella company under a permanent contract, which to some extent diverges from the transitional nature of *portage salarial* established in the 2008 national cross-industry agreement. However, this alleged contradiction must be kept in perspective as it contributes to providing more job security for co-contractors and, ideologically, it is difficult to oppose the conclusion of permanent contracts in an economy where permanent contracts are considered the traditional form of employment.

As they are employed by the umbrella company, co-contractors are dependent on the employees' representative bodies in place within the umbrella company. As in all standard companies, umbrella companies must organise professional elections as soon as they employ more than 11 people.

Likewise, as they are employed under standard employment contracts, co-contractors are entitled to severance pay and notice periods (if they were hired under permanent contracts) and to any other usual compensations. Co-contractors are also eligible for unemployment benefits.

As for autonomy, dependent employees are placed under the authority of their employer who decides how work is organised, but co-contractors enjoy greater freedom, autonomy and flexibility in the way they are working. Some co-contractors suggested that they still worked as many or sometimes even more hours as when they were regular employees. Overall, the feedback received suggests that they find it more pleasant to organise their working time, leading to better reconciliation between work and family or social life.

This also has an impact on the working atmosphere. As co-contractors are working like independent workers, the working atmosphere is not the same as for standard employment. Co-contractors do not often get to see their colleagues at the umbrella company, and they change working locations from contract to contract. Co-contractors frequently telework if they do not need to be at the client company, or when they are prospecting new clients. This working method is rather atypical but allows greater autonomy, and while it could deter some workers, this flexibility is what attracts most of the co-contractors.

Co-contractors usually do not work for client companies full-time, as they have to spend part of the working week searching for new host companies, an important part of what they do.

Strengths and weaknesses

For the co-contractors, the main benefit of *portage salarial* is that it offers access to the General Salaried Regime (RGS). This is the main motivation for individuals to join umbrella companies. This regime offers several social rights: sick leave, maternity leave, unemployment and ageing risks, all fully covered by a comprehensive social protection scheme. The Independent Workers Social Regime (RSI) is not as favourable and protective. For co-contractors, the effect of using an umbrella companies means being able to shift from the RSI regime to the RGS regime.

Nevertheless, important litigation has taken place on the issue of unemployment insurance. The UNEDIC (the national institution managing unemployment benefits) at one time refused to grant co-contractors unemployment benefits, arguing that they were not working under a genuine contract of employment under the hierarchical authority of the umbrella company. As the law only gives a vague definition of *portage salarial*, co-contractors were treated as independent workers and so not entitled to unemployment benefits.

However, the French Supreme Court decided in December 2009 that co-contractors are hired under a contract of employment, in a hierarchical relationship with the umbrella company, and are therefore entitled to the benefits of the unemployment regime. Consequently, in November 2011, the UNEDIC published a circular which recognised the rights of co-contractors to receive unemployment benefits.

Another strength of the *portage salarial* mechanism for co-contractors is that they do not need to create a legal structure for their activity as they are linked to the umbrella company. They do not have to take care of administrative, fiscal or accountant burdens as these duties are dealt with by the umbrella company.

For client companies, resorting to *portage salarial* is also very advantageous. They can quickly fill an immediate yet temporary need for a specific role, particularly one outside of their usual field of activity. For instance, *portage salarial* can be used to resolve conflict in a company between social partners, hiring the services of a consultant in social dialogue.

Since the beginning of the crisis in 2008, companies have been increasingly outsourcing their activities. *Portage salarial* has also been responding to this trend. In order to benefit from more flexibility, companies are less and less willing to hire workers directly. By using an external workforce, such as the one provided by umbrella companies, they can save the costs of recruiting, hiring and then dismissing workers. Hiring through umbrella companies also gives companies budget certainty and they know in advance that they will only have to pay the price set in the service contract. There will be no dismissal cost once they no longer need the services provided by the co-contractor.

Nevertheless, the inherent nature of the *portage salarial* mechanism is subject to a number of weaknesses.

The first weakness concerns the lack of explicit legislation regulating the form of employment. Except for the legal definition provided by the 2008 law, the entire legal regime and conditions of *portage salarial* were left for the social partners to determine. As a result, and under the pressure of the financial crisis, social partners have adopted some controversial provisions and these are likely to be changed if the economic and social conditions fluctuate, given that there is no clear legal framework.

French case law considers that there is 'a contract of employment when a person makes a commitment to work on behalf of and under the direction of another person, in exchange for remuneration'. The essential element of a contract of employment is the hierarchical relationship between the employer and his employees. However, when negotiating *portage salarial* in the framework of the 2008 national cross-industry agreement, social partners were quite careless and deliberately overlooked the fundamental French principle of 'inalienability or unavailability of qualification' – in French '*principe d'indisponibilité de la qualification*' (Casaux-Labrunée, 2011). This principle means that it is not possible to claim contractual freedom for determining the nature of a work relationship. It is the factual circumstances in which the parties perform work that qualify the work relationship.

However, by declaring in the first article of the 2010 agreement that 'the activity of *portage salarial* requires the existence of an employment contract between the co-contractor and the umbrella company', social partners imposed their interpretation of this relationship and infringed this fundamental principle of the French labour law. Only the legislator can impose a 'contract of employment presumptions', but the article defining *portage salarial* in the 2008 law does not determine such a presumption, because it does not clearly require the use of a contract of employment for *portage salarial*.

Therefore, one of the most important weaknesses of the *portage salarial* mechanism is that it seems like the contract of employment is being used for the sole purpose of permitting the co-contractors to take advantage of employee status. A contract of employment is signed between the co-contractor and the umbrella company, but the conditions and obligations attached to the contract of employment are not always complied with. As already mentioned, the traditional hierarchical relationship is not respected and obligations that usually lie with the employer (obligation to provide work, to control the skills and qualifications of the workers, and so forth) are shifted to client companies or co-contractors.

As a result, the main criticism of *portage salarial* is that a conventional contract of employment is not suited to the activity of *portage salarial*. Further reflection should be conducted on ways to find more appropriate solutions such as, for example, the introduction of a specific contract solely dedicated to the activity of *portage salarial*.

The French Social Security Code provides in article L. 241-8 that 'the employer's contributions [to social taxes] remain exclusively at his expense; any contrary agreement is null and void'. Consequently, another weakness of the *portage salarial* mechanism is that it infringes this fundamental principle of social security law. As mentioned earlier, before paying the co-contractor, the umbrella company levies a tax (10% to 15%) for management fees and social contributions. A *portage salarial* co-contractor therefore has to pay all of his social protection since the amount deducted includes both the employer's and the employee's contributions.

Considering the fact that co-contractors are entitled to unemployment benefits, some stakeholders are worried that *portage salarial* might call into question the viability of the unemployment regime. Usually, only employees who involuntarily lose their job are entitled to unemployment benefits.

Despite the fact that co-contractors are not exactly employees and that they do not involuntarily lose their jobs – they simply complete a commission – they nevertheless benefit from this compensation.

The issue of social justice would then require that this unemployment regime should be widened so that all independent workers could benefit from it. The cost of the unemployment regime is not entirely covered by social contributions and the more this form of employment is used, the more impact it may have on the social contract.

Transferability

As far as umbrella companies are concerned, France seems to have adopted a rather original mechanism.

The mechanism was inspired by the British 'Managed Services Company' system which is based on financial intermediation from an individual co-contractor. Commissions are assigned to the company and it is responsible for collecting the fees from clients and paying the co-contractor a salary. A percentage of the

revenue is paid to the umbrella company for administrative paperwork, social security contributions and other services.

A recent study on new forms of employment in Europe was published in November 2013 by the Fondation ITG – a French foundation which encourages public debate on new forms of employment by conducting analysis and research works in this field. The study found that France plays a leading role in umbrella company systems. French *portage salarial* remains a unique example and France is the only country that has developed such a mature and regulated system (albeit still with some weaknesses).

The study says that because of this most developed hybrid form of employment, France should take the lead at the European level to reinforce coherence and visibility of this system since it has already proven to be a useful tool serving social progress. Authors also call for further structuring both at the national and at the European level to encourage the rise and development of this form of employment.

Commentary

Despite now having a legal framework, there is still a range of practices of *portage salarial*.

The French Orientation Council for Employment undertakes research on the evolution of employment forms. Its analysis of these practices shows that:

- some umbrella companies are merely workforce providers, and their activity could be considered illegal subcontracting as they do not respect the restrictive conditions set out in the legislation on labour lending;
- other umbrella companies are simply 'invoicing companies' – they only charge the client companies for the services provided by the co-contractor and levy on this amount a certain percentage to cover their own costs;
- a final category of umbrella company provides advice and guidance to co-contractors and shares risks.

The objective of creating a legal framework for *portage salarial* was to reference and keep only the good practices of this activity.

However, *portage salarial* in its legal version is still young and in a transitional period. The 2010 agreement was extended in May 2013 and a two-year deadline has been granted to umbrella companies to comply with the new dispositions. New umbrella companies created after May 2013 must comply immediately. A monitoring committee has been implemented within the joint observatory on *portage salarial* (OPPS) and is in charge of identifying the different practices on *portage salarial* and will report on whether these practices are evolving towards compliance with the law.

During this transitional period, umbrella companies have until June 2015 to clarify their practices and, for instance, make sure that they are exclusively employing executive workers who are able to earn at least €2,900 a month.

This restriction has often been criticised by some stakeholders who worry about the future of co-contractors who will be excluded from umbrella companies simply because they cannot be considered as executive workers or they cannot meet the €2,900 objective. Some stakeholders are therefore arguing in favour of an expansion of the professional categories entitled to use *portage salarial* to include those in the field of 'intellectual performance' such as journalists, translators, editors or trainers. Those categories are frequently excluded de facto from *portage salarial* as their activity does not allow them to earn at least €2,900 every month, but the *portage salarial* mechanism would however answer their needs.

More generally, some employers' representatives in the field of *portage salarial* would like to see *portage salarial* evolving towards its generalisation for all workers. According to them, the limitative criteria were only implemented as a first step, to test the viability of *portage salarial* before granting access to all professional categories.

On the other hand, other stakeholders claim that *portage salarial* should not be generalised but rather remain an employment policy measure for specific groups. The idea is not to limit access to *portage salarial* according to professional categories but rather according to age categories. As explained throughout this analysis, *portage salarial* is particularly efficient for senior workers and for workers starting their independent careers. Therefore, it has been proposed that *portage salarial* should be exclusively for young and senior workers.

The extension of the 2010 agreement in May 2013 has been praised in the sense that it brought some stability and certainty to the mechanism of *portage salarial*. However, barely extended, the agreement was already contested because of its mode of adoption (Casaux–Labrunée, 2014).

The Force Ouvrière trade union questioned the legitimacy of the temporary agency work actors designated to negotiate on the legal regime of *portage salarial* and referred the matter to the Constitutional Council, asking for the annulment of the May 2013 extension decree.

At the beginning of 2014, the Constitutional Council agreed to address the matter, and in April 2014 it ruled in favour of the trade union's claim. The Constitutional Council stated that it is for the legislator to define the legal regime of *portage salarial* and it should not be dealt with through the negotiation of a collective agreement.

As a result, the debate on the rules and conditions governing *portage salarial* has been reopened and a new legal intervention in this field is to be expected soon. This could be an opportunity to start rebuilding the *portage salarial* form of employment and to clarify it, taking into account the accumulated experience gathered over the years.

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