



ESPN Thematic Report on Access to social protection of people working as self- employed or on non-standard contracts

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Gilles Huteau – Gaby Bonnard
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Summary

In France there are multiple, heterogeneous insurance schemes for self-employed people. They were established following the refusal of self-employed professions to come under the general social security scheme, despite the affirmation of a principle of unity in the French Social Security Plan of 1945.

These schemes were built successively, risk by risk and profession by profession, which explains the fragmentation that persists to this day. The social scheme for self-employed people (*Régime social des indépendants* – RSI) set up in 2006 now groups pension schemes for traders and craftspeople along with the maternity insurance scheme common to these professions, but some occupation-specific schemes nevertheless still exist, such as a pension plan covering all of the liberal professions: doctors, architects, accountants, etc.

Schemes for the self-employed were originally set up so that their beneficiaries could pay lower contributions than on the general scheme and for a long time they offered less favourable benefits. However, to respond to the new aspirations of contributors, a significant standardisation effort has been made, starting in the 1970s, leading to greater similarity between social protection for self-employed people and employees covered under the general scheme. As a result, today, the health insurance schemes provide identical coverage of healthcare costs, as do the pension insurance schemes, with the exception of the liberal professions. In addition, since 1945, self-employed people have been covered by the general family benefits scheme. However, other areas of social protection are less favourable, in particular in terms of occupational accidents and maternity benefits.

In addition, in general, people working on non-standard contracts benefit from the same social protection as all employed people. Nevertheless, some measures are in place that are more advantageous for particular categories (e.g. unemployment insurance for entertainment workers) to take into account the intermittent nature of their work.

This observation highlights the crucial issue of the distinction between self-employment and employment. However, no operable definition of self-employed work exists in France with the result that self-employment is traditionally defined as the opposite of salaried employment, which is understood in the sense of a position of legal subordination, typical in French law¹: the Cour de cassation – the French supreme court – judges that a position of legal subordination is when work is carried out under the authority of an employer that has the power to give orders and instructions, control their execution, and sanction any negligence. This situation is illustrated in particular in social security law, since it specifically refers to self-employed, non-agricultural occupations. This difficulty in identifying the notion of self-employed is exacerbated by the arrival of the “new self-employed”, more precisely “auto-entrepreneurs” and “gig workers” (hired directly on digital platforms), caused by shifts in the labour market and the economy. This has led to the notion of the economically dependent worker, which further blurs the line between self-employment and employment.

This situation is not totally new because, since the creation of the social security system, the general scheme was legally obliged to integrate diverse categories of workers whose activity was by nature self-employed: homeworkers, childminders, people running a franchised business, etc. Yet the issue has now come back to the forefront due to the strong growth of self-employed workers doing non-standard work at a time of mass unemployment and transition to a digital economy.

Faced with this phenomenon, social protection needs to be able to guarantee self-employed people financial security. In particular, the need to secure professional careers

¹ International Labour Organization, Non-Standard employment around the world: understanding challenges, shaping prospects, 14 November 2016 p.11

and make it easier to move from one status to another have led to recommendations to move away from social rights based on work status to individual rights taking the form of credits on a personal account.

1 Context: Self-employment in the national economy and the labour market

The French labour market has changed dramatically since the mid-1970s for all major categories of workers (including employed² and self-employed people). These changes have resulted in a sharp decrease in self-employment, which went from 20.8% in 1970 to 8.8% in the early 2000s, picking up to reach 10.6% at the end of 2014³ (volume of jobs irrespective of the duration of work carried out in them).

This general observation is based on a combination of two contemporary trends. The first is the break with what used to traditionally characterise the workforce, in other words, guarantees, rights and pay in exchange for the employer's total responsibility concerning the execution of the work and its conditions. The second concerns the transformations impacting both employed and self-employed work resulting from economic shifts, including in the farming sector.

The increasing precariousness of the French labour market, intensified by the significant rise in temporary short term employment⁴ and temporary postings, has led to interruptions in the social protection of the employees affected, particularly in the areas of supplementary health insurance coverage, "social welfare, invalidity, disability, death", pension and finally unemployment. These social protection provisions are based on the social contributions paid on the labour income (see 2.2).

Self-employment has also undergone considerable change. Firstly in terms of volume, as shown in the figures above⁵. However, the change is mostly structural, reflected in the composition of this category. Take for example the agricultural sector, which currently only employs 15% of self-employed people compared to almost 50% in 1970⁶. In addition, with the transformation of the retail sector and in particular the massive development of superstores, a quarter of self-employed jobs in the tertiary sector disappeared between 1970 and 2000. The situation has changed since then, with the tertiary sector comprising 9.1% of self-employed jobs in 2014, compared to 7.1% in the early 2000s, and the building sector seeing an increase in self-employed work since the 2000s.

The development of self-employed work, in particular in the tertiary and building sector, was spurred by the creation of the "auto-entrepreneur" status in 2009, which boosted *"the growth in numbers of self-employed workers"*⁷. The auto-entrepreneur scheme concerns commercial and craft activities and non-regulated liberal professions but does not apply to agricultural activities or artists. The turnover earned by an auto-entrepreneur must not exceed specific thresholds: EUR 82,200 for sales and EUR 32,900 for service activities (2016). This status has the advantage of reduced formalities for business creation and simplified calculation and payment of charges and social contributions.

² Article in the Figaro économique dated 4 April 2016 based on a study by INSEE and DARES: "In France, in 2015, while 85% of employed workers were on permanent contracts, 87% of the new contracts signed were temporary". See table, annex 1

³ Report by the Haut Conseil du Financement de la Protection Sociale – *High Council of Financing for Social Protection* (HCFIPS) on social protection for self-employed workers, October 2016

⁴ See graphic, annex 2

⁵ See also table, annex 1. As mentioned above, self-employment went from 20.8% in 1970 to 8.8% at the start of 2000 then increased to 10.6% at the end of 2014.

⁶ HCFIPS report mentioned above, pp. 31

⁷ France stratégie, "Les transitions professionnelles, révélatrices d'un marché du travail à deux vitesses", analysis note, October 2016

Economically active auto-entrepreneurs represent 31% of the self-employed (excluding the agricultural scheme), bearing in mind that new forms of “gig employment” resulting from digital activities, especially collaborative platforms, are drastically changing established classifications⁸.

This phenomenon reflects how tough the labour market is, and points to the difficulty of finding salaried work following the termination of a contract. According to an Insee survey dating from 2012, 33% of auto-entrepreneurs were unemployed before creating their business, and 6% of them were previously either on a short-term salaried contract, in temporary work, or occasional entertainment workers. *France Stratégie* notes that from 2008 to 2014, 7% of unemployed people got back into work with this status, compared to 5% from 2003 to 2008⁹. It is also worth noting the significant percentage of people affected by poverty among self-employed workers. The latter represent 27% of the total of 461,000 working poor¹⁰, the majority of whom work principally under the status of auto-entrepreneur: one in two earn under EUR 450 a month and one in four under EUR 1,060¹¹

Note that women represented less than 35% of self-employed people in 2013 while they make up nearly half of employed people. The auto-entrepreneur status attracts a higher proportion of women than standard forms of independent work: they represent 40% of auto-entrepreneurs in business since 2009 compared to 34% of regular self-employed people since the same date. In general, women earn 30% less than men¹².

⁸ See table, annex 3

⁹ *France stratégie*, see note above

¹⁰ S. Rapelli, “Les travailleurs non salariés pauvres : entre invisibilité et invisibilisation”, *La Lettre de l’Observatoire national de la pauvreté et de l’exclusion sociale*, n° 4, May 2016

¹¹ L. Omalek, S. Tellier, Revenus d’activité des non-salariés en 2013, *INSEE Première*, n° 1604, June 2016.

¹² INSEE, “Emploi et revenus des indépendants”, *INSEE référence*, 2015 edition, p.100

2 Description and assessment of social protection provision for self-employed and people employed on non-standard contracts

Social protection for self-employed people is structured in accordance with their occupational category and covers social risks on a compulsory or optional basis (see section 2.1), although this system is showing its limits in handling the development of the “new self-employed” (auto-entrepreneurs, “gig” workers) despite constant improvements (see section 2.2).

2.1 General structure of social protection for the self-employed

Social protection for the self-employed, unlike that for employees, has historically covered clearly defined self-employed occupational categories (2.1.1). However, its general structure is increasingly confronted with a blurring of the line between employed and self-employed work (2.1.2).

2.1.1 Social protection historically devised for clearly identified categories of self-employed occupations

The construction of social protection in France is historically linked to the development and structuring of the employed salaried workforce. However, although it originally only covered employees, according to its founding order of 4 October 1945, the social security system was intended to extend to cover all workers and their families. However, the non-agricultural self-employed occupations strongly resisted this generalisation for economic and sociological reasons, with the exception of compensation for family benefits. A compromise was finally reached with the public authorities, with the agreement that social security would be extended to self-employed people, but through their own schemes to take into account the specific characteristics of their activities and aspirations.

Established in stages, firstly in the form of autonomous pension insurance schemes starting in 1948, then health insurance schemes from the 1960s, the social security system for self-employed people is characterised by a juxtaposition of different basic social security schemes which are themselves subject to a range of managing organisations. Membership of these schemes is mandatory.

- The pension scheme for traders and the pension scheme for craftspeople, both of which are managed by the RSI;
- The pension scheme for self-employed and the pension scheme for lawyers, respectively managed by the national pension fund for the self-employed (Caisse Nationale d'Assurance Vieillesse, CNAV) and the national fund for the French bar (Caisse Nationale des Barreaux Français, CNBF);
- The health insurance scheme for traders, craftspeople and the liberal professions, managed by the RSI;
- The health insurance scheme, pension scheme and occupational accident scheme for farmers, managed by the agricultural social mutual scheme (MSA).

Self-employed people who choose to do so can take out optional complementary insurance with a health plan or insurance company to top up their pension, health and unemployment insurance. Since the “Madelin” Act of 1994, they benefit from a tax advantage, whereby they can deduct the amount of the contribution or insurance premium from their professional income.

Thus, the Social Security Code refers to commercial, craft and liberal occupations as self-employed workers. The reference to only these occupational categories is not sufficient to comprehensively determine the scope of social protection for the self-employed. All the

more so given that none of these activities excludes the existence of a work contract. Yet a satisfactory legal definition of self-employment is difficult to establish, with the result that it is defined as the opposite of salaried employment. We can thus consider that self-employment is characterised by the absence of a permanent legal subordination position¹³. However, changes in the labour market and types of employment increase the difficulty of making a clear distinction between self-employed and employed work.

2.1.2 Social protection increasingly confronted by the unclear line between employment and self-employment

The commercial, craft and liberal occupations, designated as self-employed, are now joined by a new category, i.e. freelance workers who hire out or make their services available to others. This calls for rethinking the organisation of social protection for self-employed people to deal with the porous line between self-employment and salaried employment.

Over the years, a legal obligation has been established for the general social security scheme to cover a wide range of self-employed workers or workers in situations of uncertain legal subordination. However, given the conditions in which they carry out their activities, these people could be considered as being self-employed. This concerns home workers, writers, entertainment workers, freelance journalists, chairpersons of limited company boards of directors, referees and sports judges who belong to a federation, etc. The assimilation of this list of occupations with salaried workers is only valid for social security. Like members of commercial, craft and liberal occupations, these workers are not covered by the unemployment insurance scheme, which is reserved for employees who have signed a work contract.

Social protection for auto-entrepreneurs is determined by the mode and nature of the activity. When carried out as a main activity, the auto-entrepreneur activity comes under the social scheme for self-employed workers, the *Régime Social des Indépendants* (RSI) and benefits from the same coverage as other self-employed occupations. However, for auto-entrepreneurs who also hold a salaried job, their health insurance is covered in their employee capacity, while they also earn pension rights as self-employed workers from their additional pension scheme.

Nevertheless, a judge could possibly redefine an auto-entrepreneur activity as a work contract in cases where a permanent legal subordination position is established. In such cases, the auto-entrepreneur is considered an employee and thus comes under the general social security scheme. This type of situation tends to concern auto-entrepreneurs who only have one client, in particular when that client is their former employer¹⁴.

In addition, the digital economy, which encourages the creation of platforms on which clients and service providers make direct, almost instantaneous contact, raises the question of the nature of the work relationship between the digital platform, the client and the service provider. While digital workers can carry out their activity subject to a work contract, they may also choose to do so as an auto-entrepreneur, or as a commercial company. In the latter case, they are self-employed workers, unless it can be proven that their activity is carried out in a subordinate position to the platform. They are covered by the RSI.

The distinction between self-employed and employed work should probably be moderated in so far as the social security schemes concerned have clearly moved closer over recent

¹³ J.-P. Chauchard, "Qu'est-ce qu'un travailleur indépendant?", *Droit social*, No. 10, November 2016

¹⁴ J.Mouly, "Quand l'auto-entreprise sert de masque au salariat", *Droit social*, November 2016,

decades, unlike the unemployment insurance and complementary protection schemes, which were established by a convention or collective agreement between employee unions and employer organisations. These complementary schemes are devised to top up benefits from social security schemes, in particular for pensions and complementary health cover.

2.2 Description of social protection provisions for self-employed and people employed on non-standard contracts

As a consequence of the initial choice of autonomous schemes specific to self-employed occupations with a low level of contributions, the social coverage for this category of workers remains less than that provided by the scheme for salaried workers, despite a convergence between the schemes since the 1970s¹⁵. This convergence takes the form of a standardisation of the rules applicable to self-employed occupations with those of the general social security scheme in the areas of health expenditure coverage, family benefits and, to a lesser extent, pension insurance.

People employed on non-standard contracts (temporary employment, part-time work, etc.) do not receive specific treatment from social security schemes or the unemployment insurance scheme, apart from rare exceptions that consider the nature and practice of the job or trade (e.g. seasonal workers, performance workers)¹⁶.

2.2.1 Healthcare and sickness: cash benefits and benefits in kind

The basic healthcare scheme for commercial, craft and liberal occupations managed by the RSI covers healthcare expenditure in terms of health risk insurance based on the same measures and services as the general scheme for salaried workers. What is more, the universal healthcare protection (Protection Universelle Maladie, PUMA), in place since 1 January 2016, establishes that access to coverage of healthcare and sickness costs does not depend on whether workers are self-employed or employed.

In addition, self-employed and employed workers are subject to identical contribution rates, and the financial integration of RSI into the general scheme¹⁷ (the income and expenditure of the two schemes are merged) creates financial cohesion between the schemes to the benefit of the self-employed. Nevertheless, the self-employed pay a proportionately higher contribution than employees under the general scheme. This can be explained by the proportion of general social contribution (CSG) financing the coverage of healthcare and sickness, and the specific nature of its financing base, which is extended to other income in addition to work income, such as income from property.

Cash benefits to provide an income in case of illness are only granted to commercial and craft occupations under the RSI. To be eligible, workers must have been insured for at least one year as a self-employed person. A 3-day waiting period is stipulated in case of hospitalisation, which is comparable to the general scheme, but this period is 7 days in other cases. The amount of compensation is proportionate to the income used to determine contributions, i.e. average income over the last three years in order to take into account the varying incomes of the self-employed. Lastly, the duration of compensation is the same as for the general scheme, i.e. 360 days over a period of three years, which may nevertheless be extended to three years in cases of long-term illness (serious, costly diseases featured in a limited list, e.g. cancer, diabetes, heart disease, Parkinson's, etc.). The acquired rights to benefits are generally lower than on the general

¹⁵ A.-S. Bruno, "Retour sur un siècle de protection sociale des travailleurs indépendants - France, XX^e siècle" in S. Célérier, *Le travail indépendant, Statuts, activités et santé*, Editions Liaisons, 2014, pp.41-48

¹⁶ J.-P. Chauchard, "La législation de sécurité sociale face aux formes particulières d'emploi" in *Droit social*, 1990, p. 556

¹⁷ See annex 4

scheme for salaried workers due to the lower contributions made by self-employed people in relation to their total income.

Like full-time employees in a stable employment, persons working on non-standard contracts can obtain a daily allowance for sickness leave so long as they satisfy the following rules:

- to have performed a professional activity for a minimum duration before the start date of the sickness leave (a person should have worked at least 600 hours during the previous 12 months for a sickness leave higher than 6 months),
- and if not, to have paid social contributions.

In order to allow a specific category of persons (essentially persons who are working on non-standard contracts, such as seasonal workers) to be entitled to sickness leave daily allowances, the social security legislation substantially lightens their benefits/ advantages (by taking into account their conditions of activity which were not foreseen by the common law. It is very important to take into account the intermittent character of their professional activity for the determination of their rights to the legal social benefits).

2.2.2 Maternity /paternity cash benefits and benefits in kind

In terms of maternity/paternity benefits in kind, standardisation already exists between the RSI and the general scheme, in line with health insurance (see 2.2.1). As illustrated by the creation of universal health protection (PUMA), since 1 January 2016 access to healthcare and sickness coverage is open to both self-employed and employed workers.

In terms of maternity/paternity cash benefits, significant disparities exist between schemes and these have increased in recent times. Thus, following the medical convention of 25 August 2016, female doctors now benefit from a distinct improvement in maternity pay conditions; while on the other hand, regulatory measures have restricted access to maternity leave daily payments for auto-entrepreneurs who have earned low incomes from their professional activity.

People working on a non-standard contract could benefit from maternity daily allowances on the same conditions as those foreseen both for the Health Insurance benefit and or for the paternity benefit in the common law.

2.2.3 Old-age and survivors' pensions

This is the most complex domain of social protection for the self-employed. Their pensions are subject to different, heterogeneous rules within one professional category (depending on whether basic coverage or complementary coverage is considered).

The basic pension schemes for retired people and craftspeople managed by RSI are now considered to be aligned with the general scheme for employed workers. This alignment takes the form of both a standardisation of rules relating to eligibility for pension insurance benefits (age of retirement, duration of preliminary insurance) and the way that pensions are calculated (occupational reference income, replacement rates, reduction or increase of the amount of pension); as well as rules relating to the base rate and contribution rates. In addition, pensions for surviving spouses of a pensioner follow exactly the same rules in the general scheme and in the basic schemes for traders and craftspeople.

The pension insurance scheme specific to liberal professions managed by the national pension insurance fund for liberal professions (Caisse Nationale d'assurance vieillesse des professions libérales, CNAVPL) is different from the RSI. It only allocates a modest basic pension, which is financed following a points system. This is the consequence of a lower level of contributions than the other basic schemes and limited standardisation with the scope of the general scheme and aligned schemes. This unique basic scheme is largely

structured by profession, within sections that are highly autonomous vis-à-vis the CNAVPL: each follows rules that are very specific in terms of services and contributions.

Along with the particular case of health insurance for liberal professions, in general, self-employed people under the basic schemes acquire fewer pension insurance rights than employed people under the general scheme. This situation can be explained, as for health insurance cash benefits (see 2.2.1), by the lower contributions required from self-employed people, despite a rising trend moving them closer to those made by salaried workers.

Along with the basic schemes, as for salaried workers, there are complementary pension schemes for self-employed people. For commercial and craft occupations, these are managed by the obligatory complementary scheme for the self-employed, while liberal professions subject to the different sections of the CNAVPL also benefit from obligatory complementary pensions, managed by these sections following their own specific rules.

A third tier of pension schemes exists for liberal health professions (doctors, dentists, medical assistants, laboratory managers and midwives). These have access to “supplementary” points-based schemes that have been obligatory since the 1970s. Such schemes supplement both the basic pension schemes and the complementary ones. These old-age social advantages (Avantage social vieillesse, ASV) result from a partial coverage of contributions by the health insurance scheme for health-service doctors.

Auto-entrepreneurs are not obliged to sign up with a complementary pension scheme.

People working on non-standard contracts could also legally obtain an insurance pension – old age insurance - as long as they satisfy the following insurance pension rules:

- To have performed 150 hours of activity in order to obtain one quarter of insurance,
- And if not, to have paid a social contribution amount, according to the current rules in the perspective of the common law of the Social Security.

2.2.4 Unemployment benefits and social assistance benefits

Since the unemployment insurance scheme was established following an agreement between representative associations of employers and employees at national level, self-employed workers, who are not bound by a work contract, including auto-entrepreneurs, are not covered by this system.

Self-employed workers who are obliged to stop their commercial, craft or liberal activity for financial reasons and who do not have resources or unemployment insurance based on a “Madelin” contract therefore have no other solution than to claim active solidarity income support (RSA), which is a social welfare benefit subject only to residency in France.

Madelin contracts are a way for self-employed workers to improve their social protection on their own initiative, not just in terms of pension and providence insurance, but also to cover the risk of unemployment. To encourage them to do so, contributions payable under these contracts can be deducted from their taxable income.

RSA aims to provide social protection to people with no resources in the form of a minimum income that varies in line with the number of people in the household (EUR 535 per month for a person living alone). Beneficiaries must in principle be aged 25 or over, but RSA may be granted to 18 to 24 year-olds in specific cases (e.g. single parents).

In terms of unemployment benefit, performance workers are covered by a separate social protection scheme to specifically take into account the intermittent aspect of their work. The conditions for allocating pensions have been relaxed in terms of duration of contributions and number of hours worked.

2.2.5 Long-term care benefits

For chronic illnesses (e.g. cancer), craftspeople, traders and auto-entrepreneurs who carry out a craft or commercial activity benefit from a daily allowance for a maximum of three years, just like employees under the general scheme. The amount of daily allowance ranges from EUR 5.14 to EUR 52.90 (2016) depending on previous income. Claimants with an annual income of under EUR 3,754 receive no daily allowance, and self-employed people cannot then fall back on RSA. On the other hand, self-employed workers and auto-entrepreneurs carrying out a liberal profession cannot generally claim a daily allowance for chronic illness.

In this matter, people working on non-standard contracts are subject to the same rules as those applied in the common law.

2.2.6 Invalidity, accidents at work and occupational disease benefits

Self-employed workers are covered against invalidity-death risk for craftspeople and traders under the RSI scheme. They can therefore claim an invalidity pension in case of total or partial incapacity to work (reduction of over 2/3 of the capacity to carry out their activity). Those working in liberal professions are subject to specific rules for each occupational section. Only notaries have no invalidity-death coverage, while for the other professions, total inaptitude is generally compensated in the form of annuities.

However, self-employed workers cannot benefit from occupational accident and disease insurance. These risks are borne by employers, who have a social security obligation towards their employees. Only self-employed people whose occupational categories have been assimilated with employees (see 2.1.2) are covered by occupational accident insurance, along with farmers since the creation of farmers' accident insurance (Assurance des Accidents du Travail des Exploitants Agricoles, ATEXA) in 2003. In addition, traders, craftspeople and members of the liberal professions can take up voluntary occupational accident insurance with the general health insurance scheme, which makes them eligible to benefits in kind for occupational accidents. They may also voluntarily take out a Madelin contract.

People working on a non-standard contract are covered in case of an occupational accident and/or an occupational disease without any professional activity preconditions, as for all employees.

2.2.7 Family benefits

In the field of family benefits, employed and self-employed people have identical rights, whatever their professional activity, since the general scheme covers the whole population, whether in employment or not.

To complete the picture, note that the social contributions paid by auto-entrepreneurs are not based on their professional income, like for other self-employed workers, but on their turnover (12% for sales, 18.3% for liberal professions, 21.3% for services).

2.3 Assessment of existing social provisions and the impact of a possible extension of their coverage

Social protection for self-employed people is the result of a historical process involving the creation of pension schemes for each of the commercial, craft and liberal professions, as well as a health insurance scheme. However, shortfalls and gaps persist despite constant improvements since the 1970s.

The fact that some social risks (occupational accidents, unemployment) are not covered at all, or are insufficiently covered for the self-employed, raises the question for the

interested parties of a better consideration of their harmful consequences (2.2.1). More recently, the growing numbers of auto-entrepreneurs and “gig” workers raises the even more crucial question of adapting social protection of self-employed people in a political context of combating unemployment (2.2.2).

The traditional limits of basic and complementary social protection schemes vis-à-vis non-standard contracts

People working on non-standard contracts might not be able to work a sufficient period of time and/or not pay enough contributions to be entitled to either their daily health insurance or maternity allowances, or obtain an old age insurance pension. Thus, it can happen that some people in these jobs are paying their social contributions without achieving the legal conditions for the allocation of these social benefits. In these cases it is the general rule itself, as defined by the common Social Security legislation, which is not suited to the contemporary transformations of the labour/employment market.

The traditional limits of basic and complementary social protection schemes vis-à-vis the self-employed

The most important issue is that, with the exception of farmers, the self-employed do not benefit from insurance against occupational accidents and diseases. They receive no specific compensation because the concept of occupational risk is simply absent from their mandatory scheme.

It is true that invalidity insurance for non-agricultural self-employed people can compensate invalidities of occupational origin. However, in the general scheme for employees, a significant specific feature of the insurance against occupational accidents and diseases is the particular emphasis on the prevention of occupational risks. The RSI has already developed several prevention actions in this area, but their impact is not permanent in the absence of pooling with the general scheme's pension and occupational health fund (Caisse de retraite et de santé au travail, CARSAT).

One substantial difference between employees and self-employed people is that the latter are not covered by the arduous work conditions measure established in 2014. For jobs that are exposed to certain risks affecting health, this measure allows workers to accumulate points to extend the duration of their insurance and enable earlier retirement¹⁸.

In addition, the unemployment insurance scheme is conventionally organised between organisations representing employers and employees at national level, which means that self-employed people who are not subject to a work contract remain outside its scope of application. Yet the self-employed are increasingly subject to risks that can lead to the termination of their activity and the loss of employment, with no right to compensation, even after a full professional career. Along with less crucial issues (like consideration of variations in activity, establishment of a control system), an exploration of this avenue raises the central problem of determining the criteria for allowing self-employed people to benefit from unemployment insurance: it would be necessary to define what is meant by a risk of unemployment, and yet self-employed people work in extremely heterogeneous situations, not just in terms of the different categories, but within each category.

Added to this, the absence of a right to a daily sickness allowance for liberal professions raises the question of whether this should be generalised to include all self-employed people, in coordination with the invalidity insurance for the professions concerned, which can pay out invalidity benefits starting from the 91st day of stopping work. However, unlike commercial and craft occupations, whose representatives have taken the initiative of creating a daily sickness allowance measure, the liberal professions are not currently

¹⁸ ESPN Thematic Report on retirement regimes for workers in arduous or hazardous jobs, May 2016

debating whether to create a similar system, which remains significantly less favourable than that of the general scheme for salaried workers.

The less favourable, and in particular less fair, character of cash benefits resulting from social protection for self-employed people is particularly evident in terms of maternity benefits. Although these cash benefits are designed to provide a replacement income for paid work, the significant disparities of coverage are difficult to justify given the ultimate objective of maternity insurance.

Greater convergence between social protection for the self-employed and employed workers is also facilitated by the use of “Madelin” contracts established by a law of 1994. These make it easier for some self-employed people, including from the non-agricultural sector, to sign up to optional complementary “retirement / provident (compensation for sick leave, invalidity/death guarantees) / unemployment” schemes to benefit from advantages similar to those enjoyed by employees. Contributions to a health plan or insurance premiums paid to this end may be subject to tax deductions. However, despite some success, this measure is only financially attractive to beneficiaries who come into a high tax bracket. In addition, auto-entrepreneurs who sign up to a Madelin contract gain no particular tax benefits under the tax regime applicable to them.¹⁹

Social protection system for the self-employed challenged by the growth of the “new” self-employed

New aspirations in terms of social protection and the arrival of “new self-employed”, i.e. auto-entrepreneurs and “gig” workers in the digital economy, result in a need to support the dynamics of these new economic activities while guaranteeing contributors adequate security against social risks.

However, in light of the above description of social protection for self-employed people, auto-entrepreneurs and freelancers for whom it is their main activity are in a less favourable situation than those working in commercial, craft and liberal professions, in as much as it is the fact of belonging to a particular self-employed category that determines the extent of coverage of social risks.

It is also worth noting that the conditions for auto-entrepreneurs only allow them to earn a maximum income that is barely sufficient to validate four quarters of retirement insurance contributions²⁰. They may even find themselves unable to continue acquiring new pension insurance rights when a work relationship suddenly comes to an end. More generally, auto-entrepreneurs find themselves at a disadvantage given the rules for attributing and calculating cash benefits by self-employed social security schemes in as far as they are based on contributions, whereby benefits are correlated to the beneficiaries’ income.

Another point worth mentioning is the recent beginnings of a change in this area, which is likely to improve social protection for self-employed people, in particular the most financially vulnerable. It was initiated by the law of 8 August 2016 on digital platforms that determine the characteristics of the service supplied or the good sold and establishes the price. This new law obliges digital platforms to cover insurance contributions for occupational accidents for self-employed workers when the latter voluntarily take out such insurance, or to take out an insurance contract, except when the platform has established a collective contract²¹. This recent measure is not the only one, since the agreement signed on 25 August 2016 between the national union of health insurance funds (social security body grouping all national funds on the general scheme,

¹⁹ Given that auto-entrepreneurs’ taxable profits are determined by a lump-sum deduction that encompasses all expenditure related to their activity, the charges paid when signing up to a Madelin contract are not deductible from their taxable profits. On the tax regime, see G. Daid, P. Nguyen, *Le guide pratique du micro-entrepreneur*, Eyrolles, 8th edition, 2016, pp. 135-152.

²⁰ See table, annex 5

²¹ HCFIPS Report mentioned above, p.339

the agricultural scheme and the RSI) and private doctors' unions mentions extending the social protection for this kind of risk for these parties, if necessary financed by the health insurance system, i.e. the public authorities. However, although these moves represent progress for the interested parties, successive additions to the measures in future could result in making social cover for the self-employed even more heterogeneous and unequal.

Another reason for extending social protection for auto-entrepreneurs is that workers in this self-employed category have no access to the obligatory complementary protection that covers self-employed commercial, craft and liberal occupations, nor to "Madelin" contracts unless they have sufficient financial resources.

The lack of or insufficient obligatory coverage of some social risks combined with a "blurring" of the line between self-employed and employed work can lead some contractors to prefer using auto-entrepreneurs rather than standard service providers or instead of hiring staff. In a situation of mass unemployment, where jobseekers are encouraged to create their own job, some employers are tempted to call on the services of auto-entrepreneurs who are in reality simply "employees in disguise". These workers are not self-employed according to the standard definition, and may be reclassified as salaried employees when they find themselves in a state of financial, and also legal, dependence on a single employer.

3 Conclusions and recommendations

3.1 Conclusions

The "new self-employed" constitute a notable phenomenon in the French labour market that seems set to last given the transformations taking place in the economy. Their presence alongside traditional categories of self-employed is likely to create an increasingly marked dichotomy in social protection for self-employed people. This development raises a number of concerns: it could lead to stronger solidarity within each group of self-employed professions to the detriment of the most financially vulnerable workers and despite the fact that social security, and beyond that social protection, is primarily based on national solidarity.

Another point worth noting is the contemporary trend for standardising social protection schemes for employees and the self-employed. This trend has taken the form of a constant improvement in coverage of social risks for self-employed commercial, craft and liberal occupations, and even led to an attachment to the general scheme for diverse particularly vulnerable occupational categories that could however be qualified as self-employed. Nevertheless, given the gaps and shortcomings observed, this standardisation movement is not yet complete, and it is necessary to pursue efforts aimed at the self-employed. This could involve adopting the following two significant measures:

- Improving the prevention of occupational accidents and diseases in the absence of social coverage to compensate for corresponding damages.
- Improving access to cash benefits, which could be accompanied by a reorganisation of the tax benefits associated with "Madelin" contracts.

It would nevertheless be worth extending these measures to envisage not just a clarification of social protection for auto-entrepreneurs and workers, but also to boost its protective character. Such a move should be made with caution in order to avoid the following two pitfalls:

- Hindering the growth of new forms of work that have become essential to economic development, in particular the digital economy²²;
- Jeopardising salaried work to the advantage of self-employed work with the risk of some employers depriving people formerly employed as salaried workers of a relatively secure social protection system.

Based on this conclusion, one possibility would be the creation of an intermediate status between employment and self-employment, with the aim of going beyond the standard criterion of legal subordination and creating a new criterion, i.e. financial dependence. For the OECD, this concerns workers with only one client, who cannot recruit salaried staff even if their workload is considerable, and who cannot autonomously make the most important decisions in carrying out their activity²³.

3.2 Recommendations

Several reports published over the last decade resolutely call for creating a “third” status in between salaried and self-employed work. Thus, in their reference report Antonmattei and Sciberras²⁴ (2008) insist on the importance of “para-subordination”, and suggest that non-standard self-employed people should not come under the general scheme for employees, but under the self-employed social scheme (RSI) because they naturally fall into this category, while refusing to grant them the same social benefits as the ordinary employees. They do recommend increasing their rights to cash benefits and occupational accident insurance, but consider that coverage for the latter should be guaranteed by their contractors. In addition, those in favour of this solution say that they are against creating a social protection scheme specific to “para-subordinate” workers, but do not stipulate the level of cover offered in this case. Would this involve better social protection than for other self-employed workers if financial participation was made by contractors?

In any case, promoting a notion of “para-subordination” resulting from workers’ financial dependence does not correspond to the recommendations set out below. We consider that the aim should not be to determine social protection for workers according to whether they belong to a particular category of self-employed occupation, but rather to guarantee them coverage against social risks due to the exercise of their professional activity. This recommendation assumes not just that all workers should have access to social protection, but also that the benefits and social contributions should not widely differ from one scheme to the next. It corresponds to the definition of a “worker” in European social security law²⁵.

²² On this point of view, see Conseil national du numérique, Travail Emploi Numérique. Les nouvelles trajectoires, rapport à la Ministre du travail, de l'Emploi, de la Formation professionnelle et du Dialogue social, January 2016, p.31. Le statut d'indépendant et plus encore d'auto-entrepreneur apparaît comme « fait pour » ces travailleurs des plateformes ; N. Colin, A. Laudier, P. Mohnen et A. Perrot , « Economie numérique ». Les notes du Conseil d'analyse économique, n° 26, Oct. 2015, p. 10: L'économie numérique favorise l'émergence du travail indépendant pour plusieurs raisons (...). Enfin, dans le cas de la France, le statut d'auto-entrepreneur constitue une alternative simple et fiscalement avantageuse.²³ OECD, “Employment Outlook 2014”, November 2014

²³ OECD, “Employment Outlook 2014”, November 2014

²⁴ P.-H. Antonmattei, J.-C. Sciberras, “Le travailleur économiquement dépendant : quelle protection ?”, Report commissioned by the Minister of Work, Social Relations, the Family and Solidarity, November 2008.

²⁵ The definition of a worker under EU law translates this convergence between salaried work and self-employed work. The Court of Justice of the European Union (CJEU), then the European Union, proceeded in several steps. It initially affirmed in the *Brack* case (CJEU, 29 September 1976, *Brack* Aff. 17/16:Rec.1976, p.1429) that a person who has successively had a salaried job and then worked as a self-employed person is a worker and benefits as such from Regulation 1408/71. Then, to make the free circulation of workers more effective and to ensure equal treatment for nationals and non-nationals, regulations were drawn up in 1971 and 1972 to allow for coordination of national social security schemes in Member States. From 1981, these coordination rules were extended to independent workers, confirming a convergence between these two main categories of worker.

On an operational level, as suggested by the High Council of Financing for Social Protection²⁶, one solution for self-employed workers would be to give them the right to an individual option to come under the general scheme and its corresponding benefits. For auto-entrepreneurs, whose main activity is salaried employment, this measure would have the advantage of simplicity as well as allowing beneficiaries to acquire rights to improved benefits under the general scheme, based on the addition of their salary and non-salary incomes. This recommendation was in fact recently made by the High Council of Financing for Social Protection. This body stipulates that its implementation would involve defining a flat rate considered to be “equivalent” to employers’ social contributions to the general scheme for salaried staff.

Since such a measure could only be implemented in the medium term, it does not prevent the more rapid establishment of piecemeal measures to improve social protection for auto-entrepreneurs and “gig” workers on digital platforms.

What is more, although self-employed work is not replacing employed work in general, the professional careers of numerous individuals will in the future be marked by their passage through several work statuses. As a result, in addition to standardising the various schemes, it would be worth working on disconnecting rights to social protection from professional status and connecting them to individuals. This would thus involve moving from social rights (e.g. training, time-saving accounts, pension entitlements, etc.) based on work status to individual rights, accumulated in employment throughout a professional career, credited to one or several personal accounts and transferable from one status to another. This would make it easier to transport and transfer rights with the idea of making professional career paths more secure. To this end, the personal activity account set up in 2017 and partially effective from 1 January 2017, should be widely developed to respond to these issues.

²⁶ HCFIPS Report mentioned above, p.323-324

Summary tables

SUMMARY TABLE 1: ACCESS TO SOCIAL PROTECTION: SELF-EMPLOYED

	On her/his own account	With employees (self-employed employer)	Dependent on single client	Dependent on contractual relationship with client	Liberal professions (e.g. doctor, notary, lawyer)	Other1 (farmers)
Healthcare - cash benefits and benefits in kind	Full	Full			Full	Full
Sickness - cash benefits and benefits in kind	Partial	Partial			None	None
Maternity/paternity - cash benefits and benefits in kind	Partial	Partial			Partial	Partial
Old age pensions (preretirement benefits and pensions)	Full	Full			Full	Full
Survivors pensions and death grants	Full	Full			Full	Full
Unemployment benefits	None	None			None	None
Social assistance benefits	Full	Full			Full	Full
Long-term care benefits	Full	Full			Full	Full
Invalidity benefits	Full	Full			Full	Full
Accidents at work and occupational injuries benefits	None	None			None	Full
Family benefits	Full	Full			Full	Full

SUMMARY TABLE 2: ACCESS TO SOCIAL PROTECTION: CONTRACTUAL EMPLOYMENT (NON-STANDARD CONTRACTS)

	Full-time employee	Part-time employee	Fixed-term employee	Temporary agency worker	Casual and seasonal workers	On-call workers	Zero-hour workers	Apprentices	Paid trainees	(Other) persons in vocational / professional training
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	Full	Full		Full	Full	Full
Sickness - cash benefits and benefits in kind	Full	Partial	Full/ Partial/ None	Full/Partial/ None	Full/Partial/ None	Full/Partial/ None		Full	None	Full/None
Maternity/paternity - cash benefits and benefits in kind	Full	Partial	Full /Partial	Full/partial	Full/Partial	Full/partial		Full	Partial	Full/ Partial
Old age pensions (preretirement benefits and pensions)	Full	Partial	Full	Full	Full	Full/Partial/ None		Full	None	Full/None
Survivors pensions and death grants	Full	Partial	Full	Full	Full	Partial/None		Full	None	Full/None
Unemployment benefits	Full	Partial	Full /Partial / None	Full/Partial/ None	Full/Partial/ None	None		Full	None	Partial
Social assistance benefits	Full	Full	Full	Full	Full	Full		Full	Full	Full
Long-term care benefits	Full	Full	Full	Full	Full	Full		Full	Full	Full
Invalidity benefits	Full	Partial	Full/ Partial	Full/Partial	Full/Partial	Partial/None		Full	None	Full/None
Accidents at work and occupational injuries benefits	Full	Full	Full	Full	Full	None		Full	Partial	Full
Family benefits	Full	Full	Full	Full	Full	Full		Full	Full	Full

Annex 1

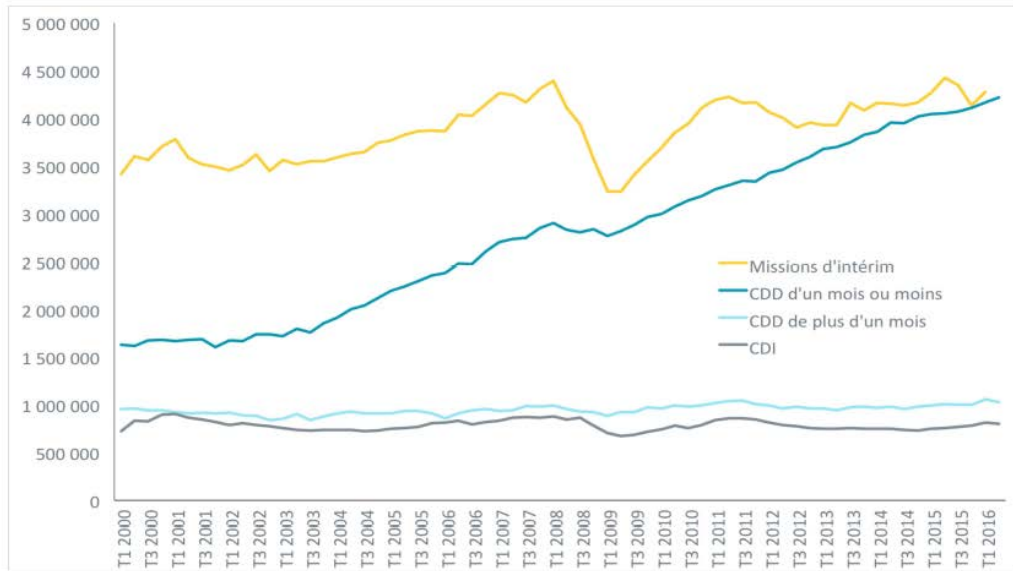
Self-employment and categories of non-standard contracts.

Definition	Type of contract	Volume in 2014	percentage
Total population in employment		25,802,000	100%
Self-employed		2,968,000	11.5%
	Independent workers	1,766,000	60% of self-employed
	Employers	1,093,000	37% of self-employed
	Caregivers, medical personnel	109,100	4% of self-employed
Total employees		22,832,000	88.5%
Precarious work contracts (employees on temporary contracts and employees with specific jobs)		3,182,000	14% of total employees

Source: data 2014 – employment survey, INSEE

Annex 2

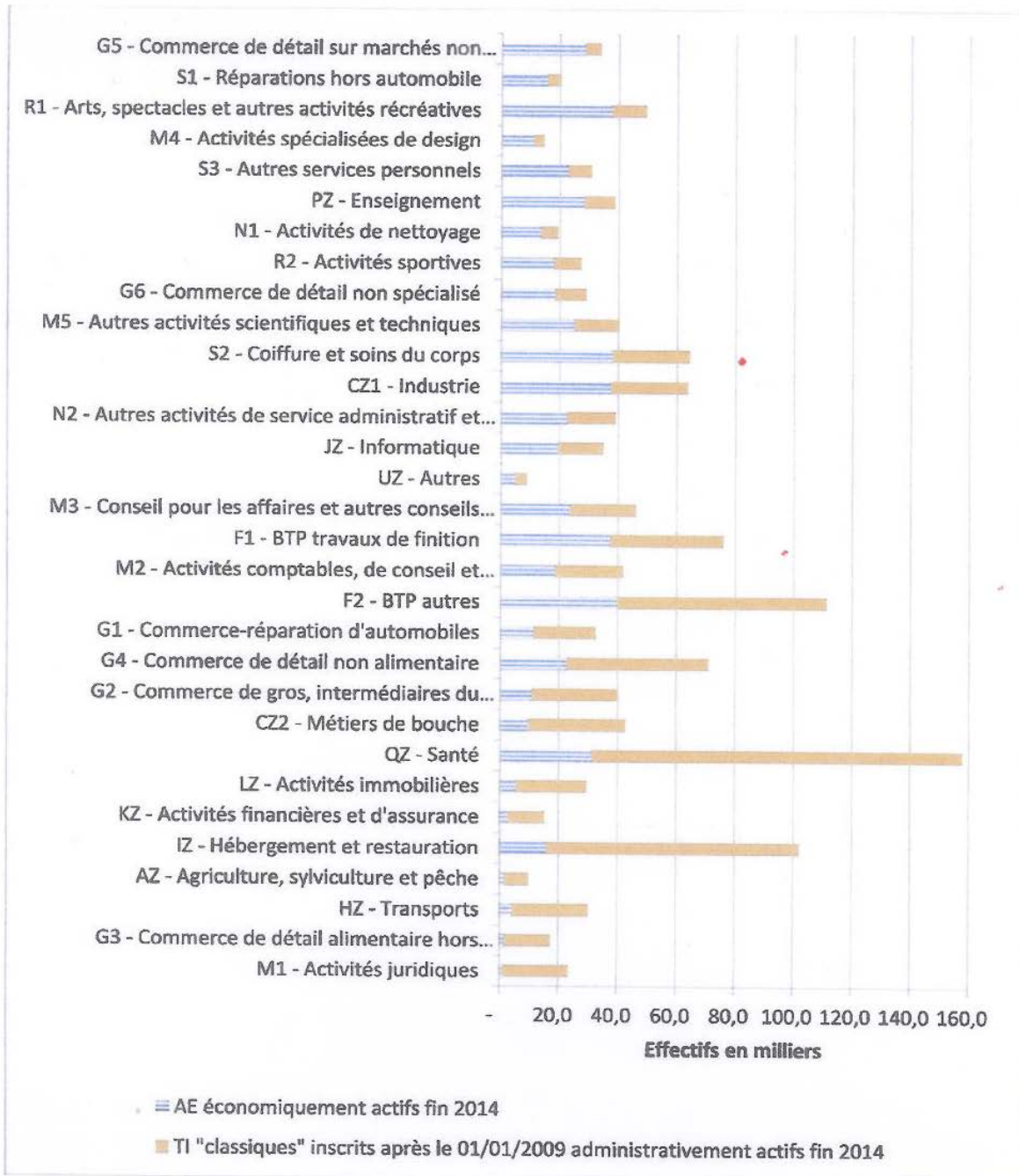
Evolution des différents types de contrat dans les embauches depuis 2000 (nombre de contrats conclus par trimestre)



Sources : DPAE Acoiss Urssaf pour les CDD et CDI. Relevés mensuels de mission (RMM) pour les missions d'intérim. France entière, secteur privé.

Annex 3

Effectifs des auto-entrepreneurs (AE) et des travailleurs indépendants « classiques », inscrits après le 1^{er} janvier 2009, fin 2014 selon le secteur d'activité



Note : AE=auto-entrepreneurs, TI « classiques » = travailleurs indépendants non auto-entrepreneurs.

Source : Acoess

Annex 4

The self-employed pay the following on the basis of the earned income figure used to calculate their income tax:

- A health insurance contribution at the standard rate of 6.5% for covering healthcare costs
- A health insurance contribution at the rate of 0.7% for daily sickness allowance
- A general social contribution of 7.5%, a fraction of which is used to finance healthcare costs.

Salaried employees do not pay the 6.5% health insurance contribution since their employers pay an employer contribution instead. They are however subject to contribute 0.74% of their gross pay to cover daily sickness allowance and CSG at a rate of 7.5%.

Annex 5

For basic pensions and complementary pensions

You will acquire rights with the RSI (if you are a craftsperson or trader) or with the Cipav (if you have a liberal profession) corresponding to your turnover, based on a minimum amount for both the basic pension and complementary pension according to the following table.

Pension scheme	Activity	Reduction applicable to turnover	Turnover to be achieved in 2016 to validate			
			1 quarter	2 quarters	3 quarters	4 quarters
RSI	Sales/ Hotel trade/ Catering BIC ²⁷	71%	€4,982	€7,870	€10,773	€19,995
RSI	Services BIC	50%	€2,890	€4,565	€6,249	€11,598
RSI	Services BNC ²⁸	34%	€3,466	€5,475	€7,557	€9,743
Cipav	Liberal activity BNC					

Source: RSI, 2016

²⁷ BIC = *Bénéfices industriels et commerciaux* – industrial and commercial profits

²⁸ BNC = *Bénéfices non-commerciaux* – non-commercial profits

