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Regulation of platform work in France: From voluntary charters to sector-wide collective agreements?

**Peer Review on “Platform Work”
Germany, 12-14 October 2020**

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1 Introduction

This paper has been prepared for the Peer Review on "Platform Work" within the framework of the Mutual Learning Programme. It provides a comparative assessment of the policy example of the host country and the situation in France. For information on the host country policy example, please refer to the Host Country Discussion Paper.

2 Situation in the peer country

The use of platform work in France grew by 80.6% between 2017 and 2018 (Senat, 2020). Although precise statistics are lacking, the number of individuals working for the largest online delivery platforms and ride-hailing services suggest some 100,000-200,000 platform workers in France. Overall, platform workers represent less than 1% of the active population, with independent workers in general representing 12%. The lack of data makes it difficult to determine the proportion working exclusively as platform workers versus those supplementing their income. The French tax authority plans to create a database on numbers and income of platform workers.

Platform workers in France can be either independent or subordinate (regular) employees, with most being independent workers. In some cases, platform workers have successfully litigated to gain the status of regular employees. Subordinate platform workers have full employment protection (minimum salary, maximum working hours, holidays, protection against termination of employment) and social security contributions are mainly paid by the employer. By contrast, independent platform workers have no such protections, and pay their social security contributions themselves, with the exception of work accident insurance. Since 2016, France has some specific legal provisions for independent platform workers but these offer only minimum protection and do not constitute an autonomous status (Loiseau, 2020).

Platform work is synonymous with low-paid and under-protected work. The principal concerns are unfair competition, financial vulnerability and health and safety risks.

The question in France was whether or not platform workers should be assimilated (by statute) into employee status. Successive governments viewed this solution as an obstruction to the development of this new economic model. Since 2016, there have been several initiatives to enable the simultaneous enjoyment of independent status and certain prescribed protections. These regulations sought to prompt platforms to voluntarily improve their terms and conditions, rather than imposing compulsory minimum terms and conditions.

In early 2021 the law is set to recognise platform workers' delegates for consultation on voluntary codes of practice and negotiation of terms and conditions at plant and/or sectoral level.

3 National policies and measures

3.1 Independent platform workers

Statutory provisions for independent platform workers derive from two statutes.

3.1.1 Statute 2016-1088, 8 August 2016

Although these provisions indicate that they apply to 'independent' platform workers only, statute law in France does not create the legal presumption that platform workers are independent workers. Rather, they can be either independent or subordinate. By providing a specific independent status, statute law enables (and confirms) the use of independent status.

The provisions of the Statute apply to 'independent workers that use a digital platform for the exercise of their professional activity' (Article L7341-1 Labour Code) and to

platforms that play a significant part in the organisation of the service by imposing conditions of service on the service provider. Such a platform has 'a social responsibility' to the independent platform worker 'provided that it is the platform which determines the characteristics of the provision for services and defines the price of the service or the provided goods'.

The term corporate (social) responsibility is generally used to designate soft law. This emphasises that the applicable law does not have legally binding effects but instead encourages platforms to abide by certain principles. Platforms are themselves expected to fix and abide by the terms and conditions of service, without state supervision or legal sanctions. In doing so, the French legislator tried to avoid imposing unnecessary burdens that would impede the development of platform work. Despite the reference to 'social responsibility', however, some of these provisions indeed constitute legally binding obligations (see below).

Platforms' corporate social responsibility is divided into: 'common provisions' applicable to all independent platform workers (Section I, deriving from Statute 2016-1088); and 'specific provisions' applicable to independent drivers and delivery workers (Section II, deriving from Statute 2019-1428).

Statute 2016-1088 provides for non-mandatory work accident insurance from 1 January 2018. While platforms are not legally obliged to insure platform workers against work accidents, statute law encouraged platforms to provide such insurance (especially for independent workers earning more than EUR 5,400 annually). If they do not, platform workers can take out individual voluntary insurance against work accidents, with the platform liable for the reimbursement of rates up to a certain ceiling (Article L7342-2 Labour Code).

In September and October 2017, respectively, an online food delivery company and an online ride-hailing service announced that they had undertaken collective insurance against work accidents for their independent workers.

By contrast, Article L7342-3 Labour Code seems to introduce a *prima facie* legally binding training obligation on platforms. Even platform workers who have chosen independent status are entitled to vocational training, albeit limited to the 'validation of acquired experience'. Where individuals earn at least EUR 5,400 annually through a platform, the platform must pay for that training.

Article L7342-6 Labour Code introduces the right to strike for independent platform workers. Although collective bargaining is not mentioned, the law does not exclude collective claims on strike action. The law also provides that strike action should not be used as an excuse for sanctions (contract termination, contractual liability, other penalties) against independent platform workers.

Independent platform workers are entitled to create, adhere to and represent their collective interests through trade unions (Article L7342-6 Labour Code). This recognition of trade unions opens the door to contractual relations and collective bargaining. Some trade unions have already been set-up (local, e.g. *Collectif des livreurs autonomes de Paris* (CLAP), *Syndicats des coursiers autonomes de Loire-Atlantique* (SCAL-A); national, e.g. *Syndicat des chauffeurs privés*, (VTC)) but have yet to engage in collective bargaining, as the representation principle requires that the trade union represent at least 8% of sector workers and/or 10% plant workers for any agreement to be binding.

3.1.2 Statute 2019-1428, 24 December 2019

This Statute introduced provisions applicable to platforms engaged in car transport and delivery of goods by motor or non-motor vehicles (Article 7342-8 Labour Code). Under Article L7342-9, these platforms can establish voluntary codes of practice (charters)¹

¹ A code of practice can deal with: 1. Transparency, i.e. the precise conditions under which the platform makes a platform worker meet clients' needs; 2. measures to ensure decent pay; 3. vocational training; 4. improvement of working conditions and the anticipation of professional risks; 6. measures to ensure

defining rights and obligations towards platform workers and vice versa, and the conditions under which platforms must show their social responsibility.

Although the codes of practice seem to be strictly unilateral, the law provides for prior consultation with platform workers, which is a step forward towards recognition of their representatives. At the time of writing, regulations on the consultation process (to supplement statute law) are outstanding, including whether consultation will be direct or require the election of platform workers' representatives/other trade union representation. This likely explains the lack of codes of practice, despite 15 platforms announcing the adoption of a common code of practice in November 2019.

Statute 2019-1428 originally indicated that charters could not be used as proof of subordination in establishing an employment relation. However, the Constitutional Council declared this provision unconstitutional, meaning that platform workers will be able to use a code of conduct as proof of legal subordination.

3.1.3 Social security applicable to independent platform workers

According to their contractual provisions, most platform workers in France are independent workers. Enrolment of independent workers in the social security system is mandatory (unlike in Germany). Since 2018, the (special) independent workers social security scheme has begun to gradually merge with that of subordinate workers. However, independent workers still pay lower contributions and receive lower benefits than subordinate workers.

Most platform workers enrol as micro-businesses. Dating from 2008, this regime was designed to simplify enrolment and payment of contributions and taxes, with independent workers allowed to claim micro-business status where turnover does not exceed EUR 70,000 per year. This appears to be the case for most platform workers, although specific statistics are lacking. Micro-businesses pay contributions to retirement, health insurance and care insurance, in proportion to their turnover. The contribution rate is 22% of total earnings, which is considered high, given the limited benefits they receive.

Platform workers' basic health insurance equates to that of employees (universal coverage), but they must pay for complementary insurance, maternity² and disability benefits. Platform workers are not covered against work accidents unless they or their platform voluntarily subscribes to a scheme. Most large platforms operating in France have undertaken such insurance. In case of temporary incapacity (illness, e.g. COVID-19), platform workers receive a daily subsistence allowance only after three days of illness and only if their annual average turnover for the past three years is more than EUR 3,982.80. They also need to have paid contributions to the scheme for at least one year prior to the date of temporary incapacity. The minimum allowance can be very low for micro-businesses compared to other independent workers (EUR 5.46 vs. EUR 22.54 per day)³. The maximum allowance for micro-businesses is equal to that of independent workers (EUR 56.35).

During the COVID-19 crisis, platform workers – especially delivery personnel – continued to provide their services, unlike restaurants, cafés and other relevant activities. The media criticised platforms and called for interruption of their activity, as did certain platform workers' unions (including CLAP). Platforms responded that the absence of direct contact with clients protected delivery personnel from contamination. Under pressure, one online food delivery company declared that any delivery personnel required to quarantine would be paid a subsistence allowance equal to their earnings during the previous two weeks.

workers have sufficient information on the conditions of service and any changes in the course of the contract; 7. quality of service expected, the control exercised by the platform and the circumstances justifying termination; 8. possibility of supplementary social protection.

² Maternity allowance is subject to prior affiliation with social security for 10 months.

³ Allowance = platform worker's annual turnover/730.

Platform workers do not pay contributions to unemployment insurance and therefore are not entitled to unemployment benefits. During the COVID-19 crisis, none of the platforms reduced their activity, leaving it to independent workers to decide for themselves whether to work or remain at home.

Given these special circumstances, independent workers in general (including platform workers) were entitled to a lump sum of EUR 1,500 and deferred payment of their social contributions, taxes, rent and other expenses (water, energy bills). Recent legislation provides that independent workers are entitled to unemployment benefit of EUR 800 for a period of six months, maximum. However, the conditions are difficult for platform workers to meet, especially in the context of COVID-19: two years' prior activity as an independent worker for the same business; and at least EUR 10,000 turnover per year during the last two years. To be entitled to this benefit, they must also declare bankruptcy.

3.2 'Subordinate' platform workers

According to their contractual provisions, most platform workers are 'independent' workers. However, the independent status has been the subject of litigation, especially in the context of the termination of contractual relations without (just) reason. Platform workers seek regular subordinate employee status so as to enjoy full employee protection (minimum salary, maximum working hours, holidays, protection against termination).

Traditionally, regular employment status in France is not an option. If a worker is (legally) subordinate to the employers' powers of direction, control and sanction, a judge can rule that a contract for services is in fact a contract of employment (Ass. plén. 4 March 1983, n°81-15.290)⁴. This principle applies equally to platform workers.

In two recent cases (the first relevant to delivery personnel: *Take Eat Easy*, 18 November 2018 n°17-20.079; the second relevant to independent taxi drivers: *Uber*, 4 March 2020, n° 19-13.316), the Supreme Court decided that the platform workers were actually employees. More precisely, it decided that if the registration of a worker as an independent contractor creates a legal presumption that they are not an employee (Article L8221-6), there is no obstacle to the worker proving legal subordination before employment tribunals. The Court took a broad view of 'legal subordination: 1) that the worker did not organise the performance of the contract autonomously, as an independent worker would; 2) that their activity depended on organisation controlled by the platform; 3) that the worker had no clients of their own and did not choose their own itinerary and prices; 4) that the platform controlled workers' performance and, in case of default, imposed sanctions, such as account closure (permanent/temporary). Elements such as workers having their own material (e.g. car or bicycle) and some freedom in the choice of their schedule were insufficient to rule out recognition of an employment contract.

Supreme Court decisions like these produce legal effects only between the parties of the initial claims and do not have an automatic effect for all similar workers. Individuals working for the same company and exercising their activity under the same terms and conditions must bring similar claims before employment tribunals. Once they do so, however, they are assured of the same favourable decision.

The decisions of the Supreme Court, while powerful, do not preclude the use of independent status in platform work: recourse to independent status has been recognised - and even reinforced - by two legislative initiatives (see 3.1), and statutory law can circumvent judicial precedent. The substance of the next legislative intervention will likely be important here.

⁴ Decision of the French Supreme Court, Social Chamber on *Société Générale v. Urssaf de Haute Garonne*, 13 November 1996, n°94-13.187.

4 Considerations for future policies and initiatives

Platform workers' representation is at the heart of current debates in France. If platform workers are to be consulted on codes of conduct or actively participate in (binding) collective bargaining, they require elected representatives at plant level and sector-wide legitimate trade union delegates. The government intends a new legislative initiative (beginning of 2021) encouraging company and/or sector-wide collective bargaining, along with unilateral codes of practice at plant level. In January 2020, a report was commissioned on the representation of platform workers, with its scope extended in June 2020. COVID-19 has delayed the final report until end October 2020.

Platforms similarly recognise the need to organise, creating an 'Association of platforms using independent workers' (*Association des Plateformes des indépendants, API*) in November 2019 to represent their position to public authorities and – eventually – engage in social dialogue with platform workers' delegates. Members of API signed a charter to promote concertation with platform workers, clarification of their status, improvement of social protection and decent pay. Recently, an online food delivery company announced its intention to elect workers' delegates for the purposes of consultation. However, general trade unions (CGT, CFDT, FO, SUD) expressed concerns about the independence of ad hoc elected delegates.

In 2020, the Jean Jaures Foundation proposed that platform workers organise in cooperatives or under umbrella companies that would act as the workers' employer and an intermediary between platforms and clients. It also proposed that platform workers would participate in profit-sharing.

In May 2020, the social commission of the French Senate examined a proposal for the creation of a legal status applicable to 'autonomous employees'. This special contract of employment would incorporate collective bargaining and the application of maximum working time. The proposal was rejected on 27 May 2020, as its ideological foundations ran contrary to the spirit of current reforms in France. The government instead seeks to unify special regimes and create a sole social security authority for subordinate and independent workers (including platform workers).

The National Digital Commission (CNN, 2020) notes that during the COVID-19 crisis, platform workers' activity intensified. While health and safety risks increased, platforms do not have to assume responsibility for work-related illnesses or accidents. CNN recommend extending access to unemployment benefits and complementary healthcare to platform workers.

5 Questions

- Should legislation (national or European) impose a transparency principle on conditions of service for platform workers?
- Would collective bargaining at European, national or sectoral level be adequate to guarantee decent pay and other conditions of service for platform workers?
- Should legislation adapt social security to the special needs of platform workers?
- Would the creation of cooperatives or umbrella companies constitute adequate intermediation for platform workers?

6 List of references

Books- PHD thesis

Gomez, B. (2018). *Le droit du travail à l'épreuve du numérique*. Université Paris 10, PHD thesis.

Journal articles

Favennec-Héry, F. (2020). Quel régime pour les travailleurs des plateformes? *JCP édition sociale*, pp. 26-27.

Favennec-Héry, F. (2020). Les travailleurs des plateformes collaboratives: en attendant Godot. *Semaine sociale Lamy*, n°1896, pp .8-11.

Jeammeaud, A. (2020). Le régime des travailleurs des plateformes, une oeuvre tripartite. *Droit Ouvrier*, pp. 181-215.

Loiseau G. (2020). Travailleurs des plateformes, un naufrage législatif. *JCP édition sociale*, pp .17-25.

Perulli, A. (2020). Le droit du travail au-delà de la subordination. *Revue droit du travail, Dalloz*, pp. 309-318.

Reports

Conseil national du numérique (2020). *Travail à l'ère des plateformes*. Available at: https://cnnumerique.fr/files/uploads/2020/2020.06.30_Rapport_Travailleurs_des_plateformes_VF.pdf

Institut Montaigne (2019). *Travailleurs des plateformes*. Available at: <https://www.institutmontaigne.org/ressources/pdfs/publications/travailleurs-des-plateformes-liberte-oui-protection-aussi-rapport.pdf>

Fondation Jean-Jaurès (2020). *Pour travailler à l'âge du numérique, défendons la coopérative!* Available at: <https://jean-jaures.org/sites/default/files/rapport-cooperative.pdf>

Rapport d'information du Sénat (2020). *Travailleurs des plateformes: au delà de la question du statut quelles protections?* Available at: <https://www.senat.fr/notice-rapport/2019/r19-452-notice.html>

Annex 1 Summary table

Situation in the peer country

- The number of platform workers in France is increasing rapidly, although remains less than 1% of the active population.
- Platform workers can be either independent or subordinate (regular) employees – most are independent workers. Independent status is less favourable, with some platform workers now seeking legal recognition of their employment status.

National policies and measures

- Statute 2016-1088, 8 August 2016 introduced 'platform social responsibility', encouraging platforms to insure platform workers against work-related accidents. Independent platform workers have the right to create trade unions and the right to strike. Platforms are obliged to provide training in certain circumstances.
- Statute 2019-1428, 24 December 2019 provides for platforms to introduce voluntary codes of practice. These are subject to prior consultation, although regulations are needed to provide workers' delegates with consultation rights.
- Social security coverage is compulsory in France, with independent workers' contributions high compared to benefits. Independent platform workers have only a conditional right to subsistence allowances and unemployment benefit.
- The French Supreme Court decided that platform workers were regular employees, as they do not organise their own activity and are subject to the control/sanctions of the platform. These decisions do not preclude the use of independent status, however.

Considerations for future policies and initiatives

- The Prime Minister has commissioned a report on platform workers' representation rights ahead of future legislation recognising platform workers' delegates and collective bargaining, likely at sectoral level.
- In May 2020, the French Senate examined – and rejected – a proposal for the creation of a special status for autonomous (including platform) workers.
- Jean Jaures Foundation recommended that platform workers create cooperatives/umbrella companies to reinforce collective representation and improve conditions of service. The National Digital Commission recommended unemployment benefits and complementary healthcare for platform workers, especially during the COVID-19 pandemic.

Questions

- Should legislation (national or European) impose a transparency principle on conditions of service for platform workers?
- Would collective bargaining at European, national or sectoral level be adequate to guarantee decent pay and other conditions of service for platform workers?
- Should legislation adapt social security to the special needs of platform workers?
- Would the creation of cooperatives or umbrella companies constitute adequate intermediation for platform workers?

Annex 2 Example of relevant practice

Name of the practice:	Statute 2016-1088, 8 August 2016 and Statute 2019-1428, 24 December 2019
Year of implementation:	Since 2016
Coordinating authority:	N/A
Objectives:	Statutory provisions for independent platform workers
Main activities:	<p>Introduced 'platform social responsibility', encouraging platforms to insure platform workers against work-related accidents.</p> <p>Independent platform workers have the right to create trade unions and the right to strike.</p> <p>Platforms are obliged to provide training in certain circumstances.</p>
Results so far:	<p>Some trade unions have already been set-up (local, e.g. Collectif des livreurs autonomes de Paris (CLAP), Syndicats des coursiers autonomes de Loire-Atlantique (SCAL-A); national, e.g. Syndicat des chauffeurs privés, (VTC)) but have yet to engage in collective bargaining</p> <p>Lack of codes of practice, despite 15 platforms announcing the adoption of a common code of practice in November 2019.</p> <p>In September and October 2017, two platform companies announced that they had undertaken collective insurance against work accidents for their independent workers.</p>

