

*The potential implementation of the proposal directive and guidelines in France*

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**The in-between of the French legal system  
or  
the French legislator's solo escape**

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# I. Introduction

## A. The French context on platform work has the following features:

1. An unparalleled activism of the legislator (2 laws of 2016 and 2019, 2 ordinances of 2021 and 2022 and several decrees).
2. Very strong resistance from judges (civil/social/commercial/criminal
3. organised resistance by workers in new and traditional organisations
4. The systematic use of expertise by public authorities (no less than 10 reports) rather than social dialogue
5. Public authorities sensitive to the arguments/seduction of this new economy
6. Public authorities forced to give answers to the social and political forces that are protesting against the harmful consequences of this business model on the working and living conditions

## I. Introduction (continued)

### B. The french legal order on platform work has the following features :

1. The French public authorities have adopted a legislative policy of **in-between** self-employment statute in the strict sense and employee statute, **a sort of third status** without saying so, with individual and collective rights inspired by common labour law.
2. The french legal system comprises two axes:
  - + A self-employed worker with individual rights based on the social responsibility of platforms (I)
  - + and collective rights polarised around the ongoing construction of a sectoral social dialogue aimed solely at workers on mobility platforms (II).

## **II. The granting of individual rights : from self employment statute to autonomous statute**

The cumulative individual rights are the result of the law of 2016 **(A)**, of 2019 and of the ordinance of 7 April 2022 **(B)**.

### **A. Law of 2016 (labour Code) : self employment statute**

- the possibility for the platform to pay the contribution to the insurance taken out by the worker to cover the risk of **accidents at work** or to propose that workers join a collective contract with guarantees at least equivalent to those of the voluntary insurance for accidents at work taken out by the platform, subject to a minimum turnover.

-The worker benefits from the right of access to **continued vocational training** and the contribution is paid by the platform. The personal training account is topped up by the platform, subject to a minimum turnover.

## II. B. The 2019 LOM law and the order of 7 April 2022 : more autonomy for platform workers/obligations for platforms (transport code)

- **Information on** distance covered by the service, the minimum guaranteed price, the destination of the services
- A reasonable period of time to accept or refuse the contractual relationship/not suspending the contractual relationship in the event of refusal
- Freedom to choose working hours and periods of inactivity.
- Not be required to use a particular material or equipment (subject to legal and regulatory obligations regarding health, safety and environmental protection)
- Possibility to use several intermediaries simultaneously;
- Freedom to determine the itinerary, particularly with regard to traffic conditions, the itinerary proposed by the platform and, where applicable, the customer's choice.

## II. From self employment statute to autonomous statute

### C. Comments

- Many of the indications of subordination identified by the judges of the Court of Cassation are taken up by the legislator in order to transform them into workers' rights or platform duties.
- **But** the order specifies that "these provisions do not prevent the use of a dedicated application made available by the platform". **So the platform continues to control the worker's activity regardless of the self-employed status.**
- It is algorithmic management, which determines the working conditions and remuneration of workers. Pricing algorithms, incentive mechanisms and rating systems determine the behaviour of workers, so the « freedoms" recognised to workers by French law remain formal in the face of the power of the algorithm and the "dictatorship of precariousness".

### **III. Collective rights for self-employed platform workers**

#### **A. Law of 2016 and collective rights**

- Platform workers have the right to take part in concerted refusals to provide their services in order to defend their professional claims. Except cases of abuse, this has no impact on their contractual liability and does not constitute grounds for terminating their relationship with the platforms.
- Platform workers have the right to form a trade union and to represent their collective interests through it.

### **III. Continued**

#### **B. Order 21 April 2021 and 7 April 2022 : social dialogue for self-employed workers/ mobility platforms**

##### **1. Creation of an Employment Platforms Social Relations Authority (ARPE).**

- +A body for information, consultation and regulation.
- +determines the list of organisations representing workers by organising the ballot;
- +Provides funding for training and compensation for training days and delegation hours;
- +Promotes social dialogue and supports the representatives of platforms and workers in organising electoral cycles;
- +Authorises the termination of commercial relations between platforms and workers holding a mandate;
- +Collects the statistics transmitted by the platforms

### **III. Continued**

#### **B. Social dialogue for self employment workers/mobility platform (continued)**

##### **2. Workers and platform representatives for social dialogue.**

-National election organised every 4 years. Ballot is organised by acronym. Professional trade unions and associations established under the 1901 law may stand for election.

-The audience criterion is that of ordinary law, i.e. 8% of the votes cast in the ballot.

-Criteria for Worker representative : having performed at least 5 services per month on a platform for at least 3 months in the 6 months preceding the election.

-Protection during the mandate and for six months after the end of the mandate permission must be sought from the industrial relations authority and the decision can be appealed to the administrative court.

-payment to compensate for the loss of pay due to training days and delegation hours

### **III. (continued)**

#### **B. Social dialogue for self-employed workers/ mobility platforms**

##### **3. Topics of social dialogue : annual negotiation obligation**

- Methods for determining workers' incomes, including the price of the service provided
- Conditions under which workers carry out their professional activity, in particular the framework of their working time and the effects of algorithms on the methods of providing services
- Prevention of professional risks and damage caused to third parties
- Modalities for developing professional skills and securing professional careers
- Optional other topics : supplementary social protection benefits, arrangements for exchanging information on the organisation of commercial relations, circumstances that may lead to a breakdown in commercial relations; etc.

### III. Continued

#### C. Comments on social dialogue for self employed workers

-The legal initiative to create a level of negotiation without prior social consultation between the social partners is totally out of touch and unprecedented in France. **It is therefore a social dialogue imposed and structured by the public authorities.**

-Creating a special sector for platforms mobility (riders and taxi) while a transport national collective agreement exists (specially for urban racing) **will create un social competition between employees and self employment**

-The topics that may have a direct effect on the business model (1, 2 and 5) can be postponed to 2 years or are optional. This leaves occupational risk prevention (cause of main disputes) and skills development (in line with the discourse of platforms) as priorities

-The text does not provide for any measures that could give workers and workers' representative rights of control over the algorithm. On the contrary, **it preserves the platform's full power in this respect.**

### III.C.1. Comments (continued)

#### One Major risk:

if a whole system of collective autonomy for self-employment workers with a normative vocation **is set up** in competition- with the system of collective autonomy of employees.

#### One Major problem :

+The algorithm is at the heart of the economic model of the platforms; it is protected by the business secret. The algorithmic management is the heart of a new form of subordination. The best way to limit this power is consider the inequality and dependence of the worker on the platform and protect him by a **legal presumption** of an employment contract allowing him to have full individual and collective rights and not reduced or instrumentalised as is the case in French law.

#### IV. Concluding remarks :

- The French legislator has the political will to put in place a counter-model to the one prevailing in the draft directive creating a potentially conflictual situation: presumption of self-employment versus presumption of employment contract.
- The French legislator deliberately ignores the algorithmic dimension of platform activity whereas the draft directive takes it into account whether the workers concerned are employees or self-employed.
- The French legislator is ahead of the draft guidelines on the interpretation of competition law. Guidelines provide additional protection for the French social dialogue system front of european competition law.

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**Thank you very much for your attention**

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