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### New Employment Forms and Challenges to Industrial Relations - Country Report France

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**NEW EMPLOYMENT FORMS AND  
CHALLENGES TO INDUSTRIAL  
RELATIONS – NEWEFIN –  
National report France**

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## 1 Introduction – background

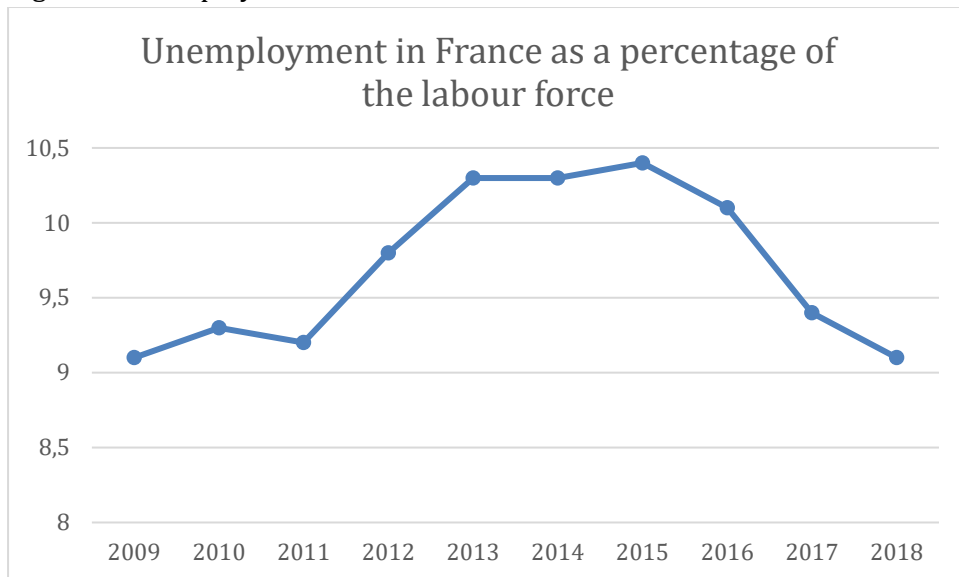
### 1.1 General introduction

Reference period for this research is 2007-2018. Research and interviews have been round up in August 2019, only on a incidental basis later developments or data is included. The report is based on a literature study and 8 semi-structured interviews with academics (2), a representative of the government (1), representatives of (platform) companies (3), a representative of trade unions (1) and a representative of a think tank on new forms of work.

Next to self-employment and platform work there are other forms of precarious work in France that are new or that have increased in the past decade. One of the these trends is the use of very short-term contracts that offer employers a lot of flexibility, but provides obviously very few advantages for workers. These three phenomena will be described in this report. The increase of self-employed workers, the rise of platform work and the renewed popularity of the short-term contracts take place against the backdrop of a labour market that has been struggling during the reference period of this research.

To start with, the unemployment rate in France remains rather high, although it is decreasing.

Figure 1: Unemployment rate in France

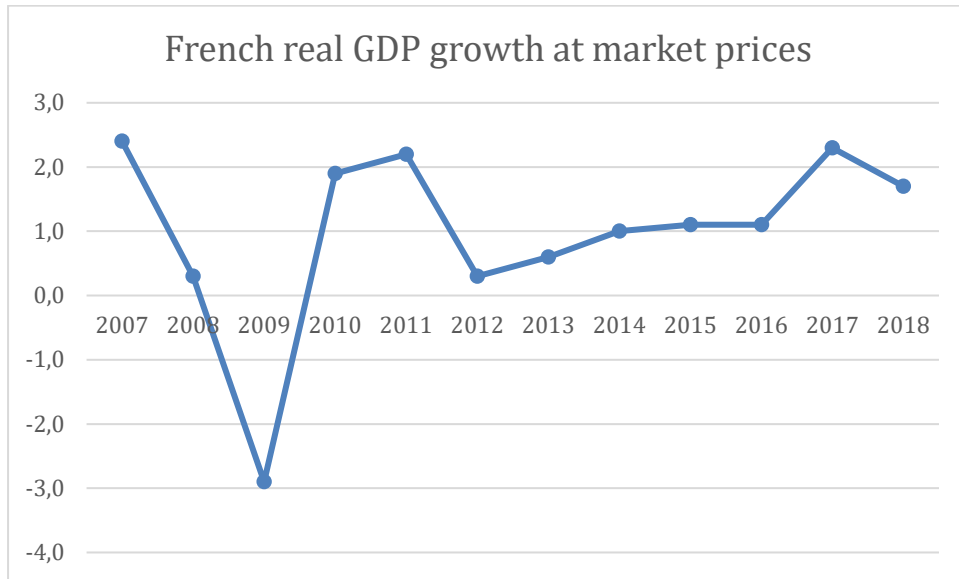


Eurostat, August 2019

The French employment law system is protective for employees, but is less sophisticated when it comes to facilitating integration into the labour market. Inclusion, raising competitiveness and the aging population in combination with the relatively early retirement age have been returning spearheads in the OECD recommendations in the first

half of the reference period. Steps have been made, more specifically the large labour market reforms in the past decade and at many levels the French economy has its strengths, but unemployment remains high (particularly for young people) and the economic growth has slowed down. In 2018 real wage growth and productivity gains have not returned to pre-crisis levels, despite a slight rebound in 2017/2018.

Figure 2: Real GDP growth France



(Eurostat August 2019)

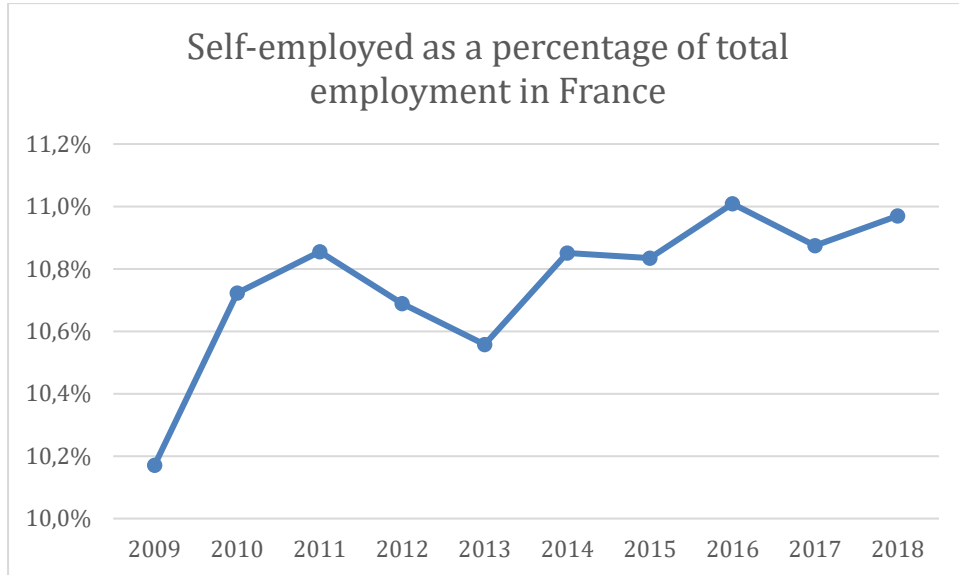
In summary: employment rates are increasing but remain low, the population is unevenly skilled and job turnover on very short term contracts has increased for part of the workforce. Labour law reforms have induced more certainty over dismissal costs and had restructured the social dialogue and engaged a reform in unemployment benefits, but the challenges remain (OECD 2019c). At the same time, France is currently going through a period of social unrest that began as a protest against an increased fuel tax but has evolved into a broader protest against current economic policies ('yellow jackets'). One of the underlying issues is that although there has been economic growth, many French haven't seen any real wage growth.

It is against this backdrop that this report discusses self-employment, platform work and the increase of use of short-term contracts.

## 1.2 Self-employment

According to Eurostat data, the self-employment rate in France (as a percentage of the total working population) shows an increase in the reference period. In 2009 10.2% of the working population is self-employed, in 2018 it is 11%.

Figure 3: Self-employed as percentage of total employment in France



(Eurostat August 2019)

If we take a further look back, the recent rate of self-employed is not historically high. In the 1970's this rate was at 20,8%, dived to 8,8% early 2000 before rising as shown above (HSFIPS 2016). However, the self-employed in the 1970 were mostly working in the agriculture sector whereas the modern self-employed worker who is in the last decade often marked as precarious is working mainly in construction and services (OECD 2018).

One of the hypotheses is that the introduction of the statute of *auto-entrepreneur* in 2008 (par. 2.1.3) had a positive effect on the growth of the self-employed. It is however important to realize that not every self-employed worker or independent contractor can be seen as an 'entrepreneur'. Arreoal et al (2017) have pointed this out very clearly (see for further reference par 4.1)

This coincides nicely with the observations of Klapper et al. (2012). They describe how France has generally been perceived as hostile to entrepreneurship but has reached a top 3 position in Europe when it comes to support entrepreneurship and small businesses. In the thirty years after the Second World War there was a focus on growth and extension on national business systems, focusing on large enterprises mainly. Policy measures were aimed at industrial concentration and mergers and acquisitions were encouraged by the policies. In the late 1970's the French government started to see the importance and potential of small and medium enterprises and the first support for these enterprises was

established (financial support, training facilities and specific support for innovative companies in high technology sectors). As from the mid-1990s various encouraging structures were established because entrepreneurship and enterprise creation was recognized as vital for the French post-industrial society. For an overview of this structures in this period up to 2008, please be referred to Klapper et al. (2012). In paragraph 2.1 further legislative initiatives to promote entrepreneurship and self-employment are described.

Furthermore, it is noteworthy that according to an INSEE survey, cited by Huteua & Bonnand (2016), 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.

Self-employment has accounted for a large share of job creation since the beginning of the 2000s. Between 2001 and 2015, self-employment accounts for 34% of the net job creation in all non-agricultural sectors. The growth as of 2009 (after the introduction of the auto-entrepreneur status) almost doubles the growth in paid employment. Within the group of self-employed, the auto-entrepreneurs (or micro-entrepreneurs as they are called since 1 January 2016) represent an increasing part as of 2009 (OECD 2018), the report focusses on this type of self-employed worker.

Further details on the self-employed workers can be found in Cahuc 2018. He points out that for 89% of the self-employed their self-employed work is their main activity. The remaining percentage derives most of their income from paid employment.

### **1.3 Platform work**

The most comprehensive research with respect to platform work in France has been carried out by the *Inspection générale des affaires sociales* (IGAS) in 2016. According to this report 80% of the platforms in France have been created since 2008, thus during the reference period of this research. From the report can be concluded that the collaborative economy in France is (as in many other countries) divers and includes platforms that operate on a profit driven base as well as on a more non-profit peer-to-peer base. Furthermore, a distinction can be made between platforms that deal with goods or assets and platforms that are matching demand and supply of services. As a separate category we can distinguish platforms that are an intermediary for micro tasks.

For the purposes of this report platform work is understood as 'work-on-demand- via-app' (Di Stefano 2015). This means that it is about (i) services that are (ii) provided in the physical world, while (iii) the worker and the client are matched through an internet application. A slightly different definition than used in the Eurofound country report (Lhernould 2018) or the aforementioned IGAS-report because it leaves out micro-tasks. The reason to leave this type of platform work out of the research is that there is very little data available on this type of work and that from a legal perspective it is very

challenging to establish what jurisdiction applies. Even within this narrow definition, platforms differ hugely when it comes to their business model and also with respect to the status of the workers. Although the assumption is that most platform workers are self-employed, there are also platforms that enter into employment contracts with the workers (Lhernould 2018).

Reliable statistical evidence on platform work in France is scarce and the need for it has been highlighted in several reports (IGAS 2016, Lhernould 2018 and IRES 2019). According to the IGAS (2016) report the total amount of transactions between platform workers and final clients had a value of € 1.6 billion in 2015 (covering 100 active platforms in France). Based on the volume of business generated by the platforms and on data more than 200,000 workers in France were concerned (excluding second-hand sales and accommodation platforms). The more recent IRES (2019) report refers to a limited sample (3,700 self-employed workers) that was added to the Household Survey in 2017. Conclusion is that 7% of self-employed workers and 0.8% of employees are using platforms for work. The authors warn for overestimation connected to the fact that the questions in the survey do not allow to properly distinct digital platforms from other intermediaries.

According to IGAS, the growth in business volume of employment platforms is very dynamic: +370% between 2012 and 2015. Their impact on the jobs of traditional companies is unfortunately not precisely documented, and is rather ambiguous. IRES reports a recent rise in the number of 'skilled services platforms', acting as new digital work intermediaries. These new players compete with 'traditional' labour intermediaries, such as temporary work agencies and IT service companies. They are also created as subsidiaries of some traditional actors. This is the case of Yoss, a start-up incubated by Adecco and developed by Microsoft, launched by Adecco in February 2018 to develop new segments (IT, digital, marketing, communication and events, and consulting and business development). The willingness to go on the freelance market and develop new business lines is clearly assumed. The platform is considered as a growth driver not competing with the traditional interim business (IRES 2019).

It is thus mainly the potential growth or job creation that makes the platform work an interesting new form of work to research and not so much the current size. Currently the most visible and most developed markets in France are transport (taxi as well as couriers) and accommodation (Air BnB), the latter not being in the scope of this report. It is however to be expected that platform based work expands to other sectors. Another development in France that is worth noticing is the appetite of regular companies to take over platforms. The on-demand delivery service *Stuart* has been acquired by the French national postal service La Poste in 2017 and the peer-to-peer car rental platform *OuiCar* by France's national rail service SNCF in 2015 (Amar & Viossat 2018). Another form of old and new economy meeting is the close collaboration between traditional companies



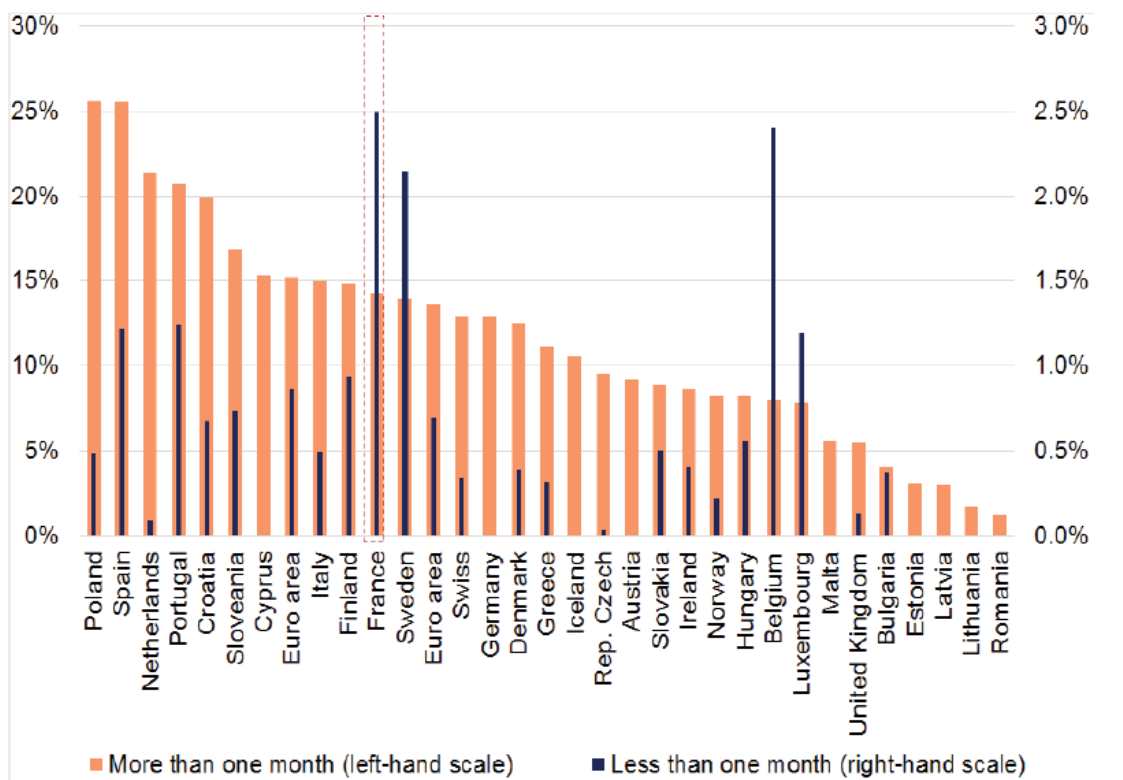
and platforms that arises. The platform Frizbiz (home improvement) for example works in close collaboration with LeroyMarlin a large do-it-yourself retail company..

Platform work in France is perceived as a new form of work that needs new regulation, but at the same time it is recognized that it can also be seen as an intensifying of the pre-existing trend towards more flexibility. This rise of atypical forms of work has been initiated already in the 1980's (IGAS 2016). Furthermore, next to new regulation it is suggested to integrate platform work into existing categories (see paragraph 2.2.2)

### 1.4 Short term contracts

Although holding an average position within the European member states when it comes to fixed term contracts, France has an exceptional high rate of fixed-term contracts shorter than one month. Whereas other countries might use zero hour contracts or other flexible forms of work, France has a high percentage of these very short term contracts.

Figure 4: Share of fixed-term contracts employed as percentage of total employment in France in 2017.



(Bornstein & Perdrizet 2019)

France takes the first position with 2.5% of total paid employment in 2017. France has shown a steady growth of fixed term employment in the 1980s and 1990s. As of 2000, there has been an increase in fixed-term contracts that last less than one month. Most of these hires are with a former employer (Benghalem 2016). These contracts are mainly

found in the service sector, in 2017 98% of these short term hires were in this sector. Within the service sector most of the increase can be found in the residential care service and social action sector. This can be explained by the exponential growth demand in this sector due to the ageing population, however total employment has only increased with 7% whilst the increase of very short-term contracts was 114%, all in the period 2000-2017 (Benghalem 2016). A 2018 employer survey (Survey 2018) shows that the main factor explaining this sharp rise is the replacement of absent employees. The sector is dealing with a high number of absenteeism, partly due to increasingly difficult working conditions. Also the allocated budget to the medico-social establishments is often insufficient (Bornstein& Perdrizet 2019).

Other sectors with a large percentage of very short-term contracts are: arts and entertainment, hospitality and administrative and support service. In neither of the cases the increase cannot be explained by the growth of paid employment in those sectors.

The consequences of repeated very short-term contracts for employees are similar to the consequences for most employees in precarious contracts: lower income, less access to vocational training, limited prospects to moving towards stable employment and more difficulties accessing housing and getting bank loans.

The reasons for the sharp rise in this type of contract is twofold. On the one hand these very short-term contracts may provide an answer to specific production or operational constraints as referred to above. On the other hand regulatory and legal developments also have contributed. The latter will be elaborated in paragraph 2.3.

## 2 Legal framework

### 2.1 Self-employment

#### 2.1.1 General introduction

As in many European jurisdictions, French labour law is based on a binary distinction between employees and self-employed workers. Art. 1102 of the French Civil Code defines an employment contract as bilateral contract by which two parties, the employer and the employee, have reciprocal obligations. According to case law and doctrine three criteria are key to establish that a contract indeed is an employment contract: (i) the employee must perform work, (ii) in exchange for a remuneration and (iii) the work must be performed under the subordination of the employer (Kessler 2017). The two first being not particularly distinctive since there are more contracts that imply the performance of work and remuneration and therefore 'subordination' is the decisive factor. In addition, as of 2008, art. L8221-6-1 Labour Code defines an independent contractor (Act Lagarde of 4 August 2008). A person is presumed to be an independent contractor, if his working conditions are defined exclusively by himself or in a contract, in conjunction with his customer.

It is settled case law for many years that 'subordination' is the distinctive factor in establishing whether contractual relationship is an employment agreement or not, and not the criterion of economic dependency that had the preference of the legislator at the time (Aubert-Monpeysen 1985). In the 1931 landmark decision, the court ruled that *'the legal relationship of workers with the person for whom they work cannot be determined by their weakness of economic dependence, but only by a contract between the parties; the status of employee requires the existence of a legal relationship of subordination between the worker and the employer'*.<sup>1</sup>

In another landmark case the French Supreme Court has ruled that a 'subordination relationship is characterized by performance of duties under the authority of an employer who has the power to give orders, monitor execution of assigned duties and punish his subordinates' breaches of duties'.<sup>2</sup> The subordination thus heavily relate to the power to give instructions, monitor and sanction with respect to the activities. As in many other jurisdictions, judges take into account the actual facts and not only the written contract<sup>3</sup> as well as multiple factors in order to establish the control of the employer over the worker's activities. The various criteria (such as working hours, duties & remuneration, place of work & work equipment, exclusivity or portfolio of clients and registration) are evaluated in an overall context. Finally, it is important to notice that the primacy of facts

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<sup>1</sup> French Supreme Court, Civil Law Chamber, 6 juillet 1931, *Bardou*.

<sup>2</sup> French Supreme Court, Social Chamber, 13 November 1996, n° 94-13187, *Société Générale*.

<sup>3</sup> French Supreme Court, Social Chamber, 9 may 2001, N° 98-46158, *Emmaüs de Pointe-Rouge*.

is recognized: not the form of the contract but the substance of the relationship determines the classification of the contract. It is not up to the parties to classify the contract.<sup>4</sup>

It is thus possible that a court reclassifies an employment relationship and states that instead of being an independent contractor, the individual works on the basis of an employment contract. Such reclassification (recently done by the French Supreme Court with respect to food delivery couriers, see paragraph 2.2.3) has as a consequence that in retrospective the worker has all rights and social protection that are linked to the employment contract (e.g. payment of overtime, payment of social security contribution by the employer) and after the reclassification a criminal offence might be established because the worker has not been declared as a salaried employee. The importance of the reclassification lies in the difference in social protection and rights of employees and self-employed workers.

In France there is no in between category of workers (such as the TRADE in Spain or the 'worker' in the UK), but nevertheless the scope of labour law can be extended. Next to the possibility of reclassification as described above, there are two classic legal methods to extent the scope of labour law to those workers for whom the subordination can be difficult to establish.

First of all, there is the legal presumption of an employment contract. For some professions the law stipulates that these must be exercised under an employment contract.<sup>5</sup> These individuals are subject to the Labour Code as well as to the rules of their own profession. As a counterpart of this classification by law, art. 8221-6 Labour Code stipulates that some relations are presumed not to be an employment relationship, e.g. workers that are registered as independent workers. However, this latter presumption can be rebutted if there is notwithstanding the registration a situation of subordination. This system of presumption of an employment contract was deemed to constitute a restriction on the free movement of services by the ECJ.<sup>6</sup> The dispute was about artists who, based on the aforementioned assumption were obliged to work as employees in France (and therefore subject to social security contributions) whilst they were recognized as independent contractors in their member state of origin. The court rules that *'even if it does not deprive, in the true meaning of the word, the performing artists in question of the opportunity to pursue their activities in France in a self-employed capacity, it none the less places them at a disadvantage that may impede their activities as service providers. In order to avoid their contract being accorded the status of employment*

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<sup>4</sup> French Supreme Court, Social Chamber, 3 June 2009, N° 08-40981, 08-40982, 08-40983, 08-41712, 08-41713, 08-41714, *Ile de la tentation*.

<sup>5</sup> Inter alia salespersons, journalists, performing artist, models, home workers.

<sup>6</sup> ECJ 15 June 2006, C-255/04, ECLI:EU:C:2006:401, *Commission/France*.

*contract, which would entail additional costs because of the obligation, in France, to pay contributions as affiliates of the social security scheme for employed persons, and bring them under the scheme for annual paid leave, they must prove that they do not work as employees but, on the contrary, are self-employed. Thus, the presumption of salaried status at issue is likely both to discourage the artists in question from providing their services in France and discourage French organizers of events from engaging such artists.'* The system has been amended, but is still in place. Not only artists, but also some types of domestic workers are included in that system.

Secondly, some workers are not considered employees, but can nevertheless benefit from the regulations in the Labour Code, because of their economic dependency. So despite the reluctance of courts to use economic dependency as a distinctive factor, the legislator does. It concerns, managers of petrol stations, licensees, exclusive distributors and franchisees (Kessler 2017). This second method is referred to as 'extension of rights' and has been introduced in 1994 (Act Madelin of 11 February 1994), repealed in 2000 (Act Aubry II of 19 January 2000) and reinstated in 2003 (Act Dutreil of 1 August 2003).

### **2.1.2 Legal position and social protection of self-employed workers**

As can be derived from the previous paragraph, self-employed workers work on the basis of a general service contract and unless the extension of right situation (see previous paragraph) applies, there are no specific labour law rules applicable. It must be noticed that case law implies that the termination of service agreements should not be abusive and the contractual notice period should be observed. If the notice period is violated, an indemnification might be due.<sup>7</sup> In short: the protection from a civil law perspective is very limited.

However, there are forms of social protection for self-employed workers, this derives from social security law. Regulation in France is changing at a considerable pace, this description is based on the state of law in 2018. When it comes to the social protection, there is a rather complex system in place as well from an organizational perspective as from the perspective of scope (personal scope as well as coverage). It is a recurring recommendation of the OECD to simplify the regulatory system, as well in labour law as in the framework of promoting small and medium enterprises (which includes self-employed) (OECD 2015, 2009).

#### ***Organizational aspects***

Social protection in France is historically provided via separate schemes for employees and self-employed, also when it comes to universal coverage such as housing & family assistance or basic health care. Within the group of self-employed the system historically is also set up with different funds for various professions and various risks. This history

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<sup>7</sup> French Supreme Court 22 January 2013, N° 11-27293, 3P.

has various backgrounds, one of them being that strong shoulders, the high skilled professionals with a high income do not want to share their contribution with others.

Since the 1970's the social protection has gradually been integrated or aligned and accumulated in 2006 in one system: the Régime Social des Indépendants (RSI). This had not been a success, there were malfunctions and in 2018-2020 the system will be abolished and transferred into the general system by force of the Social Security Financing law<sup>8</sup> (Cahuc 2018).

Currently, the system for self-employed workers is based on a decentralized system: one national fund that coordinates 29 regional branches and a network of insurers and mutual funds that manage health and maternity insurance benefits. By what fund the self-employed worker is covered depends on the sector, the profession and the form of self-employment (such as micro-entrepreneurs).

### ***Social protection coverage of self-employed***

The social protection is characterised by a plurality of schemes, the scope of which varies across professions. The below outline is by its nature a general overview, not covering all details or exemptions.

#### *Social protection of self-employed, not being micro-entrepreneur*

Self-employed workers' social security contributions are calculated based on their self-employed, non-agricultural earnings that are taken into account for their income tax calculation. The compulsory contributions cover the following risks (the rates depend on earned income (in brackets that vary per covered risk) and type of self-employed):

- Health/maternity (including daily benefits in case of illness) (0-6.5%),
- basic retirement (17.5% for income up to EUR 40,524 and 0.6% for income beyond this amount)
- supplementary retirement (7 or 8 %),
- disability/death (1.3%),
- family benefits (0-3.1), and
- professional training for specific groups (shopkeepers and craftsmen, as of November 2019) (0.25-0.34)

Self-employed workers are not covered for occupational accidents or diseases. They can take voluntary join one of the existing schemes. Unemployment is not covered either, but it is possible to take out a job-loss insurance contract from a private insurance company.

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<sup>8</sup> Décret n° 2018-174 du 9 mars 2018 relatif à la mise en œuvre de la réforme de la protection sociale des travailleurs indépendants prévue par l'article 15 de la loi de financement de la sécurité sociale pour 2018, JORF n°0059 du 11 mars 2018 texte n° 8.

Furthermore, in case of judicial liquidation it is possible for a self-employed to obtain benefits for 6 months (EUR 800).

***Social protection of the micro-entrepreneur.***

The micro-entrepreneur enjoys a more favourable regime when it comes to taxes and social security contributions. In order to profit from this status, the following conditions apply.

- i) The micro-entrepreneur can work as craftsman, shopkeeper, or private-practice professional, either as sole employment (holding only this status) or as supplementary employment (alongside salaried worker, pensioner, student, or another status). Some professions such as lawyers, finance companies, hire companies and estate agents are excluded. People with revenue from royalties can't apply for the status either.
- ii) The yearly turnover may not exceed a certain threshold: EUR 170,000 if the worker is involved in the sale of merchandise, objects, supplies, eat-in or takeaway food, or accommodation and housing services, including furnished tourist accommodations or EUR 70,000 for the provision of commercial services categorized as industrial and commercial profits or as non-commercial profits. In case of a combined sales and contracting business the overall turnover cannot exceed EUR 170,000 including EUR 70,000 in maximum turnover for the provision of services.

Per month or quarter (at the entrepreneurs choice) social security contributions based on the gross turnover for the chosen period is paid, using the following rates:

- 12.8% in sales/resales, eat-in or takeaway food, housing services business, and
- 22% for contracting and private-practice work.

These rates include the full contributions related to compulsory social security coverage for the same risks as described above for the other self-employed: health-maternity (including daily benefits in case of illness), disability-death, basic retirement pension, compulsory supplementary retirement pension and family benefits

Op top of this a corporate social contribution is paid in addition to a professional training contribution: it amounts to 0.10% (for shopkeepers and members of unregulated private-practice professions), 0.20% (for those in regulated private-practice professions), and 0.30% (craftsmen) of turnover.

Contrary to other self-employed, micro-entrepreneurs are not allowed to deduct their expenses from taxes.

***In conclusion:*** Self-employed, including micro-entrepreneurs have a rather extended social protection package including benefits in case of illness and the possibility to take out insurance against loss of work (with private insurance companies), although very complicated. The lack of compulsory insurance for occupational accidents and diseases is a large point of concern.

### **2.1.3 Relevant legal developments in the past decade**

#### ***Act on the modernization of the economy of 4 August 2008<sup>9</sup>***

In this law the concept of an ‘auto-entrepreneur’ (later renamed micro-entrepreneur, a term that will be used in this report) has been introduced as per 1 January 2009. The purpose was to make it easy for everyone to practice a trade or craft as a main or supplementary activity without creating a commercial company to do so. It would increase the entrepreneurship in France and take this type of worker out the informal economy. Often people found it to complicated and to expensive to start a business. Starting as a micro-entrepreneur is relatively easy, no formalities are required nor was it initially required to register with the Chamber of Commerce. The transactional costs to start (or to end) a business are lowered, no minimal capital requirements apply and it is possible to use the home address as business address (which is not allowed for other self-employed). Furthermore, the social security charges and VAT rates are lower and simplified.

The scheme was rather popular from the start, but also received critics. We will highlight the most important points of criticism that has lead to the amendment of the law in 2015. Established artisans saw themselves as facing unfair competition from auto-entrepreneurs. Furthermore, there were concerns that ‘concealed employment has risen with companies putting pressure on individuals to work as auto-entrepreneurs in order to avoid paying their social contributions (see also the paragraph on platform work).

The Act Pinel of 18 June 2014,<sup>10</sup> effective as 1 January 2015 has tried to address this issues by introducing the following changes. All artisan micro-entrepreneurs will be required to register and so are those involved in selling. The registration, that should take place at the respective professional organizations, before only was applicable to artisans for whom their work was their main activity. Furthermore, all micro-entrepreneurs have to provide proof of of professional insurance, in sectors where it is compulsory (notably building sector artisans). The Act Pinel also introduces an optional support scheme for those who reach 50% of the turnover ceiling.

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<sup>9</sup> Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie.

<sup>10</sup> Loi n° 2014-626 du 18 juin 2014 relative à l'artisanat, au commerce et aux très petites entreprises (loi Pinel).



***Act on the modernization of the labour market of 25 June 2008<sup>11</sup>***

Noteworthy is the system of *portage salarial* mostly translated as 'umbrella company' or 'wage portal system'. According to article L.1254-1 and subs. of the French labour code (introduced with the Act on the modernization of the labour market), the goal of the wage portage scheme is to provide the status of 'employee' to a worker who, in practice, is self-employed. This scheme is based on a triangular relationship: the worker has an employment contract with a wage portage scheme company, and the said company has a commercial contract with a client company, which is found by the worker. The worker then provides services to the client company; the client pays the wage portage company, which, in turn, pays a salary to the worker and manages all administrative duties. According to article L.1254-2 of the French labour code, this scheme only applies to highly qualified workers, such as engineers: the employee who has expertise, qualification and autonomy that allow him/her to look for his/her customers himself/herself and to agree with them the conditions to perform his/her service and of his/her price. The worker receives a minimum salary, the amount of which is set by a sectoral collective agreement since March 2017 (Lhernould 2018). Legislative changes in 2015<sup>12</sup> have theoretically opened up the system up for workers with a lower income. From the interviews it became clear that wage portage scheme companies are hardly servicing the lower paid workers. Since the company's fee is a percentage of the wage, this is not an interesting target group for them. This group is mainly serviced by cooperatives that obtain governmental subsidy.

***Career Path Act of 5 September 2018<sup>13</sup>***

Based on the Act on choices in professional future, self-employed (including micro-entrepreneurs) facing the judicial liquidation of their company can be eligible for a monthly benefit of 800 euros for a period of 6 months, provided that their activity has generated a minimum income of EUR 10,000 per year over the last two years preceding the judicial liquidation (applicable as of 1 November 2019).

**2.1.4 Labour market effects of the reforms**

The complexity of the social protection system brings along that it is difficult to compare the contributions and the social benefits of employees and self employed workers. This brings along a barrier for mobility between being an employee or a self-employed. Furthermore it is an obstacle for further convergence of the social protection of both groups (Cahuc, 2018).

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<sup>11</sup> Loi° 2008-596 du 25 juin 2008 portant modernisation du marché du travail, effective as of 1 January 2009.

<sup>12</sup> Decree 2015-380, later ratified through Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels

<sup>13</sup> Loi n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel.

The introduction of the micro-entrepreneur might not have succeeded in its primary aim, to help small businesses to grow, with only around 5% of micro-entrepreneur developing to the extent that they need to change to a different status.

## **2.2 Platform work**

### **2.2.1 General introduction**

In terms of labour law, platform work can be performed by employees of self-employed. Notably the micro-entrepreneur status (see previous paragraph) can be found quite frequently amongst platform workers, mostly in the category professional services (with the EUR 70,000 turnover threshold. In the following paragraph specific legislative initiatives with respect to platform work are described, as is relevant case law.

### **2.2.2 Legislative initiatives**

#### ***El Komhri Act 2016<sup>14</sup>***

France has been relatively quick with the introduction of legislation that aims to strengthen the position of platform workers. In 2016 the El Komhri Act has been adopted and, amongst other things, inserts art. L. 7341 & 7342 in the Labour Code. The first article defines the scope: it applies to 'independent workers in an economically and technically dependent relationship with an online platform'. Other than using the technique of the legal presumption or the extension of rights (par. 2.1.1) the Act introduces specific rules for this group in the part of the labour code that deals with specific rules for certain professions or activities. The reference to self-employed workers is not an endorsement of the classification laid down in contractual terms. The worker can still claim an employee status. The regulation is meant to give protection to those workers who cannot be classified as an employee. Furthermore, art. 242 of the French General Tax Code defines a platform a company that, regardless of its place of establishment, connects remotely and by electronic means, persons for the sale of goods, the carrying out of services or the exchange or the sharing of goods or services.

It follows from the El Khomri Act (art. 60) that Article 60 these platforms have social obligations towards their self-employed workers when these platforms:

- determine the service carried out by the self-employed worker; and
- fix the price of this service.

This social obligations are laid down in art. L7342 Labour Code and in the legal framework that has been further developed in the a circular 2017/256 of 8 June 2017, specifying Decree n°2017-774 of 4 May 2017. This legal framework entered into force on 1 January 2018.

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<sup>14</sup> Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.

Art. L 7342 stipulates the following rights for the platform worker:

- they can benefit from insurance for accidents at work, which is the responsibility of the online platform in question;
- these workers equally have a right to continuing professional training, for which the online platform is responsible;
- they should at their request be provided with a validation of their working experience with the platform, by the online platform;
- they have the right to constitute a trade union, to be a member of a union and to have a union represent their interests; and
- they furthermore have the right to take collective action in defense of their interests. Apart from abuses, such collective action cannot lead them to incur contractual liability, nor can it be used as a reason to discontinue their association with the platform, nor can they be penalized by the platform in another way for such action.

In summary, we can distinguish three themes: (i) coverage for accidents at work, (ii) access to training rights, including validation of working experience and (iii) right to strike and to form a union. If we look at these rights more in detail, the following can be found (based on the labour code, the decree and the circular).

*(i) & (ii) Social contributions of the platform regarding occupational accidents and occupational trainings*

The platform, and not the self-employed worker, will have to pay the insurance contribution for occupational accidents and occupational diseases (article L. 7342-2 Labour Code). This payment by the platform concerns cases in which the worker has concluded an insurance covering the risk of occupational accidents. The worker will first pay the contribution and then ask the platform for a refund of this contribution. The platform is exempted from this obligation if the worker joins a collective insurance contract put in place by the platform (with equivalent guarantees). At this point the position of a platform worker is thus more favorable than that of a 'regular' self-employed person who has no such coverage (as elaborated in paragraph. 2.1.2), but less favorable than the position of an employee who has full coverage.

Similarly, platforms have to refund certain fees for workers who conduct occupational trainings (Article L. 7342-3 Labour Code). The contribution to continued occupational training amounts up to EUR 95 on average per worker, according to the circular. The payment of fees linked to the validation of acquired experience (up to the limit of 3 percent of the annual social security ceiling, i.e. EUR 1,176.84 in 2017 (the annual social security ceiling being fixed at EUR 39,228 in 2017)). In addition, the self-employed platform worker has the possibility to obtain a refund from a self-employed worker training fund. These rules go back to the advice of IGAS in 2016.

These financial obligation of platforms regarding these social rights is only applicable to workers who, through the platform, have earned a turnover exceeding 13 percent of the

annual social security ceiling (i.e. EUR 5,099.64 in 2017). This could lead to a situation where several platforms sometimes are obliged to refund contributions by the same self-employed worker. In this case, the circular specifies that each platform has to proportionately refund the share of turnover achieved by the worker through each of these platforms.

Example: a cyclist concluded an occupational accident insurance and worked via two platforms, earning a turnover of EUR 6,000 with platform A and EUR 5,500 with platform B, the total being EUR 11,500.

The share of the contribution refunded by platform A will be 52 percent and the one of platform B will be 48 percent. Thus, for an annual insurance contribution of EUR 586 paid by the worker, platform A will refund EUR 306 (52 percent of EUR 586) and platform B EUR 280. (LHerould 2018).

#### *Entitlement of workers to collective action*

Art. L. 7342-5 Labour Code states that "*Movements of concerted refusal to provide their services, organized by the workers who have resorted to a platform, with a view to defending their occupational claims may not, unless abused, incur contractual liability or constitute grounds for the breach of their relations with the platforms, nor justify measures which penalize them in the exercise of their activity*".

The circular specifies that these movements do not need to be initiated by a trade union or other organization, and that these movements are not subject to a specific declaration procedure towards the platform. It is required that actions undertaken are:

- of collective dimension, therefore involving at least two platform workers;
- organized, although the requirement in terms of organization should be light, not excluding for instance spontaneous actions;
- related to the defense of 'professional claims';
- taking the shape of non-performance of the service. Therefore, if the law is interpreted strictly, defective or partial performance should not be among the collective actions covered by the law.

This legal basis for the right to strike (or better: being protected in case collective action takes place) is new. Regular self-employed do not have this protection. Non performance of service in that case can be reason for termination.

These workers also have the right to form a trade union (Article L. 7342-6 of the French Labour Code). The rules are the same as for a union section in a company. The union's task is to defend the material and moral interests of the personnel in a given sector namely, if it is affiliated to a representative trade union organization at the national and inter-professional level; or if it meets the following criteria:

- respect of Republican values;

- independence;
- it was constituted at least two years ago;
- its professional and geographical scope covers the platform concerned.

This is in fact a confirmation of the already existing constitutional freedom to create a union, so not actually a new right. Furthermore, the possibilities of such union are limited due to the competition law that hampers self-employed workers from collectively negotiating a price.

***The General Mobility Act of 24 December 2019<sup>15</sup>***

During the parliamentary debate on the Act on choices in professional future of 5 September 2018<sup>16</sup> (see par. 2.1.3) and amendment to the bill was submitted by the member of the parliament, Mr. Taché. This amendment entailed the introduction of a wide margin of maneuver for platforms to determine, on a voluntary basis working conditions and remuneration and to establish a social dialogue in exchange for the guarantee of not having the risk of reclassification of the contract as an employment contract. The amendment was repealed by the Constitutional Council on technical grounds in 2018, but relaunched during the parliamentary debate on the General Mobility Act and has landed in art. L. 7342-9 Labour Code – again with an amendment by the Constitutional council that will be explained later.

Art. L 7342-9 Labour Code stipulate that the platform may establish a charter that defines the terms and conditions of the platforms social responsibility. More precisely, the law provides 8 subjects that should be addressed in this voluntary charter. It should address:

1. The conditions for the exercise of the professional activity of the workers with whom the platform is in contact, in particular the rules according to which they are put in contact with the platform's users as well as the rules that can be implemented to regulate the number of simultaneous connections of workers in order to respond, if necessary, to a low demand for services by users. These rules guarantee the non-exclusive nature of the relationship between the workers and the platform and the freedom for workers to use the platform and to connect or disconnect, without time slots being imposed;
2. the terms and conditions to enable workers to obtain a decent price for their services;
3. the methods for developing the worker's professional skills and securing their professional careers;
4. the measures aimed in particular at (a) improving working conditions, and (b) preventing occupational risks to which workers may be exposed as a result of their activity and damage to third parties;

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<sup>15</sup> LOI n° 2019-1428 du 24 décembre 2019 d'orientation des mobilités.

<sup>16</sup> Loi n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel.

5. the terms and conditions governing the sharing of information and the dialogue between the platform and the workers on the conditions in which the latter exercise their professional activity;
6. the procedures under which workers are informed of any change in the conditions in which they exercise their professional activity;
7. the expected quality of service, the methods by which the platform will monitor the activity and how it is performed, and the circumstances that may lead to the termination of the relationships between the platform and the workers in accordance with the requirements set forth in Article L. 442-1 of the French Commercial Code, as well as the guarantees from which the worker benefits in this case;
8. where applicable, the additional social protection guarantees negotiated by the platform and from which workers may benefit.

The original idea was that in return of this social responsibility the platform will be protected against claims of workers demanding a reclassification of the contract as an employment contract. This has not been accepted by the Constitutional Council in its decision n° 2019-794 DC of 20 December 2019; the Council deemed it not in compliance with art. 34 of the French Constitution. According to the Council the proposed wording in a way delegates the legal classification of the contract to the platforms and that is not allowed. The text of the law now states that the terms and conditions as established in the charter do not bring along a subordination. This leaves it still possible for the worker to claim reclassification (and for the relevant court to reclassify). The academic and political debate on this is still ongoing and new legislative attempts will be made to further regulate the position of platform workers.

Two relevant points of criticism on this Act are that in fact it does not give the platform workers hard rights: it is at the discretion of the platform whether or not a charter will be put in place. Secondly if charters are put in place, it might give platform workers a more favorable position than other self-employed workers that might be at the same level of precariousness.

### ***Working group on new regulation of 'the digital'***

The French government has established a working group that has as a mission to advise on new rules regarding the digital world, including the position of workers. The working group is part of the National Digital Council<sup>17</sup> and is established mid 2018 and will deliver its findings mid 2020.

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<sup>17</sup> <https://cnumerique.fr/index.php/le-conseil>.

### 2.2.3 Case Law

In France there have been several court cases at the level of first instance or appeal with respect to the position of platform workers. Some proceedings are conducted before a commercial court, others before an administrative court, criminal court or before the 'conseil de prud'hommes', the French court that deals with employment law cases. This obviously depends on the type of dispute. We will focus on the landmark classification case within the research period: French Supreme Court 28 November 2018 (*Take Eat Easy*).<sup>18</sup>

Take Eat Easy is a food delivery company that uses a digital platform and an online application to connect restaurants, customers and delivery riders. Similar to most other food delivery platforms, riders carried out their activity under a self-employed status. The contract between rider and platform was classified as a services agreement. One of the delivery riders initiated proceedings before the Labor Court to seek the reclassification of his contractual relationship as an employer-employee relationship. His claim was not awarded by the Paris Labor Court of Appeal dismissed his claim, but the Supreme court upheld the claim. In order to respond to the question as to whether the existence of an employment relationship was established, it founded its reasoning on an standard legal basis: it actually merely applied the fundamental basic principles of its case-law, no more, no less (see also paragraph 2.1.1). The Supreme Court first recalled that "the existence of an employment relationship does neither depend on the will expressed by the parties nor on the designation that the parties have given to their agreement; it depends on the factual circumstances in which the workers exercise their activity". Therefore, the qualification given by the parties to their agreement and the jargon/terminology that may be used are totally irrelevant. The actual conditions in which the agreement is performed matter, not what is put on paper. The Supreme Court that continues that the relationship of subordination (the determining factor to assess whether a work relationship is an employer-employee relationship) is characterized by the powers of direction, control and sanction. In other words, in order to determine whether an agreement can be reclassified as an employment contract, it is necessary to analyze if the conditions in which the activity is exercised allow to determine that a power of control, direction and sanction is exercised by the platform operator.

The Supreme Court takes the following two facts and circumstances in account:

- The application includes a geo-tracking system which enabled the company to monitor the delivery rider's position in real time and to record the total number of kilometers travelled, which likely characterized a power of direction and control by Take Eat Easy.

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<sup>18</sup> Labor Chamber of the Cour de Cassation, November 28, 2018, n° 17-20.079.

- The platform furthermore has a power of sanction, revealed through a system of bonuses and penalties attributed to the worker in case he failed to fulfill his contractual obligations.

It is this system of sanctions that is deemed the determining criterion and reveals alone the relationship of subordination, to the extent that it enables the platform operator to unilaterally terminate the contract without the intervention of a court, similar to a dismissal.

Other elements, that at the previous instances led to the conclusion that the worker was self-employed did not outweigh these to circumstances in the Supreme Courts decision. It concerned in particular the fact that the worker remained free to choose the working days, the number of working days and the time slots during which he wished to work, and that he was not bound by any exclusivity or non-compete covenant – were absolutely irrelevant.

Although the reclassification might be seen as a pyrrhic victory for the riders since the platform was wound up, it has been relevant for practice. Similar platforms that had similar mechanisms of control have amended them.

## **2.3 Short-term contracts**

### **2.3.1 Introduction**

As in many jurisdictions the France legal system distinguishes between fixed-term contracts (“contrat à durée déterminée” or “CDD”) and contracts for an indefinite period of time (“contrat à durée indéterminée” or “CDI”). A different type of contract is the temporary employment contract (“contrat de travail temporaire” or “CTT”) that is concluded for a specific task, but contrary to the CDD, the employee is not hired by the employer but by a temporary agency. The latter type will not be further discussed in this report.

A fixed-term contract cannot have the purpose or effect of permanently filling a post linked to the company's normal and permanent activity, and may only be used for the performance of a specific, temporary task (article L1242-1 Labour Code). The French Labour Code provides a legal framework that prescribes what reasons there can be to conclude a fixed-term contract as well as rules regarding duration, renewal and compensation.

The general legal framework for fixed term contracts summarizes as follows: First of all, a fixed- term contract can be only be used in the event of a replacement, a temporary increase in the company's activity, or as part of activities that are temporary in nature. Secondly, in the absence of a collective labour agreement, a fixed-term contract may not exceed 18 months in length. During this period, the contract may be renewed only twice



(i.e. three successive contracts), and companies adhere to a waiting period between these contracts (leaving aside some exceptions). Thirdly, if a fixed-term contract is not converted into an open-ended contract, a bonus is due at the end of the contract. Generally, the amount is set at 10% of the total gross compensation paid to the employee during the contract. This amount can be reduced by collective agreements if the employer offers other forms of compensation to the employee, particularly special access to vocational training.

### **2.3.2 CDDU**

A particularly flexible form of employment is a specific type of a fixed-term contract, the fixed-term contract in case of custom ("contrat à durée déterminée d'usage" or CDDU). This contract is not subject to length and renewal limits or waiting periods, nor is the bonus at the end of the contract due (unless stipulated otherwise in a collective labor agreement). The sectors that may use the CDDU are defined by decree (there are 30 sectors, article D1242-1 Labour Code) or by extended collective bargaining agreements. It concerns sectors in which it is "established practice not to use an open-ended employment contract because of the nature of the activity carried out and the temporary nature of these jobs". Important sectors are the residential care service, the social action sector and hospitality. Other sectors that frequently use very short term contracts are the cultural sector including media and entertainment.

There are three conditions for the use of a CDDU if a sector has been defined by decree or by extended collective bargaining agreement (articles L. 1242-1, L. 1242-2, L. 1244-1 and D. 1242-1 Labour Code):

1. It has to be common practice not to resort to a contract for an indefinite period for certain jobs within the sector, due to the nature of the activity
2. The employment is by its nature temporary, and
3. Successive use of the CDDU has to be justified by objective reasons that consists of concrete elements (if that is not the case, the court can reclassify the contract to a contract for an indefinite period of time)

There are some formal rules, of which the main rule is that the contract has to be in writing. Furthermore, the contract has to establish amongst others, the applicable collective labor agreement, the salary, the work place, the duration of any trial period. If any of these requirements are not met, the contract is assumed to be a contract for an indefinite period of time.

### **2.3.3 Legislative changes**

#### ***Regulatory initiatives that might have encouraged the use of CDDU***

The growth in short-term contracts may be linked to sector-specific production and organizational constraints, as well as to regulatory and legal changes. However, due to the lack of studies on the factors behind this increase, it is difficult to establish cause-and-

effect relationships (Bornstein & Perdrizet 2019). We nevertheless describe some regulatory changes that might have been of influence.

First of all, the national plan to combat illegal work rolled out in 2004-2005 transformed a lot of undeclared jobs to declared work – most of the jobs being very short term contracts. This concerns mostly the residential care services and social actions sector as well as hospitality. This combined with the cuts to employer contributions for low-wage jobs introduced in the late nineties and the tax breaks for personal services since 2000 could have led to an increase in very short term contract (Coquet B. & Heyer, E., 2018).

Furthermore, it can be argued that the method of calculating unemployment benefits, based on a daily rather than a monthly salary encourages the use of a series of very short term contracts (Bornstein, A. & Perdrizet, W. 2019).

Important is also that between 2003 and 2008 the role of the courts in reclassifying CDDU's as a contract for an indefinite period of time was diminished. The courts only had to verify whether the company belonged to one of the sectors in which a CDDU was authorized. It was not necessary to check the temporary nature of the employment. This has presumably also led to an increase of the number of very short term contracts. In other words, companies profited from unclarity and lack of enforcement (Jaouen V. & Marie E. 2015).

### ***Regulatory initiatives to push back the use of these contracts***

The introduction of temporary permanent contracts might foresee in the need for short-term labour force. This contract creates an open-ended contract between an temporary employment agency and an employee for the performance of successive assignments (with a third party). In between the assignments the agency provides the employee with a compensation. This figure has its origin in the branch agreement of 10 July 2013 and is enshrined, eventually, in the Career Path Act.<sup>19</sup> In the same act it is made possible for a company to replace several absent employees under a single fixed-term or temporary contract (that was not possible before).

Another important change in the Career Path Act is that social partners are invited to change regulations governing unemployment insurance. The expectation that it will curb the 'permanent-intermittant' situations. Furthermore more far reaching possibilities to modify the employers' unemployment insurance contributions. This would lead to an internalization of the costs instead of having the public unemployment benefit funds bear the costs.

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<sup>19</sup> Loi n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel.

### 3 Position and role of the social partners on new forms of employment

#### 3.1 Self-employment

In France, there is a strong legal framework when it comes to establishing trade unions. If self-employed wish to join their forces this is a very lengthy trajectory (and of course having the same issues as in other Member states with competition law). However, there are self-employed that are employee by presumption (see 2.1.1) such as journalists and those who work in the creative arts as well as self-employed that work for via the wage portal system (2.1.3) who can fall within the scope of a collective labour agreement.

For the journalists and the creative artists national collective agreements are in place and extended by the government. The agreements include a wide variety of subjects including provisions on pay and are in place as of 2008. The collective agreement for the wage portal workers is more recently concluded and extended in the same year 2017. This agreement contains a minimum rate of around EUR 2,000 per month for a full time worker, plus a 5% addition for preparatory work as well as a right to annual leave. It is noteworthy that an additional 10% of salary is paid into an account that can be used by the worker if they have no work. There are ongoing discussions on other elements such as health and safety (Fulton 2018).

It has become clear from the interviews as well as literature (Fulton 2018) that the first to categories (journalists and creative artists) are often pressured to act as micro-entrepreneurs, although they have an employee status by law. We haven't found the same results for those working via a wage portal company, but their position is often different giving that in general the workers are more at the high end of the labour market (see 2.1.3).

A part from these three groups who have a rather clear position, the representation of self-employed through social partners has mixed features. First of all they can be affiliated with unions or they can be member of representatives of employers (if they have staff of their own). Secondly, there are different types of organizations that represent self-employed. We can find on the one hand organizations that function as service organizations (such as *L'union des auto-entrepreneurs et des travailleurs indépendants* and *Fédération des Auto-Entrepreneurs, FEDAE*) and on the other hand associations that negotiate and claim rights and act more as trade unions, but in fact are more like employers organizations. Examples of the latter: the French National Union of Liberal Professions (*Union Nationale des Professions Libérales, UNAPL*) and the French Inter-Union Defence Confederation and National Union of the Self-Employed (*Confédération intersyndicale de défense et d'union nationale des travailleurs indépendants, CID-UNATI*) are, in fact, employer organizations. Some structures have emerged to defend the interests of micro-entrepreneurs, such as the French Federation of Micro-Entrepreneurs

(Fédération des Auto-Entrepreneurs, FEDAE). Furthermore, classic trade unions, such as *CFDT* welcome self-employed as members or even create specific branches for them.

On the side of the self-employed, there are mixed feelings when it comes to the question of trade unions. Some of them consider themselves as ‘true entrepreneurs’ and are only interested in services that can be provided. Others do feel the need for representation. From an employer’s representations perspective, self-employed are sometimes perceived as competitors. This is even more terse within the platform work.

The interviews also brought to light that the essence of the micro-entrepreneurship scheme actually does not promote entrepreneurship. Well-acknowledged entrepreneurial values such as growth, innovation, research & development are not stimulated by the scheme itself, it rather creates ‘independent employment’. This has also been pointed out by Arreola e.a. 2017.

### **3.2 Platform work**

First of all, the same issues that have been raised in par. 3.1 regarding self-employment also play a role when it comes to platform workers since most of them also work as self-employed (either correctly classified or not). On top of that other issues play a role when it comes to the social dialogue regarding platform work that we will elaborate upon below.

#### ***Not well organized***

Both workers and platforms appear to have no natural desire to organize themselves. Platforms are not always welcome at regular employers organizations and not always keen to team up with competitors. They also fear the reclassification once they start acting as employers by entering into social dialogue. In general it concerns young companies or startups that are by its nature not very enthusiastic about the traditional structures. The workers often don’t know each other and typically don’t share a work place. Combined with their weak position and sometimes geographic dispersion, there is not a very fruitful starting position for collectivity. Another important aspect is that in the platform economy the variety in sectors and the variety in dependency are large, which doesn’t promote organizing collectivity. Nevertheless, there are some interesting initiatives.

#### ***Several initiatives***

First of all some traditional trade unions are, after a hesitant start, active in reaching out to platform workers. Union initiatives mainly concern the organization of platform workers and the development of services for workers. Some unions welcome them as

members and other create specific branches. UNSA<sup>20</sup> has for example created a specific branch aiming at Uber drivers. Another initiative regarding Uber-drivers is SCP-VTC,<sup>21</sup> an organization aiming to defend the interest of Uber drivers. CGT<sup>22</sup> stimulates local unions, noteworthy is the bike courier union of CGT in Bordeaux. The Federation 3c, one the divisions of the largest French trade unions CFDT,<sup>23</sup> that is involved in various branches (postal services, distribution, telecom, culture, media, sport) have launched an association for platform workers. Next to these initiatives, there are more informal initiatives such as facebook groups or groups that find each other via other social media (e.g. [Collectif#PETT](#) or la [communauté solidaire de chauffeur indépendant VTC](#)).

There has been a strong lobby from platform companies that have teamed up at the initiative of the government who could not turn to usual social partners because the platform companies are not consistently represented in employers' organizations. So instead of organizing themselves along the lines of the traditional social dialogue, platforms do work together, but via lobby.

Finally, there is a wide variety of working groups, think tanks and other groups that collect information on platform work and also perform research or formulate policy options. Some of them are initiated or endorsed by the government such as the *Working group on new regulation of 'the digital'* (mentioned in par. 2.2.2) or by business associations (e.g. *l'Observatoire de l'ubérisation*). Noteworthy is also the 'Sharers and Workers' initiative, founded by IRES (a non-profit organization run by trade-unions) and ASTREES (an interdisciplinary organization).

### ***Comments & observations from social partners regarding regulation on platforms***

Employers organizations seem not very interested in platform work, the perception on platform work differs. MEDEF,<sup>24</sup> one of the large French employers organizations, see platforms as an opportunity to create jobs on the one hand but fear unfair competition on the other hand. This has also been raised by FFB,<sup>25</sup> an employer's organization in construction.

Trade unions focus mainly on the precariousness and the threat of erosion of the employee protection. They point out that this new way of working thrives on the 'myth' of freedom and work autonomy. In the debate around the 'charter'(see par. 2.2.2) unions, e.g. Force Ouvrière has stressed that the priority should be to allow workers to benefit

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<sup>20</sup> Union nationale des syndicats autonomes.

<sup>21</sup> Syndicats des chauffeurs privé-rtc

<sup>22</sup> Confédération générale du travail.

<sup>23</sup> Confédération française démocratique du travail.

<sup>24</sup> Mouvement des Entreprises de France.

<sup>25</sup> Fédération Française du Bâtiment.

from a real employment framework - either independent or salaried worker - which provides concrete protections, instead of leaving them in a grey zone.

The reaction on the charter, the most far-reaching legislative initiative, is mixed. The protagonist (mainly the platforms themselves) state that it creates the possibility for platforms to offer certain terms and conditions (such as insurance) whilst the risk on reclassification is mitigated. Antagonists (mainly platform workers and unions) point out that it is undesirable that the responsibility for social protection is put in the hands of commercial companies. They also mention that the unilateral character of the charter implies that there is no dialogue or negotiation (although the final wording of the act includes that consultation takes place). The permissive, facultative character of the charter is also criticized. Remarkable is that some platform workers find it a violation of their entrepreneurship: terms and conditions are set by them, not by the other party (this is a minority).

### **3.3 Short-term contracts**

The high turnover of (very) short-term contracts, which open access to unemployment benefits, weighs significantly on the overall unemployment benefit budgetary balance. This is one of the reasons why the discussions about these contracts have been an important source of tension between trade unions and employers' organizations. All unions were in favour of these contracts being subject to a higher rate of employers' contributions whereas employers were against this as they wanted to avoid a situation where the contributions rate would vary according to the duration of the contract (Bonnand 2017).

The trade unions Force Ouvrière, CFDT and CGT have been consistently negative on the use (or abuse) of these contracts, especially when workers are forced to stay in those contracts for longer periods. Employers' organizations have very few incentives to work on changing the existing system, which brings along a deadlock situation that was still there at the end of the reference period of this research.

## 4 Conclusions

*In the light of the growth of new forms of employment, what are, according to different stakeholders (legislator-policy makers, social partners, other associations), the most important challenges for the labour market and the regulatory framework?*

The challenges regarding self-employed workers and platform workers are converging and intertwined. First of all, the growth of new forms of employment can easily lead to a dichotomy between well protected employees on the one hand and more precarious workers with a different legal status on the other hand. Also within the group of self-employed a division can occur: the more traditional self-employed versus the new self-employed. The social protection system being strongly fragmented and partly organized along the lines of professions might lead to an enforced solidarity amongst professions to the detriment of newcomers.

Although social protection for different groups (employees and non-employees) is converging, a large point of concern is the lack of compulsory protection for self-employed and platform workers when it comes to occupational accidents and diseases. Another challenge is the complexity of the system. A huge disadvantage is that because of the complexity, workers are not always aware of their rights and, secondly, it hampers the development of hybrid workers or workers that change from employed to self-employed and vice versa.

For platforms the debate has more specifically been dominated by the following questions/challenges:

- (i) do platform workers have decent working conditions and pay,
- (ii) is the 'employee model' threatened,
- (iii) is platform work becoming a typical way of accessing the job market,
- (iv) will platform work become a form of activity tailored to certain population groups such as students and retirees and
- (v) is the principle of fair competition between traditional operators and platforms being respected.

*How has regulation attempted to affect (perceived) changes of the labour market, i.e. the growth of flexible work forms?*

Taking into account the different initiatives with respect to self-employed workers and platform workers we would conclude that legislation is focusing on increasing social protection of these workers outside the system that is in place for regular employees in order to take away the pressure on the classification. Furthermore, there is a tendency on converging the social protection systems of employees and self-employed.

This is slightly different for the very short term contracts. These contracts are part of the existing system. The corrective measures that are taken aim at discouraging employers to make use of these contracts.

*How are social partners' initiatives trying to affect (perceived) changes of the labour market, i.e. the growth of flexible work forms?*

*How are traditional industrial relations actors (trade unions in particular) adapting to the changing profile of workers (as potential members) and to the needs of workers in new forms of employment?*

It seems that social partners are adapting really slowly to the new world and are mainly focusing on formal and organizational aspects (such as representativity). The French system brings along that if issues are not tackled by social partners, the government steps in. Since the social dialogue in the platform economy has not really took off, legislation is provided for. The most interesting finding is that it seems that through lobbying, companies have found a non traditional way of influencing the process. Workers (and their representatives) on the other hand seem to invest more in influencing the public opinion, research and gathering data.

*Has regulation and/or social dialogue outcomes been successful in its goals? I.e.: to curb/change labour market developments/improve the labour and social protection of workers in new forms of employment etc.*

With respect to the very short term contract the conclusion is that measures have not succeeded in pushing back the use of these contracts and the position of the workers remain precarious.

When it comes to the self-employed, especially the micro-entrepreneur, a conclusion might be that it caused an increase in entrepreneurs, but not the innovative and growing type of enterprises that were envisaged. Also because of the rise of the platform economy the figure of the micro-entrepreneurs seems to lead to 'independent employees', more than to entrepreneurs.



## 5 Literature

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