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## **NEW EMPLOYMENT FORMS AND CHALLENGES TO INDUSTRIAL RELATIONS – NEWEFIN**

### **Policy brief France**

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## 1. Introduction/relevance

The reference period for the research on which this policy brief is based is 2007-2018. Research and interviews were completed in August 2019 and later developments or data are only included on an incidental basis. 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.

The research focuses on self-employment, platform work and the increased use of very short-term contracts that offer employers a lot of flexibility, but obviously provide very few advantages for workers. The increase of self-employed workers, the rise of platform work and the renewed popularity of the short-term contracts is taking place against the backdrop of a labour market that was struggling during the reference period for this research. The 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 have restructured the social dialogue and engaged a reform in unemployment benefits, but the challenges remain.

### *Self-employment*

According to Eurostat data, the self-employment rate in France (as a percentage of the total working population) showed an increase in the reference period. In 2009, 10.2% of the working population was self-employed, while in 2018 it was 11%. This is not an historically high rate - in the 1970s it was roughly 20%. However, these self-employed were mainly working in agriculture, whereas currently the majority work in construction and services. The creation of the statute of *auto-entrepreneur* (or *micro-entrepreneur*) might have had a positive effect on this growth. Self-employment also has accounted for a large share of job creation since the beginning of the 2000s. Between 2001 and 2015, self-employment accounted 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) was almost double the growth in paid employment. Within the group of self-employed, the auto-entrepreneurs represented an increasing proportion as of 2009. The research has focused on this type of self-employed worker.

### *Platform work*

Platform work has also seen a rise in France. 80% of the platforms in France have been created since 2008, the start of the research period. Reliable statistical evidence on platform work in France is scarce. According to IGAS, the total amount of transactions between platform workers and final clients had a value of EUR 1.6 billion in 2015 (covering 100 active platforms in France). Based on the volume of business generated by the platforms and on data, there were more than 200,000 workers involved in France (excluding second-hand sales and accommodation platforms). More recently, IRES concluded that 7% of self-employed workers and 0.8% of employees are using platforms for work (the authors point out a risk of overestimation). The relationship with more traditional companies is interesting. In some

cases, platforms are competitors; sometimes they are created by traditional businesses (Yoss, launched by Adecco) or taken over by them (Stuart by La Poste); and in other situations a close collaboration arises between traditional companies and platforms. The platform Frizbiz (home improvement) for example works in close collaboration with LeroyMerlin, a large do-it-yourself retail company.

#### *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 of less than one month. Whereas other countries might use zero-hour contracts or other flexible forms of work, in France these very short-term contracts are used. 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 of moving towards stable employment and greater 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 have also contributed.

## **2. Legal framework and legislative initiatives on new forms of employment**

#### *Self-employment*

France has a binary division between employees and the self-employed, with the main distinction being subordination. There is no intermediate category of workers. However, the scope of labour law can be extended. As well as the possibility of reclassification of the employment relationship by the court (from self-employed to employee), there are two legal methods for extending the scope of labour law to those workers for whom the subordination can be difficult to establish: the legal presumption of an employment contract (for certain professions) and the extension of rights: some independent workers are covered by part of the Labour Code.

Social protection for the self-employed is based on social security law and is characterised by a plurality of schemes, the scope of which varies across professions. The complexity of the legislation is considered problematic, amongst others by the OECD. The self-employed are covered for risks regarding health/maternity (including daily benefits in case of illness), basic retirement, supplementary retirement, disability/death, family benefits and professional training for specific groups (shopkeepers and craftsmen). The compulsory contributions are calculated on the basis of their self-employed, non-agricultural earnings that are taken into account for their income tax calculation. The rates depend on earned income (in brackets that vary per risk covered). Self-employed workers are not covered for occupational accidents or diseases. They can voluntarily 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.

For auto-entrepreneurs, the system works differently. Social security contributions are based on the gross turnover per month or quarter, 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.

To qualify as an auto-entrepreneur, there is a turnover threshold of EUR 170,000 (sale, eat-in or take-away food, housing services) or EUR 70,000 (commercial services).

Three legislative initiatives have been important. First of all, the concept of auto-entrepreneur was introduced in the Act on the modernisation of the economy (2008). The scheme was popular from the start and might have contributed to the rise of the self-employed. Secondly, the Act on the modernisation of the labour market (2008) introduced the 'wage portal system'. This system allows workers who are in fact self-employed to have the status of employee via a triangular relationship system. Although open for all salary levels as of 2015, this is mainly used by highly qualified and paid workers. Thirdly, under the Career Path Act (2008), the self-employed (including micro-entrepreneurs) who are facing the judicial liquidation of their company can be eligible for a monthly benefit of EUR 800 for a period of 6 months, provided that their activity has generated a minimum income of EUR 10,000 per year.

#### *Platform work*

With respect to platform work, there have been three noteworthy legal developments. First of all, the El Komhri Act (2016) offers protection of platform workers in three areas: (i) coverage for accidents at work, (ii) access to training rights, including validation of work experience and (iii) right to strike and to form a union. The first topic places platform workers in a more favourable position than regular self-employed workers, who do not have this coverage. The third one is merely a confirmation of the existing constitutional right to form a union, but new in relation to the protection against dismissal in case of a strike.

The General Mobility Act (2019) introduced the long debated 'charter' for platform workers. Platforms may establish a charter that defines the terms and conditions of the platform's social responsibility. The Act provides eight subjects that should be addressed, varying from enabling the workers to obtain a decent price, ways of working on their skills and preventing occupational risks. The interesting part is that the Act stipulates that the terms and conditions established in the charter do not entail subordination. Originally, the aim was to stipulate that if a charter was in place, reclassification could not be claimed. This has not been accepted by the Constitutional Council. Now, reclassification can still occur, but the charter itself is not enough to state that there is subordination (and thus an employment contract).

The third relevant development is the Supreme Court ruling of 28 November 2008 regarding the platform Take Eat Easy. The Supreme Court ruled that the delivery rider was not self-employed but an employee. The court judged that there was a subordinated relationship because (i) a geo-tracking system was used that enabled the platform to monitor the rider's position in real time and record the number of kilometres and (ii) the platform has a power to

sanction via bonuses and penalties. This was enough to accept subordination. Other elements, such as 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 did not outweigh the first two circumstances mentioned.

*Very short term contracts: CDDU*

This particular type of fixed-term contract is not subject to length and renewal limits nor is there a bonus due at the end of the contract (unlike the normal rules for fixed term contracts). The CDDU contracts may only be used in branches that are identified by decree or extended collective labour agreement. Furthermore, three conditions must be fulfilled: (i) it has to be common practice not to give a contract for an indefinite period for certain jobs within the sector, due to the nature of the activity (ii) the employment is by its nature temporary, and (iii) successive use of the CDDU has to be justified by objective reasons that consist of concrete elements (if that is not the case, the court can reclassify the contract as a contract for an indefinite period of time).

The use of these contracts might have been influenced by tax reforms in 2004-2005, including cuts in contributions for low-waged jobs and tax breaks for personal services since 2000. Also, the calculation method for unemployment benefits (based on a daily rather than monthly salary) might have encouraged the series of very short-term contracts. Another explanation for the rise in these contracts can be that the role of the courts in reclassifying CDDUs as contracts for an indefinite period of time was diminished in 2003 and 2008. The courts only had to verify whether the company belonged to one of the sectors in which a CDDU was authorised. It was not necessary to check the other two criteria.

Two initiatives might push back the use of these contracts. First of all, the introduction of temporary permanent contracts between a temporary employment agency and an employee for the performance of successive assignments (with a third party). This concept has its origins in the branch agreement of 10 July 2013 and is enshrined in the Career Path Act. The same Act makes it possible for a company to replace several absent employees under a single fixed-term or temporary contract (which was not possible before). Secondly, also based on the Career Path Act, social partners are invited to change regulations governing unemployment insurance using far-reaching options for modifying employers' unemployment insurance contributions. This would lead to an internalisation of the costs instead of having the public unemployment benefit funds bear the costs.

### **3. Social partners' responses to new forms of employment**

*Self-employed*

The self-employed who are employees by presumption can be represented by trade unions and fall within the scope of collective labour agreements. Often they are pushed into the structure of auto-entrepreneur to avoid this. For other self-employed people, there are different difficulties. Of course, competition law precludes them from concluding collective agreements, but the representation of the self-employed through social partners also has mixed features. They can be affiliated with unions or they can be members of representatives of employers.

There are different types of organisations that represent the self-employed, varying from service organisations to associations that negotiate and claim rights and act more as trade unions, but are in fact more like employers' organisations. Some structures have emerged to defend the interests of micro-entrepreneurs. Some classic trade unions welcome the self-employed as members or even create specific branches for them.

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'.

The social partners' response to self-employment mainly circles around the representation issues and displacement of employees by auto-entrepreneurs. Furthermore, the lack of compulsory insurance for occupational accidents and diseases is a major point of concern.

#### *Platform work*

With respect to platform work, there are similar issues around representation and organization as for the self-employed, including the cultural component: platforms are often young companies that are by their nature not very keen on traditional structures. The workforce is also very diverse and dispersed, which hampers the organisation of collective action.

Employers' organisations seem not to be very interested in platform work and the perception of platform work varies. MEDEF, one of the large French employers' organisations, sees platforms as an opportunity to create jobs on the one hand but fears unfair competition on the other hand. This has also been raised by FFB, an employers' organisation in the construction sector. Trade unions focus mainly on the precarious nature and the threat of erosion of 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' unions, Force Ouvrière for instance has stressed that the priority should be to allow workers to benefit from a real employment framework - either as an independent or a salaried worker - which provides concrete protections, instead of leaving them in a grey zone.

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

The reaction to the charter, the most radical legislative initiative, is mixed. Protagonists (mainly the platforms themselves) state that it creates the possibility for platforms to offer certain terms and conditions (such as insurance) whilst the risk of reclassification is mitigated. Antagonists (mainly platform workers and unions) point out that is undesirable for the responsibility for social protection to be put into 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 there should be consultation). The permissive, facultative character of the charter is also criticised. Remarkably, some

platform workers find it a violation of their entrepreneurship: terms and conditions are set by them, not by the other party (they are in the minority).

#### *Short term contracts*

The high turnover of (very) short-term contracts, which allow access to unemployment benefits, weighs significantly in the overall unemployment benefit budgetary balance. This is one of the reasons why the discussions about these contracts have been a significant source of tension between trade unions and employers' organisations. 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.

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 these contracts for longer periods. Employers' organisations have very little incentive to work on changing the existing system, which has brought about a deadlock situation that was still in place at the end of the reference period for this research.

## **4. Conclusions**

The challenges regarding self-employed workers and platform workers are converging and intertwined. First of all, the growth in 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. A division can also arise within the group of the self-employed: the more traditional self-employed versus the new self-employed. The social protection system being strongly fragmented and partly organised 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 major point of concern is the lack of compulsory protection for the 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 and challenges:

- i. do platform workers have decent working conditions and pay?;
- ii. is the 'employee model' under threat?;
- 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?

Taking into account the different initiatives with respect to self-employed workers and platform workers, we would conclude that legislation is focusing on increasing the social protection of these workers outside the system that is in place for regular employees in order to alleviate the pressure on the classification. Furthermore, there is a tendency to have convergence between the social protection systems for employees and the 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 being taken aim to discourage employers from using these contracts.

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

With respect to the very short-term contract, the conclusion is that measures have not succeeded in suppressing 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 has led to 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 concept of the micro-entrepreneur seems to be leading to 'independent employees' rather than entrepreneurs.