

**OSH of self-employed  
Legal developments in France**

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# Creation of « micro-entrepreneurs » status

- The « micro-entrepreneurs » status has been defined by different Acts in 1994 – 2009 – 2014
- Since adoption of the Act of 18 June 2014, platform workers have the status of « micro-entrepreneurs », which is a simplified tax and social security regime (the target was the workers setting up in business and wanting to test their ability to run a business).
- « micro-entrepreneurs » are independent workers so they don't have the same social protection:
  - No paid leave
  - No unemployment insurance
  - No OSH insurance
  - No prevention frame (system and actors)

# Disputes on the classification of platform workers

- In France, the Court of Cassation (upper French court) established in 1996 that the subordination factor was to become the main criterion distinguishing an employment contract.
- The legal presumption of a non-salaried work relationship can be destroyed when it is established that workers are in a relationship of permanent legal subordination.
- The choice of micro-entrepreneur status is imposed to the workers by the platforms whose business model is based on outsourcing the work risk.
  - ⇒ No OSH obligation
- ⇒ But platform workers are deprived of the distinctive prerogatives of an entrepreneur: setting prices, terms and conditions of service provision.

## El Khomri Act, (August 8th 2016)

- Introduction of a new regime based on the corporate social responsibility of the organisation (the platform) and not on its statutory responsibility as an employer.
- Platform workers are self-employed but with collective rights very similar to those of employees:
  - Right to collective action (including strikes)
  - Freedom of association
  - Right to collective bargaining with no risk to be considered as a coalition / cartel
- Introduce the possibility of a work related accidents private insurance.

## Court decisions

- November 28th 2018: the Court of Cassation decided the reclassification of the agreement between a worker and a platform (*Take eat easy*) as an employment contract.
  - The app had a geolocation system allowing the platform to track and record the rider's movements
  - The company had the power to apply sanctions to the rider
  - ⇒ Subordination
- January 10th 2019: the Court of Appeal of Paris decided the reclassification of the relationship between a driver and *Uber*.
  - Uber is organizing all the service and defines prices
  - ⇒ Subordination

## Answer of the legislator

- LOM (Mobility orientation Act) December 24th 2019: only for mobility platforms (i.e.: *Uber, Deliveroo...*)
- Provides new rights to platforms workers (i.e.: possibility to refuse a ride without penalty)
- Enables platforms to establish a charter setting forth the terms for exercising their corporate social responsibility (including a work accident prevention policy).
- Stipulates that the establishment of the charter, if this one is approved by the administration, cannot characterise the existence of a legal subordinate relationship between the platform and the workers.

**=> The Constitutional Court decided that this last point wasn't constitutional**

## Last decision

- Industrial tribunal (Conseil de Prud'hommes) of Paris February 4th 2020, *Deliveroo* is sentenced for undeclared work.
  - Geolocation + power of sanction = legal subordination => reclassification in an employment contract
  - Voluntary avoids the legal obligations linked with the recruitment of an employee (remuneration statements, taxes...) => compensation, 19 K€
- *Deliveroo* reaction:
  - From the beginning of this procedure (2015) the rules of the app changed
  - Might appeal against this decision

## Other expected decisions

- A lot of cases waiting for a judgment
  - Dozens of riders asking for the reclassification of their contract
  - Social security contribution collection office (URSSAF)
  - Labor inspection against Deliveroo



## Last decisions in other countries

- Spain : Tribunal superior de justicia de Madrid (TSJM), January 23th 2020, reclassification of the contracts of 532 *Deliveroo* riders.
- Italia : Court of Cassation, January 24th 2020, same decision for 5 *Foodora* riders.
- Belgium, Netherlands, UK...
- California AB 5 Act entered into force since January 1st 2020.
  - Legal definition of an independant worker (ABC test)
  - A lot of *Uber* and *Lyft* drivers must be considered as employees
  - Impact on stock exchange

# ETUI working paper

- *The platform economy and social law: Key issues in comparative perspective*, Isabelle Daugareilh (University of Bordeaux), Christophe Degryse and Philippe Pochet (ETUI)
- Complementary approach: social & legal
  - Section 1: Technological disruption, social dereliction?
    - > link between technological innovation, the transformation of business (and management) models and the evolution of work
  - Section 2: A comparative legal approach
    - > Comparative legal approach to the platform economy and the questions it raises in terms of social legislation in ten countries: Austria, Belgium, France, Italy, the Netherlands, Romania, Spain, Switzerland, the United Kingdom and the United States
- Find the working paper (English & French) :
  - <https://www.etui.org/Publications2/Working-Papers/The-platform-economy-and-social-law-Key-issues-in-comparative-perspective>

# Conclusion

- Platforms are trying to use the gaps and ambiguities in social legislation to conclude to an interpretation in which their business model abrogates all social responsibility towards those working for them.
- Looked at from a social perspective, technology cannot be analyzed on its own. This always has to be done in conjunction with the business model that uses it.
- Convergence in case-law but different positions of legislators (i.e.: California & France).
- Platforms' business model not yet stabilized.
- In France only 1% of workers are concerned.