



DON'T GIG UP



FRANCE

Case Study Report

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NOVEMBER 2019



This report was produced for the Don't GIG Up! project, which received funding under the call for proposals VP/2017/004 of the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission. The opinions expressed in this report reflect only the author's view. The European Commission is not responsible for any use that can be made of the information contained therein.

INTRODUCTION

This paper is one of the Country Case Study Reports of the ‘Don’t GIG up!’ project, co-funded by the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission, and aimed at improving expertise and knowledge on the role unions and social dialogue can play with regard to the protection of gig workers.

Running for 24 months (from February 2018 to January 2020), the project combines studies and action research to analyse features and challenges of the gig economy in a set of selected countries, namely: Germany, France, Italy, Poland, Spain, and Sweden.

The first phase of the action was dedicated to the drafting of a State of the Art Report, a document providing an overview of the political, social, and academic debate on the gig economy and its features, as well as of relevant reforms and data in the countries covered by the project.

Whereas the report provided a homogeneous knowledge base on the topic, the following case study analysis investigates and assesses practices meant to organise gig workers and to increase their employment and social security rights.

The comparison of practices, taking place also by means of three mutual-learning workshops, shall lead to a final comparative assessment on how the gig economy affects industrial relations at both national and EU level, with a view to delivering policy recommendations.

Methodology and contents of the Case Study Report

The report is based on a questionnaire for each case study, filled out by experts appointed by the project partners. This questionnaire was structured along three sections, covering respectively: the features of each selected practice; contextual information on the platforms concerned; and a final assessment.

An abridged version of the questionnaire was used to implement a preliminary screening and to select practices deemed to be more interesting for the purposes of the project.

The questionnaire was complemented with an introduction on the target measures and the topics of interest to be investigated.

With a view to guaranteeing homogeneity and comparability of results, the introduction also provided guidance on the sources suggested for the analysis, namely: press releases and press articles; existing literature (reports, studies, scientific articles, opinion papers, and policy papers); reviews and information available on the '[faircrowd.work](https://www.faircrowd.work)' website as applicable to the covered country, as well as on forums where gig workers interact; available data on working conditions as per official or independent surveys; and interviews with stakeholders, including those having a direct role in the implementation of the measure.

The partners agreed to conduct a minimum of two semi-structured interviews for each case, possibly by phone, and using the grid proposed as a basis for the questionnaire, while focusing on the aspects best known to the respondents.

CASE 1

THE GRANDGUILLAUME LAW

Description of the measure

The simplification in the passenger transport sector (so-called '*Loi Grandguillaume*') entered definitively in force in March 2018.

It has created universal obligations to all operators of passenger transport in vehicles of less than 3.5 tonnes (taxis, platforms, ambulances, motorcycle taxis). In doing so, it constitutes an unprecedented example of the assimilation of platforms operating in passenger transport (mainly Uber) to passenger transport companies.

The law allows platform workers to benefit from a core of training common with other transport professionals (safety, accounting bases, responsibilities).

The law also establishes new social dialogue practices. It creates new areas dedicated to professional dialogue in the sector, with the creation of local and national commissions. All stakeholders in the transport sector are represented at these commissions: the State (Ministry of Transport), the Region (responsible for transport policy), the Department (traffic and security), the employer representatives (Uber participates in these commissions as a transport company), workers' representatives, and user associations. The commissions make it possible to deal with specific points (collecting passenger at airports, railway stations, reporting problems, sharing best practices). Commissions also play a disciplinary role.

The law also provides for the creation of an observatory¹.

Description of the platforms

The context: a piling up of regulations in the public individual passenger transport sector.

In France, the public individual passenger transport (T3P²) sector includes taxis, chauffeur-driven transport cars (VTC) and two or three-wheel motor vehicles (VMDTR).

It is characterised by the piling up of different and specific regulations, which were optimised by the platforms when they arrived or developed in France (Uber was introduced in France in December 2011, Chauffeurs Privés/Kapten was created in 2011, Marcel in 2012, SnapCar in 2012, LeCab - whose VTC activity was acquired in July 2019 by SnapCar- in 2012, Txfy/Bolt arrived later, in 2017).

¹ *L'Observatoire national des transports publics particuliers de personnes.*

² The French denomination is '*secteur du transport public particulier de personnes*' (T3P).

Historically, a distinction has been made between the so-called '*grande remise*' profession, taxis and VTCs and, in the case of VTCs, the specificity of the 'LOTI' licence of public road transport companies.

Taxis are subject to regulations on vehicle technical standards, conditions of professional competence and driving time regulations. The exercise of the occupation is subject to the granting of a parking permit ('*Autorisation De Stationnement*', or licence), which is attached to a geographical area. There is a numerus clausus. Since October 2014, the new permits have been non-transferable. The old ones can continue to be sold. In return for holding the licence, taxis have the right to '*maraud*'³, access to reserved lanes, including bus lanes. Tariffs are subject to maximum rates.

In 2009, the law on the development and modernisation of tourist services, known as the so-called 'Novelli Act'⁴, created the **driver-operated passenger cars** (VTCs). In practice, the law introduced a liberalisation of the '*grande remise*' sector. The '*grande remise*' sector concerned passenger transport activities with pre-order (no possibility to maraud), mainly from hotels. The '*grande remise*' enterprises (such as Chabé enterprise) worked on a segment complementary to that of taxis. It targeted a privileged clientele, on higher price segments than taxis. The Novelli law allowed to flexibilize the '*grande remise*' sector by substantially relaxing the installation conditions. Drivers were now required to have an ordinary 'B' driving licence⁵ and a professional aptitude requirement. Moreover, their vehicles had to meet some technical and comfort requirements.

The law also removed certain quantitative limits⁶. However, access to the profession was always associated with a relatively high entry cost (250 hours of training, at an estimated cost of around € 3,000).

The '**LOTI law**'⁷ has enabled public road transport companies to constitute drivers' fleets, via the detention of an alleged 'capacity' licence. The holder of the capacity licence is subject to the same examination and entry conditions as a private VTC driver. But in return, it can create a legal entity (a company) that can hire a fleet of drivers. For drivers working for the capacity company, the result is that entry requirements are much more flexible: no exams, no training, no criminal record check. Responsibility was indeed exercised by the capacity licence owner, the legal person. The LOTI law was initially conceived to meet particular mobility needs. It made it possible to ensure the continuity of some public mobility services in small and medium-sized conurbations (e.g. the extension of the last section of bus lines). The law applied theoretically only to group transport and was diverted from the outset to individual transportation.

3 Take care of passengers which hailed them on the street or called via an application, take care of passengers who are waiting for them in taxi lines at stations and airports; wait in a 'taxi station' where a passenger can solicit them directly or call them.

4 LOI n° 2009-888 du 22 juillet 2009 de développement et de modernisation des services touristiques. / Law No. 2009-888 of 22 July 2009 on the development and modernisation of tourist services. The Novelli law itself took up a proposal from the January 2008 report of the Commission for the Liberalisation of French Growth led by the economist Jacques Attali.

5 Ordinary B licence is for tourist cars <=3,5 t.

6 . The prices were also free, as was the installation subject to the conditions mentioned above. The prefectural authorisation system has been abolished and replaced by a declaratory system. The number of vehicles per contractor has no longer been capped. However, parking on public roads remained impossible without prior reservation.

7 Loi n° 82-1153 du 30 décembre 1982 d'orientation des transports intérieurs /Law no. 82-1153 of 30 December 1982 on guidelines for internal transports, so-called 'LOTI' Law.

The LOTI status allows companies ('*capacitaires*') to hire employees, and to contract directly with the platform. However, this status did not provide until recently for verification of the good reputation of the drivers (no criminal record check), nor examination to verify the qualification (except for the enterprise that hired the drivers) unlike taxis and VTC drivers).

The platforms have purposely taken advantage of these piling up of regulations. They used the VTC framework and the provisions of the LOTI law to be able to find drivers without training, the use of capacity companies hiring drivers with LOTI status allowing them to access a driver pool quickly.

The different stages of regulation, from the Thévenoud⁸ law to the Grandguillaume⁹ law

The so-called Thévenoud law was the first initiative to regulate the VTC sector after the arrival of the platforms. It took place in a context of tensions between taxis and VTC¹⁰, and after a consultation, the mission was entrusted to MP (PS) Thomas Thévenoud in February 2014. The bill was introduced in June 2014, and the law was promulgated on 02 October 2014.

In particular, the Act provided for the introduction of an examination requirement for the ability to practise a VTC activity. The law provided that the provisions of the exams would be determined within one year of the promulgation of the law. However, these provisions were never adopted.

In this context of a legal vacuum, public authorities adopted transitional provisions, in particular with the introduction of a multiple-choice questionnaire (MCQ) from the beginning of 2016. Mechanically, this relaxed the professional aptitudes necessary for exerting as VTC. Indeed, candidates for the VTC activity were no longer obliged to work for a '*capacitaire*', nor to pay the high price of the training formerly required to exert the VTC profession.

The platforms have taken advantage of this legal vacuum situation.

The Grandguillaume law came about in a context where the first tensions over the remuneration of VTCs emerged¹¹. On the one hand because of the increase in the number of drivers due to the legal uncertainty about VTC examinations and the use of MCQs¹², and on the other hand because of the decision taken by Uber in October 2015 to lower fares, and the introduction of the € 5 fares (lowering the dynamic minimum fare from € 8 to € 5). This context of price wars led to several demonstrations in December 2015 and January 2016, and to the establishment of a mediation, entrusted to MP Laurent Grandguillaume in January 2016.

8 Loi n° 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur. / Law n° 2014-1104 of 1 October 2014 on taxis and transport cars with drivers.

9 Loi n° 2016-1920 du 29 décembre 2016 relative à la régulation, à la responsabilisation et à la simplification dans le secteur du transport public particulier de personnes. Law n° 2016-1920 of December 29th, 2016 relating to the regulation, the responsibility and the simplification in the passenger transport sector (so called 'Loi Grandguillaume')

10 In the autumn of 2013, taxis had obtained from the government a framework for vehicles with drivers: they had to be subject to a 15-minute delay between booking and taking charge of the customer (except for customers of large four or 5-star hotels and trade shows). A decree to this effect was published in the 'Official Gazette' on 28 December 2013. However, its application was finally suspended in February 2014, then definitively cancelled in December 2014 by the *Conseil d'Etat* referred to it by VTC companies.

11 Cf. Les Echos (2017).

12 Multiple cases of cheating were also reported in the press for the examinations. Examples: Le Parisien (2016), LCI (2016); Lyon Mag (2016).

It is in the continuity of the mediation set up by MP Laurent Grandguillaume that he, along with other parliamentarians, tabled a bill in June 2016¹³. The law was adopted in December 2016. Its provisions came into force gradually between spring 2017 and 1 January 2018, except for data transmission (decree published in August 2019).

The provisions of the so-called Grandguillaume law

The Grandguillaume law established standard rules to all operators of passenger transport in vehicles of less than 3.5 tonnes (taxis, platforms, ambulances, motorcycle taxis). It created a joint examination for taxis and VTCs, restricted the conditions of activity of LOTI '*capacitaires*', instituted new practices of consultation and dialogue and established the principle of data transparency in the T3P sector.

Implementation of a common examination for taxis and VTCs, entrusted to a trusted institution

Inspired by the practice of sports cards, the law creates a common core of skills and knowledge between the various activities. This common core sanctions skills acquired in the fields of conduct, company management, health and safety at work and other areas. The law also establishes the principle of creating trusted actors to certify examinations. It entrusts the Chambers of Trades and Crafts¹⁴ (competent to organise taxi training examinations) with the organisation of these examinations.

The first exam sessions were held in May 2017.

*Limitation of LOTI '*capacitaires*' activity*

The law has limited the activity of LOTI '*capacitaires*' in large urban areas. It has prohibited LOTI capacity from offering trips in vehicles with less than ten seats (including drivers) in urban areas with more than 100,000 inhabitants.

A transition period, until early 2018 was introduced, in order to avoid penalising VTC drivers. It allowed drivers working under LOTI status to become VTCs without necessarily taking the exam, provided they had at least one year's seniority.

Professional Dialogue Bodies - National T3P Committee and Local T3P Committees.

The law also establishes new social dialogue practices. It creates new areas dedicated to professional dialogue in the sector, with the creation of local and national commissions. All stakeholders in the transport sector are represented at these commissions: the State (Ministry of Transport, Prefect), the Region (responsible for transport policy), the Department (traffic and security), the employer representatives (Uber participates in these commissions as a transport company), workers' representatives, and user associations. The commissions make it possible to deal with specific points (collecting passenger at airports,

¹³ Cf. <http://www.assemblee-nationale.fr/14/propositions/pion3855.asp>

¹⁴ In France, a Chamber of Trades and Crafts (CMA) is a consular chamber in charge of matters related to crafts. These chambers provide training, advice, company registration and representation before public authorities for craftsmen, apprentices and professional craft organisations.

railway stations, reporting problems, sharing best practices). Commissions also play a disciplinary role.

The question of the representativeness of the actors was raised, particularly for VTCs, as the number of seats was limited. The scheme adopted was to reproduce the criteria that trade unions must meet to be recognised as representative in private sector companies (Article L 2121-1 of the Labour Code). According to these provisions, organizations may stand for professional elections: when they have at least two years' seniority, can justify an audience, their membership, their financial transparency¹⁵. On the platform side, this has led small platforms to group around a professional organisation, the French federation of passenger transport on reservation (FFTPR)¹⁶.

Data Transparency

The law also established the principle of an obligation for platforms to communicate to the administrative authority any data relevant for the control of compliance with the laws and regulations in force, as well as the provision of various data to the supervisory authorities.

The idea was to oblige the platforms, in the case of a request made by an administrative authority, to transmit the data, to be able to identify illegal practices, to be able to respond to specific claims of drivers on connection times - in particular in connection with fare negotiations, etc. The implementing decree¹⁷ was issued very late, in August 2019.

In a press release from the Ministry of Transport dated 23 August 2019, it is specified that implementing decrees will supplement the decree in order to define precisely the information required from platforms. This may lead to limiting the scope of the information that may be requested, since the original decree gave a fairly broad definition of data.

From the Grandguillaume law to the LOM¹⁸ law

One of the provisions of the Grandguillaume law that has been most opposed by the platforms is the one relating to examinations. It is also this provision that has been amended by the LOM Bill, which is expected to be passed in November 2019. This bill introduces the possibility of optional social responsibility charters for mobility platforms (see case study 'Social Responsibility in France'). It also proposed to review the provisions of the Grandguillaume law on the organisation of examinations.

A legislative amendment, which became Article 20 bis in the bill, proposes to reform the organisation of examinations and to entrust them no longer to chambers of trade and crafts, but to persons approved by the administrative authority - under conditions set by decree. These persons must be of good repute, proof their organisational capacity, impartiality and independence. An assessment of the organisation of the examinations must be transmitted to Parliament within one year of the promulgation of the law.

¹⁵ As a result, the cost for small organisations, due to the need for the auditor's report, is around € 6,000.

¹⁶ The '*Fédération Française des Transports de Personnes sur Réservation*'.

¹⁷ Decree N° 2019-866 of 21 August 2019, Journal Officiel n°195 23 August 2019.

¹⁸ Projet de loi d'orientation des mobilités (TRET1821032L).

This provision was reinforced by a recent decision of the Council of State on the training of VTC drivers - The decision was taken on 5 July 2019¹⁹. It partially cancels the decree of 6 April 2017, applying the Grandguillaume law on the organisation of examinations by the chambers of trades and crafts.

The court had been referred by the VTC transportation platform federation (FFTPR). For the Council of State, the organisation of taxi and VTC driver exams by the Chambers of Trades and Crafts (CMA) 'may lead to an illegal infringement of the freedom of establishment'. Since some CMA members are taxis, they may, therefore 'have an interest in restricting access to these professions, particularly that of VTC driver'. This decision was welcomed by the platform and criticized by the VTC representatives, as well as by Laurent Grandguillaume.

Assessment of the measure

Social dialogue

The law is an example of broadening the scope of social dialogue stakeholders by establishing a multi-stakeholder dialogue where sector players, users and the regulator are all present.

The law also highlights the difficulty of establishing the representativeness of new categories of self-employed platform workers. The criteria for establishing the representativeness were copied from those applying to professional elections in enterprises. Such rules require two years of seniority, acknowledgment of the five big confederations as 'rightful representative'.

As a result, new VTC trade unions (for example SCP VITC), as well as VTC associations, have been excluded, with the consequence that some trade unions present in the Commission have very few drivers working on the platforms. It may result in future difficulties in the event of a conflict.

Is it necessary to arbitrate between the fluidification of the market or the professionalisation of a sector?

The law helps to ensure fair competition and avoidance of social dumping between platforms and other businesses. It contributes to the professionalization of the passenger transport sector by the platform.

It is indisputable that the law allowed to ease the relations between taxis and VTC. But platforms and detractors argue that the exams would be too demanding.

Exams

The effect of the reform of the examinations necessary to exercise the VTC profession, motivated by the goal to allow a convergence of professional aptitudes between the different professionals of private and public passenger transport, has been the subject of intense and continuous debate since the entry into force of the Grandguillaume law. For those opposed to the introduction of a standard exam, it was considered as a barrier to entry (due to a low exam success rate and a lack of exam sessions). Excessive complexity of the exams is cited as a factor impacting the success rate. The lack of examination sessions is

¹⁹ Conseil d'État N° 413040, available at: <https://www.legifrance.gouv.fr/affichJuriAdmin.do?idTexte=CETATEXT000038748656>.

said to be since the chambers of trades and crafts would be reluctant to organise courses, according to most taxi drivers.

However, it is difficult to substantiate the arguments concerning the exams and the sessions. For example, based on data from Ile de France, which accounts for 72.6% of the 44,246 VTC drivers listed in the Ministry of Transport's register²⁰ (data as of August 24 2019), the success rate in examinations, which was around 80% (with MCQs), fell substantially with the first sessions (average success rate of 39% over the first seven sessions²¹). But this figure has since risen sharply. According to data from the Chamber of Crafts and Trades, it amounted to 78.3% (unweighted average) over the seven sessions organised between September 2018 and April 2019²².

Nor does it seem obvious to support the arguments put forward on the low number of sessions. Also based on the Ile de France region, over the ten months from September 2018 to June 2019, ten examination sessions were organised. For the 2019 calendar year, a test is held every two months, with 1,500 places planned.

The impact of regulatory changes on the actual number of VTCs registered is complicated to highlight. The Ministry of Transport's VTC register makes it possible to know at a given moment all the persons allowed to exercise, i.e. holders of the VTC licence card. The obligation imposed on LOTI drivers to obtain their professional licence card in order to be registered and continue their activity, which came into force during the first quarter of 2018²³, may have contributed to inflating the number of entries in the register at the beginning of 2018. In addition, there is no guarantee that all registered VTCs (44,246 as of August 24, 2019, for example) are 'active'. The platforms do not communicate transparently on the number of VTC drivers.

Notwithstanding: the data in the register show a steady trend since 2015 towards an increase in the number of registered VTCs, which is far from slowing down over the recent period (see graph).

The only figure provided by the platforms comes from Uber. In the study on drivers' incomes published in January 2019, which reports a total of 28,000 drivers in 2018, 70% of whom are self-employed and 30% of employees of transport companies. Data from the Ministry of Transport's register show a downward trend in the number of micro-entrepreneurs in the registered workforce, to the benefit of other statutes (SASU, EURL, etc.) that are more compatible with the exercise of the profession.

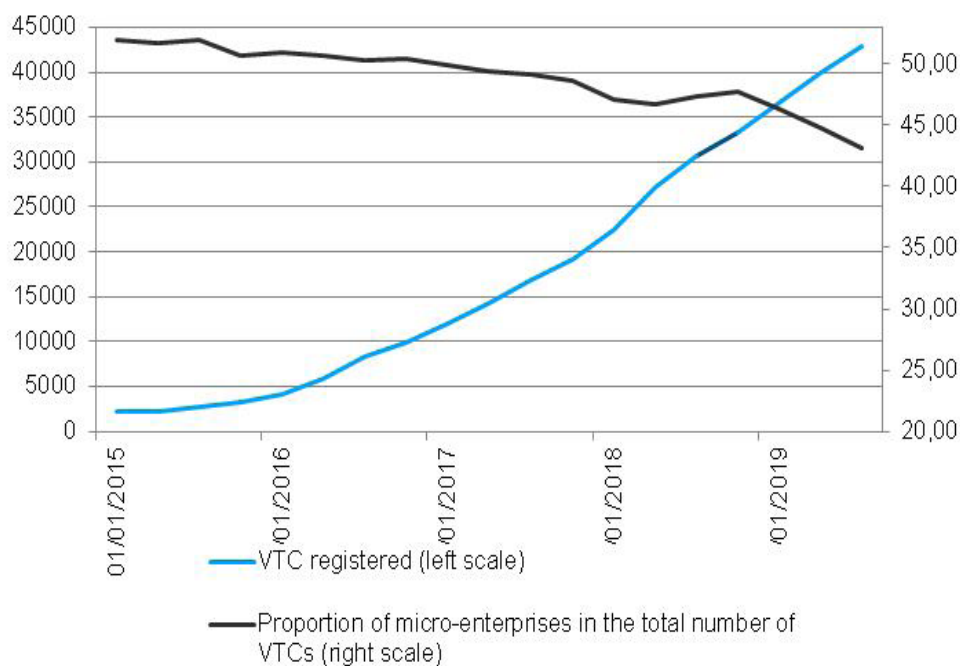
20 Cf. <https://registre-vtc.developpement-durable.gouv.fr/public/recherche-avancee/init-modif>.

21 Cf.: Pilotcity (2017).

22 Cf. <https://www.crma-idf.com/fr/espace-presse/actualites.html?op=detail&ref=11&refModule=123>.

23 This point is highlighted in particular in the first contribution of the National Observatory of Private Public Transport (Commissariat Général au Développement Durable, 2018).

Graph: evolution of the stock of VTCs registered in the VTC operators' register, quarterly data, and share of microentrepreneurs



Source :

<https://registre-vtc.developpement-durable.gouv.fr/public/recherche-avancee/init-modif>

Income and revenue

In the absence of collection by public authorities and transparency requirements imposed on platforms, it is rather challenging to provide estimations of the income of drivers. The pacification of relations between taxis and VTC following the entry into force of the Grandguillaume law would be due to the positive effect that the law would have had on incomes, in particular through regulation of the number of drivers (source: interviews). But the law would have had the effect of encouraging fraud (see below) for obtaining false cards, resulting in under declaration of revenues to the concerned authorities (Ursaf) (see FO's testimonies in the article in Le Monde of 28 January 2019).

In the absence of data transparency, statistical sources diverge. As part of a transparency campaign, Uber published in January 2019 statistics on the remuneration of self-employed drivers using its application (Uber, 2019). According to this source, the monthly net income of a 'representative' driver would amount to € 1,617, for a working time normalized to 45.3 hours of connection per week (average working time of the self-employed, source INSEE). These figures are not 'questionable' (since there is no access to the original data). They also differ quite from those available from other sources.

In 2017, in the report produced as part of the mediation requested by the government in December 2016 in the context of the dispute between VTC drivers and Uber following the increase in the fees charged by the platform, the government asked the mediator to provide clarification on the pricing. The report produced by the mediator for the first time carried out an analysis of the financial situation and working conditions of drivers. Accordingly, a driver could earn a net monthly income of about € 1,700, but for a connection time of 60 hours. The mediator's report also pointed out that 'many drivers say they cannot achieve the income figures announced by Uber despite spending more

than 60 hours in their cars per week’.

Fraud

According to most VTC collectives and unions, fraud has moved towards the purchase of fake cards (see the FO statements cited by Le Monde on 28 January 2019, the interview of Sayah Baaroun of SCP VTC by LCI news channel on 16 July 2019). In July 2019, an accident involving a driver with a fake VTC card drew media attention to the situation. According to the LCI channel, 4,000 to 5,000 VTC drivers are believed to hold false cards, a condition that should gradually be regularised with the introduction of biometric cards decided by the government as part of its campaign to secure VTC drivers’ professional identifications adopted in June 2019²⁴.

The limits of the exemption from sectoral regulations

In the context of the profound transformations favoured by the platforms, the Grandguillaume law illustrates the difficulty of harmonising the rules applicable to activities carried out by professions operating on a single and same ‘relevant market’ (within the meaning of competitive analysis) in the absence of sectoral regulations and in particular the control of working conditions and minimum fares.

The desire to professionalise via exams is hampered by the lack of capacity to control working conditions and therefore, income. One of the recurring demands of driver representatives is to request a minimum fare/price for the race. A demand formulated by all VTC driver unions, and not to confuse with minimum wage, which would be negotiated at the sectoral level, and not on a case-by-case unilateral and voluntary basis as is proposed by the charters provided for in the draft LOM law (see case study social responsibility).

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²⁴ Cf. Ministère de la Transition écologique et solidaire (2019).

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Discussions and interviews with different stakeholders:

Louis-Charles Viossat (IGAS), Franck Bonot (SPIN Consulting, UNSA Transport at the moment of the adoption of Grandguillaume Law), Sayah Baaroun (Secrétaire general SCP VTC), including mobilization of the expertise developed within the Sharers & Workers network by the redactor of the contribution. .

CASE 2 – COOPCYCLE

Description of the measure

Coopcycle aims at offering a concrete and viable alternative to bike delivery actors. It enables them to overcome precariousness through the creation of their own cooperative.

Coopcycle was, at the beginning, a platform software developed in France as an alternative to capitalistic platforms. After the bankruptcy of Take Eat Easy in 2016, a project was born through a meeting between Alexandre Segura, a developer close to the '*Nuit Debout*' movement, and an anti-platform activist and creator of the CLAP, a collective of independent riders in Paris (Jérôme Pimot), also former deliverer for Take Eat Easy and Deliveroo.

Coopcycle is in between to become a European grouping of cooperatives and associations open to bicycle deliverers with a cooperative project. It brings together three types of actors: delivery riders who wish to join a cooperative or association in their locality; restaurateurs who want to engage in an ecological and socially responsible delivery service; and the association 'Coopcycle', which ensures the coordination of the different cooperatives. Coopcycle is also in charge of the development, mutualisation and usage rules of the common tools. The approach is horizontal: Coopcycle federates local cooperatives.

Three primary services are shared: First, the platform software, which allows members of the federation to manage their deliveries (logistic module) and manage the orders (e-commerce service). Second, the smartphone application, which can be used for the orders. And third, the joint commercial offer particularly towards 'key account customers'. Not all cooperatives use the smartphone application. In this case, orders are taken manually. Other services shared include visibility & brand; administrative and legal services such as receipts, contracts, legal status; payments warranty, as warrant instant payments, thus helping financial stability for coops, funding and calls for proposal; insurances, including negotiation of grouping insurance contracts; solidarity trainings; and pooled buys.

Coopcycle brings together (in autumn 2018) about thirty cooperatives from Spain, France, Belgium, Germany, the United Kingdom and Italy (see map), with together 70 persons/riders.

Figure 1. Location of Coopcycle cooperatives



Source: Coopcycle

The software was launched in early October 2018. In spring 2019, it was used in about ten cooperatives in France, Spain, Belgium, Germany, Italy and the United Kingdom by about sixty persons/riders. Paris is the largest cooperative, with 15-20 couriers. The project is developing projects of new associations in Alfortville, Bordeaux, and cooperatives in Grenoble, for example, were mentioned in March 2019.

Coopcycle is also a member of the 'Plateformes en Commun' group. *Plateformes en Commun* is an initiative launched in 2017 by the French association 'Coop des Communs' to federate cooperative platform projects that identify themselves intending to bring social and solidarity economy and the 'commons' together.

Governance of the cooperatives/network

Several governance principles govern the links between the Coopcycle association and local cooperatives.

Coopcycle has set up a license, which is based on Dimitry Kleiner's work within the Peer 2 Peer Foundation (reciprocity licenses). The license (Coopyleft) requires structures using CoopCycle software to meet the following criteria: to adopt a cooperative model and employing their deliverers, via a traditional employment contract or a wage portage company (see box 1), and to meet the definition of SSE as stipulated by National/ eventually European law (see Box 2). The CoopCycle software is not open source: its source code is available on GitHub, but its commercial use is reserved for cooperative companies. The idea is to extend the use of the license to platforms operating in other sectors of activity.

Each local cooperative is free to set its rates to customers and to determine the method of pricing (percentage of the order, per race pricing, per hour pricing, fixed price package, etc.)

At a local level, couriers decide together about:

- The contribution's level of everyone according to its juridical status (cooperative, association, institutional entity);
- The fund's allocation;
- The pay scheme to provide services.

In the long term, it is expected that a levy of 3% will finance the association with 5% on the turnover of cooperatives.

The total turnover is not officially reported.

Box 1: Wage portage

Wage portage is a new form of employment characterized by a tripartite relationship involving an umbrella company, an employee and a company that is the client. An agreement is signed between the client and the umbrella company which collects the fees paid by the client and then pays a salary to the freelancer after deduction of management fees and all the social charges. Wage porting cumulates the advantages of being independent and being salaried.

Wage portage remained marginal for a long time before experiencing significant growth in the 2000s and entry into the Labour Code in June 2008.

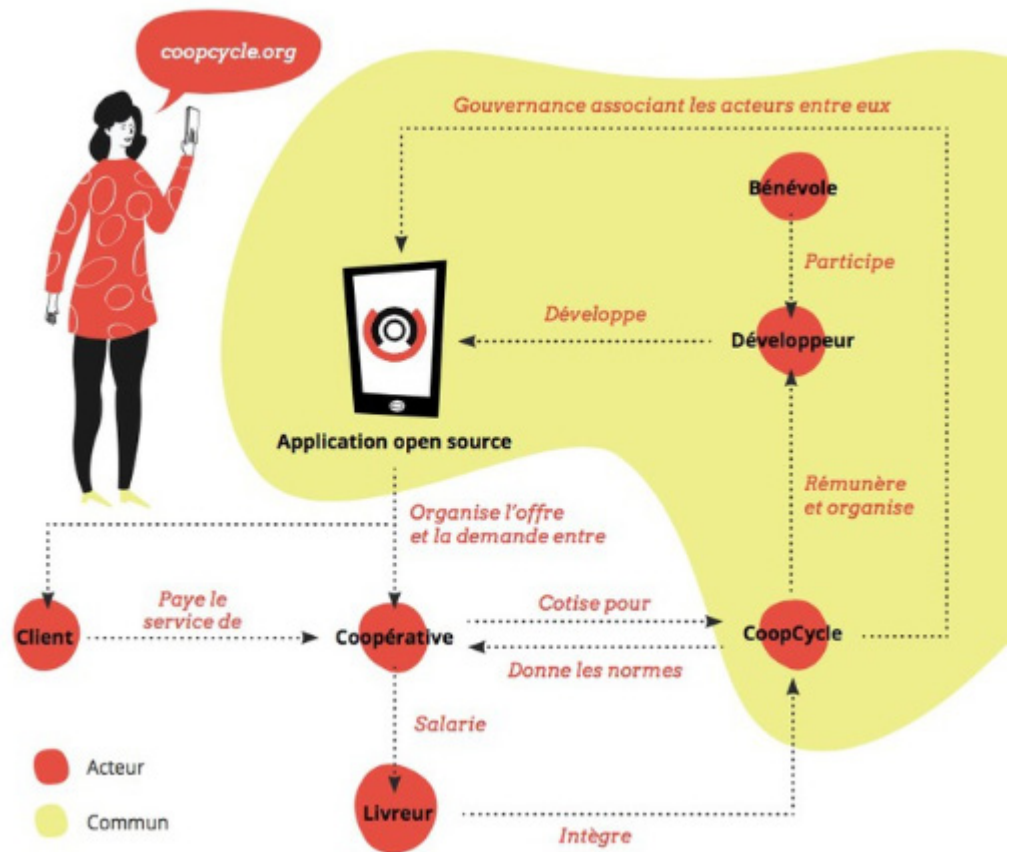
Indeed, this system was introduced into the Labour Code by Act No. 2008-596 of 25 June 2008 on the modernisation of the labour market. Its conditions of exercise were then revised by Order No. 2015-380 of 2 April 2015. It is defined in articles L1254-1 et seq. of the Labour Code.

Box 2: Social and Solidarity Economy (SSE)

Social and Solidarity Economy (SSE) are sometimes just known as the solidarity economy or the economy for the common good. It includes the parts of the not-for-profit sector, which involve trading, such as social enterprises and cooperatives. The Social economy is also known as a third sector among economies between private business and public areas (government).

It includes organisations such as cooperatives, non-profit organisations, social enterprises, and charities. A social enterprise is a revenue-generating business with primarily social objectives whose surpluses are reinvested for that purpose in the market or in the community, rather than being driven by the need to deliver profit to shareholders and owners. Social enterprise applies an entrepreneurial approach to addressing social issues and creating positive community change.

Figure 2: The Coopcycle model



Source: Coopcycle

Description of the platforms

Coopcycle targets cycling enthusiasts. The target is not students nor disadvantaged neighbourhoods. It aims at enabling delivery riders to organize themselves into local cooperatives to become autonomous and benefit from better working conditions. It requires insurance in case of an accident, for their bicycles, a pooling of tools (software, legal assistance, marketing, etc.), and a place to meet. Coopcycle is fully configurable by each cooperative according to the needs of the local market and the expectations of restaurateurs and delivery companies. It is possible to hire 'non-permanent' couriers (e.g. students) to manage peaks during an activity. For these temporary hires, the idea is to favour wage portage.

The modalities of work organization and governance were the subject of working groups that culminated in spring 2019. The following summarizes the status of these groups.

Work Status

Different statuses will be possible, as the state of salaried employees is not possible to apply in all countries, neither desired by all riders. In Paris, for example, all the cooperative's workers will be employees. Other cooperatives in Europe want to remain independent. The status of an employee can be obtained

by leaning on existing support structures: with SMART in Belgium, with the *Coopérative d'Activité et d'Emploi* OPTEOS (see Box 3) in Lille. The members of the Coopcycle association would eventually be employees.

Box 3: Activity and employment cooperatives (coopératives d'activités et d'emploi)

Employment and activity cooperatives in France assist business project holders for the launching of their activity by offering them to become 'contracted-entrepreneurs' (*entrepreneurs-salariés*). The project holder can work with full autonomy to find clients and deliver his services. However, he is bound to the cooperative by an employment contract. The cooperative collects the business sales revenue and gives it back to the project owner in the form of a salary once societal charges and management fees have been deducted.

This work status is close to the wage portage (*portage salarial*) but goes further by offering real individual support to the project owner. It's an alternative to the creation of a company or working freelance (micro-enterprise).

The law has specified the legal status of employment and activity cooperatives in France on 31 July 2014 on Social and Solidarity Economy. Employment and activity cooperatives in France are cooperative and participative companies (*Sociétés coopératives et participatives*, SCOP). It means they are participatory managed. Activity and employment cooperatives are part of the social and solidarity economy. They represent 6,500 employees and 1,500 support staff, and € 100 million in cumulative turnover (2012).

The structure supports entrepreneurs during three stages:

When an entrepreneur joins a cooperative, he/she signs a contract called a support contract for setting up a business (*Contrat d'Appui au projet d'Entreprise*, CAPE). Signing this contract will give access to the social protection and professional insurance needed to start a business. When the entrepreneur sends the first invoice and receives their first payment, the support contract for setting up a business evolves into a permanent contract (*Contrat à Durée Indéterminée*, CDI), and he becomes an employee of the cooperative, earning his salary. Of course, this salary grows accordingly to his business' sales revenue the 'contracted-entrepreneur' cannot have a € 0 salary so his company must have a minimum income for him to get a permanent contract. Also, the deal sets the amount of the fixed part and the variable component of the contracted-entrepreneur's pay. Indeed, 'contracted-entrepreneur' income depends on how much sales revenue one brings to the employment and activity cooperative. In most of the employment and activity cooperatives in France, the payment is approximately 50% to 60% of the sales revenue. As of three years from the date he joined, the entrepreneur becomes an associate of the employment and activity cooperative. It is mandatory. As an associate, the 'contracted-assistant' participates in the daily life and decisions of the cooperative.

Working conditions / Remuneration and working time

The objective, for the employees of cooperatives and associations members of Coopcycle, is to make it possible to work on a full-time basis, paid above the legal minimum wage: € 1,500 € net per month (compared to € 1,522 gross monthly for the minimum wage, i.e. € 1,204 net as of 1 January 2019). The objective is hence, approximately 25% above the minimum wage. The remuneration is set on an hourly basis, not by shift. A minimum number of working hours per week is guaranteed, as well as predictability on working hours.

The associated targeted gross income amounts to € 40/hour (to compare to € 10.7/hour for the hourly cost at SMIC level).

Working conditions /Quality of Life at Work

Guaranteeing good working conditions is a priority for Coopcycle. These conditions (bicycle load, climatic conditions, length of tours) are integrated into the cooperatives' internal regulations in the form of charters. The equipment is provided by the collective (bicycles worth about € 4,000). The cooperatives also provide all other materials (headphones, etc.).

Insurance/mutuals:

Coopcycle's objective is to negotiate 'tailor-made' group insurance contracts for bicycle delivery companies. Contacts have been made with MAIF to determine the type of coverage adapted to needs. MAIF is a mutual insurance company highly committed to supporting the so-called 'collaborative' economy.

Collective agreements:

Courier collectives have been set up in France. In some cases, trade union sections have been set up at the local level, particularly in Bordeaux (affiliated to CGT). Discussions are underway to link the couriers to the collective agreements. In Switzerland, for example, a link to the collective agreement for lorry drivers has been established.

Assessment of the measure

Coopcycle offers an alternative business model to that of capitalistic instant delivery platforms. Rather than making the remuneration of couriers the adjustment variable on which the platform acts (on this point see Aguilera, Dablanc and Rallet, 2018), Coopcycle's objective is to guarantee decent revenues, with low margins levied on restaurateurs and clients. But this is only possible because Coopcycle does not position itself in the competitive segment of low-price food-tech platforms, 'which do not allow drivers to be paid in a decent way', but in the more profitable part of 'last mile delivery'. The counterpart for the higher remuneration is, therefore, a higher price for the service. The rationale is also that significant competition and price wars characterize the food-tech delivery segment through capitalistic platforms, which are also setting up virtual restaurants today.



'Last-mile delivery is something that, with the emphasis on ecology, the concerns about urban congestion, is working very well now. (...) It is often profitable with cargo bike for delivery cooperatives. It is easy to find contracts at higher prices. Often even riders that are beginning to self-organize charge too low prices. They are afraid and do not realize the quality of their service. And so, in fact, it is with the feedback since our creation that they can increase prices because it is a service that is demanded, and it is a quality service that they often provide' (Coopcycle member)

The economic model is not stabilized. The first IT budget for the Coopcycle association was approved in spring 2019, with the funds obtained as part of the 'ESS trophy' from the City of Paris. The grant will cover travel, infrastructure costs (server, hosting, and some necessary services), to mention some. But most of the cost of developing the standard tools were based on free work, for a total estimated development cost (source interview) of € 200,000. It raises the question of financial means allocated to initiatives based on 'Commons'. One possible approach is to recognize the positive externalities for cities of this type of platform and to provide them with public subsidies. Examples of subsidies granted by municipalities exist in France, particularly in Paris, with an integration platform '*Les lulu dans ma rue*'. Today, approximately 12% of the revenue of the Coopcycle association come from public funding.

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CASE 3: PLATFORM SOCIAL RESPONSIBILITY

Description of the measure

The two stages of social responsibility

Since 2016, France has been committed to a social regulation approach concerning gig workers favouring the principle of ‘social responsibility of platforms’. This approach was the result of a specific choice in terms of regulatory scenario, consisting in advocating priority to the concrete improvement of workers’ rights through the empowerment of platforms, and independently of the work statutes, i.e. by adopting a pragmatic small steps approach.

Two periods are to be distinguished. The first was initiated with the adoption of the Labour Act of 8 August 2016²⁵ and Article 60 of this Act, which introduced the principle of the ‘social responsibility’ of platforms. The second phase began in the spring of 2018, when the parliament examined the bill on the reform of vocational training²⁶ proposed by the new government following the presidential elections in May 2017. At the initiative of a deputy from the new majority and co-rapporteur of the bill, an amendment was introduced allowing platforms to adopt unilateral charters specifying the conditions for exercising their social responsibility. The Constitutional Council rejected the amendment (adopted as article 66 of the law) in the summer of 2018²⁷.

The project of charters was reintroduced in autumn 2018, as part of the Mobility Orientation Bill²⁸. Article 20 of the draft law allows platforms falling within the scope of social responsibility, mainly Don’t GIG Up platforms type 1 and 2, which operate in the mobility sector, to adopt unilateral optional charters. The bill also proposes measures to introduce transparency obligations of the platforms vis-à-vis the workers they intermediate. A government amendment (Article 20 bis) proposes to relax the conditions for the practice of examinations in the VTC profession (see the case study on the ‘Grandguillaume law’). Finally, amendment 3299 (Article 20 quinquies) authorises the government to take legislative measures, utilizing ordinance, to determine the terms and conditions for the representation of platform workers. A period of twelve months is foreseen from the promulgation of the law.

25 Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels/ Law no. 2016-1088 of 8 August 2016 regarding work, modernising the social dialogue, and professional careers.

26 Loi n° 2018-771 du 5 septembre 2018 pour la liberté de choisir son avenir professionnel/Law no. 2018-771 of 5 September 2018 for the freedom to decide on one’s own professional career.

27 Mainly due to procedural reasons.

28 Projet de loi d’orientation des mobilités (TRET1821032L) : <https://www.legifrance.gouv.fr/af-fichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&legislature=15>

The project of charters has been the subject of intense debate in France since autumn 2018, with many positions taken by trade unions and platform economy and social dialogue.

In the summer of 2019, this second stage was not completed. Indeed, the deputies and senators failed to agree on a joint text in the joint committee of the assemblies on 10 July 2019, and the bill will return to the National Assembly in November 2019. In addition, a new phase will begin after the adoption of the law, in the field of social dialogue. During the parliamentary debates, the government also announced that it would set up a consultation with the stakeholders for preparing the bill on representation.

Description of the platforms

The social responsibility introduced by Article 60 of the Labour Law of 8 August 2016 (Loi Travail²⁹)

The law conferred three specific rights to the platform workers: protection against accidents at work, right to training, and recognition of the right to strike. These three rights constitute the social responsibility of the platform vis-à-vis the workers.

Social responsibility does not apply to all platforms, but only those that determine the characteristics of the service provided or the good sold and who also fix the price of the service. Typically, this concerns platforms matching passenger transport services, and platforms matching excellent delivery services (type 1 and 2 platforms of the present project).

Implications in terms of employment and social security

The first part of this social responsibility obliges the platform to cover, within the limit of a ceiling set by decree, insurance costs covering the risk of occupational accidents (Article L. 7342-2 of Labour Code). The platform is exempt from this obligation if the worker adheres to the collective insurance contract the platform puts in place for the workers, provided that the platform contract offers guarantees at least equivalent to those provided for by the individual insurance.

The second part of the social responsibility gives workers access to vocational training rights. But these rights built on those of other independent workers and are therefore limited (Article L. 7342-3 Labour Code). For instance, the right to the contribution by the platform to the obligations of self-employed to contribute to their training (without minimum requirement) and payment by the platform of the costs linked to the recognition of competencies acquired on the job (*Validation des Acquis de l'Expérience*, VAE).

The exercise of these two rights is conditional on the existence of a minimum turnover achieved by the worker on the platform. A decree of May 4, 2017 (Decree No. 2017-774) set this minimum threshold at 13% of the annual ceiling for social security (13% of € 5,099.64 / month in 2017).

²⁹ Loi n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.

The third part of the social responsibility of platforms recognises the right to strike for the workers using the platform (Article L. 7342-5 Labour Code). These strikes cannot be grounds for terminating the contractual relationship with the platforms. Workers also enjoy the right to form and join a trade union and to assert their collective interests via these trade unions (Article L. 7342-6 Labour Code). Following the law, trade unions can establish a local branch (*section syndicale*) which will defend the interests of its members.

The new steps introduced by the LOM³⁰ law project

The measures proposed in the LOM (article 20 of the bill) are intended to go further in defining the social responsibility of platforms. The scope is limited to those that operate in the mobility sector (VTC, two-three-wheel freight deliveries).

The first package of measures aims at setting transparency obligations for platforms regarding the workers they intermediate. Following the bill, platforms would have to inform about the minimum foreseeable price per service and workers would gain the possibility of refusing to provide the service without being sanctioned by the platform. Platforms would also have to publish on their website indicators on income (last calendar year), working time and average price of services. In return, more choice and freedom would be given to workers: possibility to refuse to provide a service, to choose time slots and periods of inactivity without being sanctioned.

Optional charters may be implemented by the platforms to determine the terms and conditions for exercising their social responsibility, the rights and obligations of the platform as well as those of the workers the platforms intermediate.

The charters can cover eight areas: (1) the conditions for exercising the professional activity (guarantee of non-exclusivity - freedom of connecting-disconnecting); (2) the procedures for obtaining a 'decent price' for the services provided; (3) the arrangements for developing skills; (4) the arrangements for improving working conditions, preventing professional risks; (5) the modalities of (social) dialogue between the platform and the workers on the requirements for exercising the licensed activity; (6) the patterns of information on changes in the conditions of the professional activity; (7) the expected quality of service and the circumstances that may lead to a break in commercial relations between the platform and the worker and the guarantees that the latter enjoys in this case; (8) the additional social protection guarantees negotiated by the platform, from which workers can benefit.

Following the bill, the charters are to be approved by the administrative authority (after consultation of the platform workers). If no answer is received within this period, the charter is deemed approved. The charter is to be published on the platform's website and attached to the contracts or general conditions of use.

This approval protects against the risk of requalification of the commercial contract in an employment contract. Disputes on the conformity of the charter and its approval are brought before the High Court (the Tribunal de Grande Instance, i.e. the common law court in civil matters).

³⁰ Projet de loi d'orientation des mobilités (TRET1821032L): <https://www.legifrance.gouv.fr/af-fichLoiPreparation.do?idDocument=JORFDOLE000037646678&type=general&typeLoi=proj&le-gislature=15>

Assessment of the measure

The role devoted to social responsibility in the regulation of platforms

The platform economy is conducive to the emergence of self-regulatory practices, for reasons that can be easily understood: an unstable legal framework and the analogy of experimentations that are continually developing³¹.

It is nevertheless necessary to distinguish unilateral self-regulation (depending on the rule the platform decides to set for itself) from a more collective form of negotiated self-regulation³². Moreover, negotiation needs a balance between stakeholders that is difficult to obtain, especially when trade unions are weak.

In the case of the charters proposed in France, these guarantees are far from being acquired.

The protection provided is very relative since the charter remains optional and unilateral. The permits would have to be approved by the administration and be the subject of consultation with platform workers. But consultation is not binding, and by no means equivalent to negotiating agreements.

Many trade union and stakeholders have publicly expressed their views against the charters and in favour of concrete progress in representation and collective bargaining within the platform economy.

Regarding the representation of workers, if the LOM law is adopted, the government would be authorized to legislate by ordinance within 12 months following the promulgation of the law, to give the sector's stakeholders time to organize themselves. It is a step forward concrete measures in the field of social dialogue, leaving room for consultation.

Can charters clarify the issue of requalification and statutes?

For the promoters of the charters, the hope is that the charter will encourage 'virtuous' actors to adopt measures in favour of platform workers and that this will result in a reduction in the number of court cases³³.

Protection against the legal risk of requalification as an employment contract has been very much in evidence from the outset in the debates concerning the implementation of the platforms' social responsibility. For the platforms, the idea was from the beginning that creating a legal framework concerning the protection of workers would protect them against requalification actions. The discussion of Article 60 of the Labour law raised the questions on the protection against requalification and the exclusion of the link on relationship

31 For shared elements of reflection on self-regulation, reference can be made to the restitution document of the participatory event co-organised by the ETUI, the ETUC, the Sharers & Workers network (co-animated by IRES and ASTREES) on 23 January 2018: 'Construire par le dialogue une économie des plateformes performante et responsable' / Starting a European dialogue on the platform economy <https://www.sharersandworkers.net/23-janvier-2018-construire-par-le-dialogue-une-economie-des-plateformes-performante-et-responsable/>

32 The emblematic example of negotiated self-regulation is, for example, the German code of good conduct.

33 This point was notably mentioned by the law professor Jean-Emmanuel Ray at a seminar organized on 12 June 2019 by the Ministry of Finance and the Ministry of Labour: 'L'organisation du travail à l'ère numérique: les plateformes de services', <https://www.tresor.economie.gouv.fr/Evenements/2019/06/12/l-organisation-du-travail-a-l-ere-numerique>.

subordination. In the first version of the law, it was indeed planned that the exercise of social responsibility would protect against the risk of reclassification. Still, this provision did not survive the parliamentary discussions. A further step is, hence, taken in 2019 with the draft law on Mobility Orientation, with the explicit mention that once the labour administration has approved them, the charters would protect against the risk of requalification.

However, several labour law experts doubt the ability of charters to protect against the risk of requalification effectively³⁴. Indeed, the eight topics that constitute the heart of the charter (see above) and would guarantee the status of independent or at least a presumption of non-subordination can be read as many indicators of the subordination link, with potential boomerang effect in the courts. In other words, the charter makes it possible to identify the elements that the judge will verify to requalify, if necessary, the contract for the provision of services in an employment contract. Moreover, the jurisdiction conferred to the High Court does not prevent a platform worker from applying for reclassification before the labour court.

What can we expect from measures to promote transparency in working conditions?

Following the LOM bill, platforms would have to communicate the information necessary for the performance of the service. They would have to inform about the minimum foreseeable price per service and workers be given the possibility of refusing to provide the service without being sanctioned. Platforms would also have to publish on their website indicators on activity income, activity time, and the average price of services.

But under the argument of transparency, desired by all stakeholders, the objective remains protection against requalification by establishing a principle of free connection of the worker. Most of all, the algorithm can be adapted. For example, it is possible for a VTC platform to set up an incentive system. For the driver, the risk is that in the case of expected low remuneration, he refuses to accept trips, he will no longer or less be solicited for the most profitable trips.

What concrete protections have been provided by the first phase of social responsibility (Article 60)

No official assessment has been made of the 2016 law.

The record that can be drawn is mixed. It leads to linking the social rights of workers to the platform, rather than the person. The guarantees are vaguely defined. For instance, many platforms have partnered with insurance companies to offer these group insurance policies for accident and liability protection. Uber announced a partnership with AXA in July 2017. Uber also announced in May 2018 that it was expanding the collaboration on a European scale. Deliveroo also entered into a partnership with AXA in March 2017. These private group contracts are not without raising debate (on their quality, on the consequences for the financing of social protection, on the attachment to the platform rather than to the individual). The low obligations for vocational training are also a subject of debate.

³⁴ See for example : <http://www.wk-rh.fr/actualites/detail/102581/comment-assurer-la-representation-des-travailleurs-des-plateformes-.html>

On the other hand, the 2016 law probably helped to initiate a positive dynamic in terms of vocational training. Several platforms have thus launched initiatives in favour of the professional training of the workers concerned (VTC Campus for Uber, for example).

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Louis-Charles Viossat (IGAS), Franck Bonot (SPIN Consulting), including mobilization of the expertise developed within the Sharers & Workers network by the redactor of the contribution.



DON'T GIG UP

dontgigup.eu