

FRANCE: LESSONS FROM THE LEGISLATIVE FRAMEWORK ON DIGITAL PLATFORM WORK

Introduction

Since the rise of platform work in France, different legal initiatives have been introduced that either have an impact on digital labour platforms or target platform work specifically. It is important to point out from the start that these initiatives do not legislate in the field of occupational safety and health (OSH), although they do contain provisions that impact OSH. For example, by giving platform workers control over their relationship with the platform by granting them the right to organise and the right to strike, even when platform workers are formally self-employed. From that perspective, the French framework relating to platform work – and notably the El Khomri law from 2016 – is often described in the academic and policy literature as a major step forward towards protecting platform workers (European Commission, 2020), which could inspire other Member States to take action. Other voices, including stakeholders consulted¹ for this case study, are more critical, pointing to the narrow scope and limited rights granted to platform workers through this framework.

In what follows, an overview of key recent legislative initiatives with implications for platform work in France is provided. Based on a literature review and the stakeholder consultation, the most relevant initiatives are: *Law No 2016-1088 of 8 August 2016 on labour, the modernisation of social dialogue and the securing of professional careers*² (also known as the ‘El Khomri law’ or ‘loi Travail’), *Law No 2018-898 of 23 October 2018 on the fight against fraud*³, and *Law No 2019-1428 of 24 December 2019 regarding the orientation of the means of transportation*⁴ (loi d’orientation des mobilités, LOM). In short, the El Khomri law gives some self-employed platform workers supplementary rights in the area of training, collective bargaining, and insurance against work-related accidents and occupational diseases. The law on the fight against social fraud adds information requirements and facilitates the identification of platforms and platform workers, while the LOM most importantly installs a right to refuse assignments and a right to disconnect but only for platform workers in the transport sector.

Besides these laws, two ordinances have been adopted in April 2021, which at the time of writing have yet to come into force: *Ordinance No 2021-487 on the exercise of the activities of digital intermediation platforms in various sectors of public road transport*⁵ and *Ordinance No 2021-484 regarding the terms of representation of self-employed workers using platforms in the course of their activity, and the conditions for the exercise of this representation*⁶. While their immediate relevance to OSH may not appear obvious, the consulted stakeholders underlined their potential, again by reinforcing information obligations and by rebalancing the power relationship between platform and platform worker.

None of these instruments provide an answer to the question of the **employment status of platform workers**. As in other EU Member States, platform workers in France are generally assumed to be self-employed, which has implications in terms of the applicability of the OSH regulatory framework (EU-OSHA, 2021). However, by not addressing the issue of employment status, nor tackling OSH directly, the French legal framework creates uncertainty on the competences of labour and social inspectorates, OSH authorities and enforcement agencies, according to several interviewed stakeholders. Finally, the stakeholders emphasised that the lack of data and information-sharing about platform work hinders the monitoring and enforcement of applicable regulations.

¹ Five stakeholders were consulted for this case study, among which three academic experts, a representative of the French Ministry of Labour and a representative of the French Cour de cassation.

² Loi relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels.

³ Loi relative à la lutte contre la fraude.

⁴ Loi d’orientation des mobilités. *Mobilités* is not easily translated into English; its meaning lies somewhere between ‘mobility’ and ‘various means of transport’.

⁵ L’Ordonnance n° 2021-487 du 21 avril 2021 relative à l’exercice des activités des plateformes d’intermédiation numérique dans divers secteurs du transport public routier.

⁶ L’Ordonnance n° 2021-484 du 21 avril 2021 relative aux modalités de représentation des travailleurs indépendants recourant pour leur activité aux plateformes et aux conditions d’exercice de cette représentation.

The El Khomri law⁷

France was the first EU Member State to adopt **statutory legislation to provide social security and individual but also collective rights specifically to self-employed platform workers**. The core of this important reform of the French social and fiscal law is enshrined in the El Khomri law. The El Khomri law introduced various reforms in the field of labour law, relaxing the existing legislation (for example, facilitating the implementation of economic redundancies) and strengthening collective bargaining at the company level (for example, increasing transparency). The law also introduces a 'right to disconnect' for employees. As the El Khomri law contains provisions that apply specifically to platform work, we will focus on those below.

In relation to digital platform work, the El Khomri law makes explicit that **'platforms that determine the characteristics of the services provided or of the goods sold, and set the price thereof, have a 'social responsibility' towards the workers concerned'**. Here, a platform is defined as *'an undertaking, irrespective of its place of establishment, which, in its capacity as a platform operator, brings persons into contact with each other at distance, by electronic means, with a view to the sale of a good, the provision of a service, or the exchange or the sharing of a good or a service'* (as defined by Article 242 bis of the French General Tax Code).

However, the scope of the El Khomri law is limited: the 'workers concerned' are **self-employed workers who, in the course of their professional activities, use digital platforms**. On this point, legal scholars have noted that this does not imply that the El Khomri law qualifies all platform workers as self-employed or aims to settle the debate on the employment status issue; it merely lays out to which platform workers it applies (Chatzilaou, 2020). For all self-employed platform workers who meet these criteria, El Khomri provides the **right to form and join a trade union and to defend their collective interests through it** (Chatzilaou, 2020; Grelet-Certenais, 2020).⁸ This is remarkable, considering that it is the first time that the right to strike has been granted to self-employed in France. The right to form and join a trade union is relevant in relation to OSH, considering that worker participation is an intrinsic component of the EU OSH acquis.

Besides these provisions, El Khomri foresees additional provisions for self-employed platform workers who earn at least 13% of the annual social security ceiling of sales revenue through platform work (which stands at €5,347.68 in 2021, as set by Decree) (Chatzilaou, 2020; Eurofound, 2021). For those platform workers who meet this additional requirement, the El Khomri law obliges platforms to bear the costs of insurance against occupational accidents and diseases, as well as the costs related to 'the validation of academic credit due to work experience'. This, however, further reduces the scope of the El Khomri law significantly.⁹

With regard to the **payment of insurance for occupational accidents and diseases by platforms**, there are generally two options. In both cases, however, the subscription to such insurance is voluntary, and platforms must pay the premiums (up to a maximum amount of €596.18 in 2021, fixed by Decree) in cases where a platform worker indeed subscribes.¹⁰ The first option is that platform workers themselves take a voluntary insurance for work-related accidents, and are reimbursed by the platform. The second option is that the platform offers platform workers to sign up to an insurance scheme it has arranged for itself. However, also in this case, it seems that workers are reimbursed afterwards, when they prove that their annual turnover meets the threshold (see Eurofound, 2021). Although the El Khomri law does foresee the payment of insurance against occupational accidents and diseases, which is its only direct link to OSH, this only applies to cases where the platform workers sign up to voluntary private insurance. This is an important limitation.

Regarding the **right to access to 'continuous professional training' for platform workers**, a similar approach is used, in which platform workers have to request reimbursements from the platform and can only do so after it has been verified that they meet the requirements (Eurofound, 2021). In this case, the platform must pay a specific contribution for 'professional training', which is normally paid by the self-employed person (Article L. 7342-3 §1), and cover the costs and pay compensation when the self-employed worker wishes to obtain a professional qualification certificate (Article L. 7342-3 §2) (Chatzilaou, 2020).

⁷ LOI n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels, *JORF* n°0184 of 9 August 2016 (<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000032983213/>).

Also see: <https://www.eurofound.europa.eu/data/platform-economy/initiatives/france-law-2016-1088>

⁸ 'Les travailleurs mentionnés à l'article L.7341-1 bénéficient du droit de constituer une organisation syndicale, d'y adhérer et de faire valoir par son intermédiaire leurs intérêts collectifs' (Article L.7342-6 of the French Labour Code, as amended by the El Khomri law. Note the difference in use of the term 'travailleurs' and 'travailleurs mentionné à l'article L.7341-1'.

⁹ Article L.7341-4 French Labour Code as amended by El Khomri law.

¹⁰ Article L.7342-2 of the El Khomri law.

The law on the fight against fraud¹¹

The law on the fight against fraud, which came into effect on 1 January 2020, aims towards a better detection, understanding and sanctioning of different sources of fraud.¹² It introduces new means of detecting and characterising fraud by **harmonising the tools available to administrations as well as intensifying data sharing** for the purposes of combatting tax, customs and social fraud. The law further obliges digital platforms to report amounts paid to digital platform workers to the tax administration, on the condition that these workers fall within the scope of fiscal law provision.¹³ Although the exchange of data and information may not seem of direct relevance to occupational safety and health, it most certainly is: inspectorates willing to monitor platform workers often cannot do so due to a lack of data and information, for example the number of platform workers active on a platform. This issue was corroborated by several stakeholders consulted for this policy case, who also pointed to the need to exchange information between platforms and the fiscal authorities and/or between the fiscal and other government authorities.

More specifically, the law on the fight against fraud is applicable to any enterprise *'regardless of its place of establishment, which in its capacity as a platform operator puts people in contact remotely, by electronic means, with a view to the sale of goods or the provision of services or the exchange or sharing of goods or services'* (see Article 242 bis of the General Tax Code). This is a very broad conceptualisation of digital platforms. The law obliges platforms to provide both users and the French fiscal authorities with information on the **identification details of the platform and its users**, on the **status of private person or professional** as indicated by said users, and on the **number and the gross total sum of the transactions performed** during the past year (as above, as per Article 242 bis of the General Tax Code). Finally, if known to the platform, the details of the bank account of the users in which the income of the transactions is transferred must be provided.

However, this information obligation implies that platforms should store the information they need to report immediately and on a continuous basis which – at least in theory – should allow inspection and other enforcement services to gain access to these data in view of monitoring and enforcement, even regardless of the information exchange between them and fiscal authorities. As such, **these provisions, perceived as means to tackle undeclared work through digital labour platforms, can be a key tool in the monitoring and enforcement of other applicable rules and regulations, for example on OSH.**¹⁴ In addition, compliance with these information obligations should allow the authorities to better map the extent and focus of activities in platform work over time. This overview is necessary to organise monitoring of the work environment of platform workers and enforce compliance with rules and regulations applicable to all parties involved.

Besides introducing new means of detecting and characterising fraud, the Act **reinforces the means of sanctioning fraud**. This includes the implementation of a wider publicity logic for sanctions in cases of serious tax fraud, the creation of administrative sanctions against parties facilitating fraud who are not the perpetrators of the fraud, the revision of the method to calculate fines, among other means. Non-compliance by platform operators with these obligations leads to the application of penalties amounting to a global flat-rate fine set up to a maximum of €50,000 and a fine equal to 5% of the undeclared sums in the event of failure to file the summary document within the stipulated period.

¹¹ LOI n° 2018-898 du 23 Octobre 2018 relative à la lutte contre la fraude, *JORF* n°0246 of 24 October 2018 (<https://www.legifrance.gouv.fr/loda/id/JORFTEXT000037518803/>). Also see: <https://www.eurofound.europa.eu/data/platform-economy/initiatives/french-law-no-2018-898-of-23-october-2018>. The Proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation is of relevance here. The overall objective of the Directive is to increase tax fairness by preventing tax fraud and tax evasion in order to take account of the challenges posed by the digital platform economy and the difficulties to detect and trace taxable events and transactions. The proposal aims, amongst others, to expand the scope of the information exchange and administrative cooperation between tax authorities from Member States.

¹² The law complements the *'Loi pour un Etat au service d'une société de confiance'* of 10 August 2018 (ESSOC), which introduced a 'right to error' on the part of the citizen or company. The Act relies on two pillars: 'Faire confiance' (trust), and 'Faire simple' (Keep it simple). For more information see: <https://www.gouvernement.fr/conseil-des-ministres/2017-11-27/un-etat-au-service-d-une-societe-de-confiance>. The principle of trust and the right of error (errors committed in good faith) in the law are thus 'complemented' by introducing measures to tackle fraud and abuse (bad faith) in the law on the fight against fraud.

¹³ For example, the person involved resides in France or is engaged in the provision of services or goods falling within the scope of French VAT-legislation (Article 242 bis, 3°, last limb of the General Tax Code as amended).

¹⁴ As is often the case with undeclared work, *detection* of the activities performed and the actors involved is a *conditio sine qua non* to apply the law. There can be no monitoring nor enforcement of applicable rules and regulations without basic information on activities and/or actors involved. Avoiding detection of activities can often be observed in the field of undeclared work or other forms of social fraud, hence the importance of information-exchange and the growing number of governments' initiatives on data-matching or -mining (among other publications De Wispelaere, F., Pacolet, J., Rotaru, V., Naylor, S., Gillis, D. & Alogogianni, E., Data mining for more efficient enforcement: A practitioner toolkit from the thematic workshop of the European Platform Undeclared Work, Brussels, European Commission, 2018).

About 120 platforms have filed declarations for income received in 2019, covering about 1.2 million natural persons and about 0.4 million professionals and legal entities.¹⁵

One stakeholder stated private insurance companies have data on the number and nature of work-related accidents in the context of platform work but refuse to share this information. According to the stakeholder, the incidence of accidents with certain types of platform workers is deemed significantly higher than in similar categories of people who are not performing activities within the framework of a platform (such as professional drivers, recreational cyclists and so on). Data from private insurance companies could provide valuable insight in this matter.

The LOM¹⁶

As a result of the *'assises nationales de la mobilité organisée'* [national mobility conferences] organised in 2017, the LOM was introduced (and formally adopted in December 2019) with the aim to make daily means of transportation easier, less expensive and cleaner. What makes the LOM relevant to platform work is that it introduced **provisions¹⁷ applicable to platforms and platform workers either driving a 'transport car' or delivering goods using a motorised or non-motorised two- or three-wheeled vehicle**, as in passenger transport or parcel delivery. For platform workers driving a transport car or delivering goods using a two- or three-wheeled vehicle, the LOM introduces:

- a **'right to refuse'**: Platform workers 'are entitled to refuse a transport service offer without being subject to any penalty whatsoever. In particular, the platform cannot terminate the contractual relationship with the worker on the grounds of the refusal of one or more such offers'.
- a **'right to disconnect'**: Platform workers 'are entitled to freely chose activity time-slots and inactivity periods and to disconnect during these time-slots. Termination of the contract by the platform when a worker exercises these rights is prohibited'.¹⁸

The LOM also introduced **the possibility for platforms**, 'as a part of their social responsibility towards workers', **to establish a charter** according to the rules laid down in Article L. 7342-9 of the Labour Code, as amended. The objective is to ensure greater transparency of the working conditions and to guarantee professional training, career paths, risks assessments and complementary social protection.¹⁹ These elements all could have an impact on OSH, both in terms of risk prevention and risk management. More specifically, if a charter is established, it must specify in particular:

1. The conditions for exercising 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 its users as well as the rules that can be implemented to regulate the number of simultaneous connections of workers in order to meet, if necessary, 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 the workers to use the platform and to connect or disconnect, without activity time slots being imposed;
2. The procedures aimed at enabling workers to obtain a decent price for their services;
3. The methods of developing professional skills and securing professional careers;
4. Measures aimed in particular at: (A) improving working conditions; (B) preventing occupational risks to which workers may be exposed as a result of their activity as well as damage caused to third parties;
5. The terms and conditions with regard to the sharing of information and the dialogue, between the platform and the workers, on the conditions for exercising their professional activity;
6. The terms and conditions under which workers are informed of any changes on the conditions of practicing their professional activity;

¹⁵ Rapport d'information déposé en application de l'article 145-7 du règlement par la commission des finances, de l'économie générale et du contrôle budgétaire, sur l'application de la loi n° 2018-898 du 23 octobre 2018 relative à la lutte contre la fraude, Assemblée nationale, No 3341. Available at: https://www.assemblee-nationale.fr/dyn/15/rapports/cion_fin/l15b3341_rapport-information

¹⁶ LOI n° 2019-1428 du 24 décembre 2019 d'orientation des mobilités, JORF n° 0299 of 26 December 2019, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039666574/>.

¹⁷ See the introduction of a sixth chapter in the second title of the third book of the first part of the French Transport Code: 'LIVRE III: Réglementation sociale du transport', <https://www.legifrance.gouv.fr/codes/id/LEGITEXT000023086525/>.

¹⁸ As indicated before, the EI Khomri law already created this right for traditional employees, which the LOM now extends to self-employed digital platform workers in the transportation sector.

¹⁹ See: <https://www.eurofound.europa.eu/data/platform-economy/initiatives/revision-of-the-legal-framework-for-platform-workers>. When establishing a chart, platforms must ensure that workers receive precise information on the distance and minimum price of the service, and so on. This information should be made available by any means and it must be presented fairly and is legible, clear, unambiguous and easily accessible by the worker.

inspections.²⁵ Nevertheless, one should bear in mind the limited scope of the *Ordonnance* (to various sectors of the public road transport) to the extent one could raise questions as to why such obligations, already in place for other economic actors for decades, are not imposed on other platform operators.

Conclusions

The French legislative framework presents an example of some important first steps in the direction of improving the working conditions related to platform work. The El Khomri law, in particular, introduced changes in the French social and fiscal legislative framework, providing some self-employed platform workers with individual and collective rights that are common among employees: access to training, insurance against accidents at work and occupational diseases, and the right to join and to form a trade union. Critics, however, argue that these rights were already provided, either as fundamental rights or as constitutional rights. Opponents of the El Khomri law further argue that extending said rights to workers that are (deemed) self-employed is at odds with rules on fair competition.²⁶ Besides the El Khomri law, the law on the fight against fraud and the LOM further comprise a number of provisions that help increase transparency in platform work and that support the identification of platforms and platform workers, for example by imposing reporting obligations on platforms. In this way, the laws may indirectly affect OSH, for example by facilitating data collection, monitoring and enforcement.

Overall, consulted stakeholders did not seem convinced by the impact of the French Legislature's initiatives on the many actual problems relating to platform work, given among other issues the too often too limited scope of the provisions. None of the stakeholders consulted for this case study reported any inspections on OSH specifically and most stated that **enforcement of OSH regulations was absent if not completely inexistent**. Parts of the legislative framework pay attention to enabling platform workers and giving them a voice – which is key for OSH risk prevention and management. The framework also engages platforms and by doing so, it **may foster social dialogue in the platform economy in France**, which in turn may help improve the working conditions and OSH.

It must be noted, however, that the **scope** of the French legislative framework targeting digital platform work is **limited**, which implies that – despite the progress that was made – **many, if not the majority of, platform workers are still faced with uncertainty**. Related to this, several provisions foreseen by the legislative framework are voluntary, for example platforms can choose whether to establish a charter (and only when they choose to do so, certain rules apply). As a result, despite the potential of the laws and ordinances discussed in this policy case study to contribute, directly or indirectly, to the clarification of platform workers' employment status, the improvement of working conditions, including occupational health and safety, **their impact to date seems to be rather limited**. In addition, several stakeholders reported that authorities are (still) faced with a lack of data on platform work and struggle with the question of whether platform work falls within their remit. The legislative framework may provide clarity in this regard for some cases, but not for all.

Although the French legislative framework and especially the El Khomri law are often referred to as a 'good practice' example in the literature and debate, this case study indicates that there are a number of critical points it fails to address. As a result, in practice, the framework may not be very effective and the key issue of the employment status of platform workers remains unsettled. Focussing on OSH, this implies that labour and social inspectorates, OSH authorities and enforcement agencies are still not able to act in relation to platform work and that most platform workers are not covered by OSH regulations.

²⁵ Future Articles L. 3151-6 and L. 3251-4 of the French Transport Code.

²⁶ See for example: the literature on Case C-413/13 FNV Kunsten Informatie en Media.

References

- Chatzilaou, K. (2020), 'Can digital platforms challenge French Labour Law?' in *Modern Forms of Work: A European Comparative Study*, edited by Stefano Bellomo and Fabrizio Ferraro, Sapienza University Press, Available at: http://www.editricesapienza.it/sites/default/files/5999_Modern_Forms_of_Work_OA.pdf.
- EU-OSHA (2021), [Digital platform work and occupational safety and health: a review](https://osha.europa.eu/en/publications/digital-platform-work-and-occupational-safety-and-health-review). Available at: <https://osha.europa.eu/en/publications/digital-platform-work-and-occupational-safety-and-health-review>
- Eurofound (2021), France: Law 2016-1088, Eurofound Platform economy repository, Available at: <https://www.eurofound.europa.eu/nl/data/platform-economy/initiatives/france-law-2016-1088>.
- Grelet-Certenais, N., Rapport n° 226 (2019-2020) au nom de la commission des affaires sociales sur la proposition de loi visant à rétablir les droits sociaux des travailleurs numériques déposé le 8 janvier 2020, Sénat, Paris, 2020, p. 17, Available at: <https://www.senat.fr/rap/19-226/19-226.html>.

Authors: Dirk Gillis (HIVA-KULeuven), Karolien Lenaerts (HIVA KULeuven), Willem Waeyaert (EFTHEIA)

Project management: Maurizio Curtarelli, Emmanuelle Brun, European Agency for Safety and Health at Work, (EU-OSHA).

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