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General Mobility Bill: The thorny issue of digital platform workers

Almost a year after the landmark decision handed on November 28, 2018 by the *Cour de Cassation* (French Supreme Court)[1] which had for the first time ruled on the reclassification of the contract between a delivery rider and a digital platform and acknowledged the existence of an employer-employee relationship, where does the French legislator stand on the thorny issue of gig economy workers?

Brief recap

It should first be recalled that under French law, there exist only two statuses: the status as self-employed and the status as employee. With the significant development of digital platforms, the whole question is to know which of these two statuses is applicable to platform workers, or whether a third way should emerge.

Law of August 8, 2016[2] had introduced in Articles L. 7341-1 *et seq.* of the French Labor Code a first series of minimum guarantees to protect this new category of workers: if workers remain self-employed, the applicable provisions confer on platforms a social responsibility under certain conditions, as regards protection against occupational accidents, access to vocational training, recognition of the concerted refusal to provide services and freedom to form and to join trade unions.

At the time the so-called Bill on Professional Future was discussed[3], the legislator tried include additional provisions that would have given platforms the possibility to set up a social charter in favor of these workers. The purpose of this optional charter was to afford to workers a higher level or protection while setting aside any risk of reclassification of the contractual relationship as an employer-employee relationship. Following this unsuccessful attempt[4], the measure reappeared in the General Mobility Bill[5].

The General Mobility Bill

With the General Mobility Bill (the "Bill"), the principle of the optional charter remains the same.

The Bill indeed provides that platforms will be free to draw up a charter setting forth the terms and conditions for the exercise of their social responsibility, and thus define the rights and obligations of the platform and the workers. While this charter is not mandatory, if it is established, it will have to address the eight topics that will be listed in the final version of the Bill. As of now, these topics are as follows:

"1. The conditions for the exercise of the professional activity of the workers with whom the platform is in contact, in particular the rules according to which they are put in contact with the platform's users as well as the rules that can be implemented to regulate the number of simultaneous connections of workers in order to respond, if necessary, to a low demand for services by users. These rules guarantee the non-exclusive nature of the relationship between the workers and the platform and the freedom for workers to use the platform and to connect or disconnect, without time slots being imposed;

2. the terms and conditions to enable workers to obtain a decent price for their services;

3. the methods for developing the worker's professional skills and securing their professional careers;

4. the measures aimed in particular at (a) improving working conditions, and (b) preventing occupational risks to which workers may be exposed as a result of their activity and damage to third parties;

5. the terms and conditions governing the sharing of information and the dialogue between the platform and the workers on the conditions in which the latter exercise their professional activity;

6. the procedures under which workers are informed of any change in the conditions in which they exercise their professional activity;

7. the expected quality of service, the methods by which the platform will monitor the activity and how it is performed, and the circumstances that may lead to the termination of the relationships between the platform and the workers in accordance with the requirements set forth in Article L. 442-1 of the French Commercial Code, as well as the guarantees from which the worker benefits in this case;

8. where applicable, the additional social protection guarantees negotiated by the platform and from which workers may benefit."

The platform must first consult "by any means" self-employed workers on the charter, before referring the matter to the administrative authority to seek its approval.

The charter must then be published on the platform's website and attached to the contracts or general conditions of use that are bidding between the platform and the workers.

In order to encourage platforms to go down this path, the Bill includes a safeguard mechanism by stating that the drawing-up of the charter and compliance with the commitments made in connection with the listed topics cannot characterize the existence of a legal subordination link (and therefore the existence of an employment contract) between the platform and the workers. The Bill also provides that any dispute concerning the

conformity of the charter to the law and the approval or refusal of approval by the administrative authority will fall within the jurisdiction of the Court of First Instance, not within the jurisdiction of the Labor Court.

In addition, the Bill confers new rights on workers: the right to disconnect without risk of being sanctioned, the right to know the guaranteed minimum price for a ride, the right to refuse a ride and the right to know how long they have been working and the income they have earned from their activity. It also strengthens workers' right to training.

What scope?

In the legislator's view, these provisions aim at strengthening and securing the social responsibility of platforms in such a way as to enable the self-employed workers they use to benefit from additional social rights.

However, despite this second step, the legislator does not deal with the question of a specific status for these workers and thus only partially responds to the signal sent to it by the *Cour de Cassation* in November 2018[6].

Consequently, the risk of having the contractual relationship between a platform and its workers be reclassified as an employer-employee relationship remains.

The judge will indeed retain full discretion to order reclassification based on elements other than those included in the eight topics to be addressed by the charter. As such, if a judge determines that there exists a relationship of subordination between the worker and the platform – which is characterized in particular by a power of direction, control and sanction – the judge will be entitled to order reclassification, notwithstanding the existence of a charter.

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[1] In this respect, cf. articles entitled Reclassification of the contract between a delivery rider and a digital platform: A strong message sent by the *Cour de Cassation* and *Uber drivers are employees according to the Paris Court of Appeals!* published on our Blog in December 2018 and March 2019

[2] Law n°2016-1088 of August 8, 2016 on work, modernization of social dialogue and securing professional careers

[3] Law n°2018-771 of September 5, 2018 on the freedom to choose one's professional future

[4] This provision, considered as a legislative rider, was invalidated by the French Constitutional Council

[5] General Mobility Bill, Doc. Sénat, n°157, November 26, 2018

[6] Labor Chamber of the *Cour de Cassation*, November 28, 2018, n° 17-20.079

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