

So that the digitalization of the economy does not encourage the emergence of a cyberprécariat, let's protect the workers of the platforms

"We call on the government to stop dithering over the search for a new hybrid status for workers on digital platforms, since salaried employment, cooperatives or true independence - which must be improved - are effective solutions to curb e-pre-seconomy. At the same time, digital platforms must be given a 'real duty of care'. The digitalization of the economy must not be synonymous with the uberization and destruction of social rights, unless we want to go back to the shoeshine boys' time. "It is with these words that Olivier Faure and several members of parliament opened a forum in Libération on May 11th. It is clear that six months later nothing has changed.

The health crisis that we are going through makes visible what many did not see or refused to see: the forgotten of the Republic that are the workers of the digital transport platform. These twenty-first century workers have had no other choice during the confinement than to continue their work, because none of the guarantees offered by the labor code ensure the protection of their health, nor the compensation for the loss of their income if they cannot work or if they are affected by the virus. This state of affairs stems from the false pretext that they are not employees but managers of individual companies.

But who can still seriously think that they are entrepreneurs when they are simply connected to customers through a platform?

Protecting "fictitious" freelancers

Judicial responses have already been made. Twice in 2018 and in March 2020, the French Supreme Court of Appeal admitted that the subordination link constituting an employment contract between a self-employed worker and a platform could be established. The High Court even considered, in the case of an Uber driver, that the status of self-employed worker was "fictitious" even if the worker freely determines the period and duration of his connections. These are therefore subject to the Labour Code. However, the recognition of their rights would suppose that each one of them would individually seize the judge and obtain at the end of a long and expensive procedure, the recognition of their true status.

In the face of the crisis, digital platform workers can no longer wait! The government must finally assume its responsibilities, all the more so since it was empowered to do so by the emergency law of March 23rd on health emergencies; reactivated since then!

We expect him to hold the platforms to account for their real responsibilities. They must be accountable for all the safety obligations weighing on any employer, be they health or financial.

During the crisis, national solidarity allows these workers to subsist. The government's lump-sum aid of €1500, although it has the merit of course to exist, is not enough to allow an Uber driver to assume his fixed expenses (the rental of the vehicle, the €300 monthly insurance, maintenance costs) and to have a decent rest to live on. Recently received by the Ministry of Economy and Finance, VTC drivers are asking for a guarantee that they can benefit from the solidarity fund, but also that it be applied retroactively as the loss of a client is so sudden and lasting. Many of them do not meet the criteria for the scheme, either because their car company did not exist the previous year or because the decline in their turnover is not considered sufficient to be eligible (many affected by the yellow vest crisis). We strongly support this claim.

Thus, a mechanism for partial activation must quickly be created and co-financed by the State and the platforms. Without income and under pressure, workers are taking ill-considered risks: some have been contaminated, others have died.

Finally, and this should be a prerequisite, in addition to these imperatives, there should be real protection against the health risks inherent to the activity of VTC drivers or bicycle delivery drivers. They are in contact with the public, constantly on the move, and sometimes without protective equipment (gel, gloves, masks). We ask nothing more than to guarantee the basic protections to which these false independents must be entitled.

Immediately requalify as employees

The extension of the status of employee of these platform workers must finally be clearly recognized in our Labor Code. Government attempts to circumvent labor law must stop. Without saying so, they promote the development of digital platforms whose speculative economic model leaves them no choice but to underpay for work. It is urgent to act because this model is based on the logic of *fait accompli*, by creating consumption habits that are based on undermining social protection standards. The State of California has not hesitated to choose this path. Let's be equally responsible and, if necessary, quickly legislate a requalification of these contracts.

Seized by our two parliamentary groups in the Senate and the National Assembly, the Constitutional Council stopped these government maneuvers by censoring a provision of the law guiding mobility - the famous "charters" - which was intended to curb judicial requalifications on December 20, 2019; after having already done so in 2018 on the *Avenir Pro* law on an appeal already brought by the two socialist groups. It is following these two decisions that the government entrusted Jean-Yves Frouin with a mission on the issue of the representation of platform workers and, as we feared, on the proposal to create a third status between salaried employment and independence; against the opinion of the Senate almost unanimously during the first reading of the LOM and against the opinion of the Conseil National du Numérique (CNNum) which in its report of July 2020 considered this "*as a false good idea that does not provide a lasting solution*"¹. And while the charters and this third status do not seem to be taken up by the Frouin mission, which will render its conclusions in November, it is the government itself which, through a decree of October 22, 2020, is coming back with this Trojan Horse against labor law, in defiance of the Constitutional Council, the Court of Cassation, the VTC drivers and the commission it has itself instituted, with the sole aim of satisfying the demands of the platforms!

Promote the cooperative

In parallel to the requalification for all workers to which it must apply and in the face of the every man for himself system that the platforms - which the government accompanies - want to instil, it is necessary to make the cooperative form more visible. It is an excellent tool in that it preserves the freedom of genuinely independent workers to organize and allows them to constitute themselves as a community.

This was the purpose of the bill aimed at restoring the social rights of digital workers proposed by the Socialist Group in the Senate in January 2020, which considered that "*the public authorities cannot allow work to develop without rights or outside the law. It is therefore incumbent upon it to regulate the digital platform sector and to protect these workers by obliging the actors to enter into collective bargaining to develop an organized professional branch that protects workers' rights*".² Too little known, the activity and employment cooperative compatible with the statute The "entrepreneur-employee" status guarantees remuneration linked to the activity. Workers are free to

¹ *Working in the Age of Platforms* Report, CNNum, p.6

² Excerpt from the Explanatory Memorandum of the FPP of Senators PS

to organize their time and work rhythm. Their income is paid in the form of salaries with the corresponding social rights. They are grouped together in this cooperative which can enable them to negotiate their contracts and rates collectively, and free them from an often tyrannical algorithm, a kind of 2.0 foreman that divides them.

It should be noted that, at the same time as this bill was being examined by the Senate, the Jean Jaurès Foundation published the Giusti-Thévenoud report *Pour travailler à l'âge du numérique, défendons la coopérative* which demonstrated both the shortcomings of the charters and the operability of the cooperative.

If the object is still to be perfected, there is no doubt that the co-operative is a path that must continue to be explored. The CNNum also recognizes that it is part of the package of solutions to be brought to the problem of the status of platform workers. Recommendation number 8 of its January 2016 report on the supervision of platforms, of what was still called at the time the "collaborative economy", put forward very directly the issue of "the *qualification of relations between workers in the collaborative economy and platforms*" and proposed to "*support platform cooperativism to ensure fair compensation and representation of workers in the collaborative economy*"³.

Extend the "duty of care".

Finally, we ask that the truly independent be endowed with real social rights.

Firstly, the sub-status of "self-entrepreneur" should be reserved for the creation phase of the business and should no longer be this disguised form of work.⁴

On the other hand, even when they are not subordinate, the self-employed may be subject to a state of economic dependence with a client company. The purchase of services at a rate that does not allow for reasonable remuneration of the work, i.e. at a loss, must finally be prohibited in our law.

Isn't it time to impose a real obligation of vigilance on large clients with regard to their self-employed workers? A law of 2017 on the duty of vigilance of large groups, carried by Dominique Potier, PS deputy for Meurthe-et-Moselle, has opened an unavoidable path. In substance, it makes it possible to identify the companies that have the power to organize a worker's activity and to make him/her assume the responsibilities.

It is to denounce these excesses in subcontracting chains that Olivier Jacquin filed an opinion with the Public Prosecutor of the Republic of Paris on August 4, 2010, in accordance with Article 40 of the Code of Criminal Procedure, which states that "*any constituted authority which, in the exercise of its functions, acquires knowledge of a crime or misdemeanor is required to give notice thereof without delay to the Public Prosecutor*". He reported that he was aware of "work concealed by concealment of salaried employment" and "employment of foreigners not authorized to work" by the company Frichti and its sub-contractor Delivexpress after having met the delivery man behind the movement of platform workers; a case revealed by *Libération* as early as June 25. It is because this procedure was activated that Frichti agreed to negotiate and pay the delivery man the sums due to him, to regularize some of the other workers - not all, alas - and to engage in a real policy of improving the working conditions of the people with whom it contracts.

Changing the law

It is for all these reasons that we will propose a legislative change that will put the platforms before their responsibilities in order to better protect these workers, and more broadly the self-employed.

³ Rapport Travail emploi numérique - les nouvelles trajectoires, CNNum, January 2016, p.119

⁴ An own thematic contribution, initiated by Vincent Duchaussoy, has been submitted in this respect within the framework of this congress.

⁵ " Sans papiers, sans contrat... bienvenue chez frichti ", *Libération*, June 1, 2020

Firstly, by transposing the duty of vigilance from the Commercial Code (Potier law) to the Civil Code by instituting that any company that uses self-employed workers to carry out an operation is bound by a duty of vigilance consisting of identifying risks, preventing serious violations of human rights and fundamental freedoms, the health and safety of persons and the environment, and guaranteeing a decent and fair remuneration to the worker to whom it calls upon, under penalty of legal proceedings. Through this action we seek in particular to fight against abusively low prices or tariff reductions imposed by the platforms - as we have seen with Deliveroo or Uber for too many months without acting - and thus to fight against the abuse of economic dependence through the concept of "decent and fair" remuneration.

Secondly, by fighting more effectively against fictitious self-employment through group action of workers for their rights, and first of all for requalifications. But also through a "citizen" group action that would note failures in this vigilance, and first of all on the risks concerning the health and safety of workers.

Finally, by forcing the platforms to sit around the table, guaranteeing workers a real social representation that we want to build around two ideas: the union affiliation of independent workers to the representative confederations in the branches, and the mandating of workers by a union in the case that it does not have representatives in a platform that wants to open a social dialogue with the workers it calls upon. We also want the activities of the platforms to be all linked to branches in order to promote social dialogue at this level, but also to apply a levelling up of social rights. In the current conditions, it is difficult to imagine that they could go any lower...

Conclusion

The digitalization of the economy is useful but should not be synonymous with the uberization and destruction of social rights. Employees, cooperators or true independents, let us preserve and strengthen clear employment frameworks that are as many "barrier statuses". Let's urge an end to these attempts to create a hybrid status that will only make these workers more precarious, especially in the transportation sector. Home delivery of sushi does not justify the destruction of our French model.

Socialists, let's reject cyber-proletariat!

Signatories

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