

Self-entrepreneurship, Trojan horse of the uberization of work?

For a regulation of the status of micro-entrepreneur

Taking its name from the Californian company offering a worldwide passenger transportation system in vehicles with drivers that compete directly with cabs, "uberization" is defined as the phenomenon that, with the arrival of a new player based on a new technical or technological feature, upsets an established ecosystem. Uberization is therefore a disruption, an element that undermines pre-existing structures and reshuffles the cards. Like the company that gave it its name, uberization has thus appeared in the field of digital platforms. Meal delivery, chauffeured transportation service, courier service, etc., for several years now, the service economy has been shaken by these new players. Taking advantage of the boom in digital tools and consumer connectivity, they propose to ensure, through the intermediary of a digital platform (usually a smartphone application), the connection between a consumer looking for a service and a worker offering it. The company is remunerated by charging a service fee and/or a percentage of the transaction.

But the disruptive nature of this form of digital economy is not limited to the economic fabric. It is generally based on the use of self-employed workers, whom the platform officially limits itself to putting these workers in touch with the customers using their interface. This new form of work, linking a worker - supposedly self-employed - to an often unique enterprise, poses a recurring problem of labor market regulation and protection of proletarianized workers. Justice, in France as in other European countries, has moreover repeatedly requalified it as a contract of salaried employment and condemned the company/platform to pay arrears of social security contributions.

In doing so, the disruption extends to the organization of work since the workers carrying out these activities are neither truly self-employed nor employees. They exercise under the status of micro-entrepreneur, formerly auto-entrepreneur, which came into force on January 1st 2009. The original aim of the scheme is to encourage the creation of businesses - particularly in the context of professional reconversions - by greatly simplifying the formalities for the creation, interruption and termination of an individual professional activity for profit. This status allows, in particular, the direct online registration and registration of one's business, but also simplifies the payment of social contributions, taxes and fees which are grouped together in a single contribution proportional to turnover. If the creation of this status responds to a liberal vision of economic activities, it nevertheless has certain merits in that it reduces the risk associated with business creation (simplification of administrative formalities and contributions). It thus allows a person who wishes to develop his activity to launch it within the framework of a polyactivity and to be able to secure his economic model before switching to a traditional company.

However, this original justification for self-entrepreneurship has since been largely circumvented. For many workers, it has become a form of third status in substitution for salaried employment. Since the digital platforms, its use has indeed extended to sectors of the traditional economy such as catering or certain tourism professions. Between 300,000 and 400,000 micro-enterprises are created every year, so that the number of self-employed people will reach 1.4 million by the end of 2019. The average turnover remains very low, at 11,300 euros, and only owes its constant progression to the raising of income ceilings on the one hand and to the circumvention of this status to mask false employees on the other hand, this drift being precisely allowed by the doubling of the turnover ceiling in 2018.

From the point of view of economic activity, the main problem lies in the recourse to workers who are self-employed in name only, even if the economic risk is almost exclusively borne by them. This is nothing more and nothing less than a return to the "spotting" as it still existed in the 19th century, at the beginning of the industrial revolution. Three elements make it possible, including in the eyes of justice, to distinguish false self-employment:

- Orders or instructions issued by a single principal ;
- The ability to control the execution of tasks by the principal ;
- The possibility for the latter to disciplinarily sanction his collaborator.

It is on this basis that the Supreme Court of Appeal has already ruled on the reclassification of employees as salaried employees of so-called self-employed workers, but always a posteriori.

For employers, the use of auto-entrepreneurs rather than employees has the advantage of flexibility, as well as the circumvention of social security contributions. For workers, who are mostly low-skilled, the low level of contributions - when they are correctly declared to URSSAF, this status can be attractive in that it offers an immediate remuneration that is generally higher than a fixed-term or permanent contract at the minimum wage, for example. More generally, people who are unemployed do not always have the choice to refuse when such a combination, and the promise of a return to work that goes with it, is offered to them. The corollary is the almost general lack of social protection:

- Insurance deficit (unemployment, retirement, etc.)
- Impossibility of recourse and legal protection (in the event of unilateral breach of collaboration or deprivation of the right to intermediation in the case of the use of a platform)
- Uncertainty related to working conditions.
- Lack of guaranteed remuneration or minimum wage.
- Exposure to occupational hazards

This virtual absence of social protection actually affects all self-employed workers, but exposes in a stronger way the self-employed for whom the average remuneration is very low and does not allow them to build up, for example, precautionary savings or take out additional insurance. Ultimately, it has consequences for the State and public finances, which will have to bear the related costs in the event of an accident at work, disability, etc., without having received the corresponding contributions.

The model of salaried employment, around which our labor law was built, corresponds in the end to a recent construction, inherited from the 19th century and the industrial revolution, far from

older conceptions of work. Is the rise of the platforms the beginning of a deeper change in the world of work, marked by a shift from salaried to self-employment? In many countries, we are witnessing the development of hybrid forms of salaried and self-employment, whose common characteristic is to transfer part of the fixed costs of the company and the risks linked to the organization of the production of goods or services to the workers, thus escaping the social thresholds and participation in the mechanisms of national solidarity. The status of auto-entrepreneur, in its current drift, fits this description perfectly. A firm can in fact reduce its costs by multiplying the number of contracts with independent partners rather than organizing the work of employees within an organization.

It is therefore necessary to legislate and regulate the self-enterprise sector, without falling into the trap of creating a third status that would have no other merit than to allow the de facto regularization of the abuses we have just denounced. On the contrary, it is necessary to reaffirm the primacy of the salaried sector, since the Labor Code already offers the necessary flexibility to allow very diverse forms of work to fall within this general framework. It is not a question, for socialists, of denying or refusing certain evolutions in work, particularly in the context of the development of the digital economy. On the contrary, it is a matter of tirelessly pleading for a regulation of these evolutions of work, so that they take place within a negotiated global framework that allows the protection of the workers concerned to be ensured, maintained or improved. It is indeed the role of the public authorities to impose these regulations in order to manage this transition and to moderate its negative effects on our social protection system in particular.

We offer :

1 - **A temporal limitation on the use of the auto-entrepreneur status.** For workers whose main activity is carried out under the status of auto-entrepreneur, it would be appropriate to limit the benefit of this status to 5 years [Recommendation n°1]. This period should be sufficient to allow the person concerned to develop his activity in a sustainable manner while minimizing risks, one of the initial vocations of the micro-enterprise. Beyond that, the auto-entrepreneur could be accompanied by the Chamber of Commerce and Industry (CCI) on which he depends in order to modify the statutory framework of his activity towards that of a classic company or a true independent. If at the end of this period, the transformation into a traditional company is not possible, the auto-entrepreneur concerned must be accompanied to benefit from training and validation of skills that will allow him to ensure his reconversion.

2 - For auto-entrepreneurs with only one customer, we propose to **limit the duration of the service to eighteen months**, the same duration as fixed-term contracts with a specific term. If the service performed on behalf of the client company requires a duration of more than 18 months, this certainly means that a hiring with an open-ended employment contract must be considered, without a trial period, under penalty of automatic requalification. This measure aims at fighting against the abusive use of self-employment by the principals. In the case of conventional workers, labor law must apply.

3 - We also propose to set a **limit on the number of self-employed contractors that a client could choose as subcontractors**, as a percentage of its total salaried workforce, in order to limit the use of self-employed self-employed contractors as a substitute for salaried employees. This rate could be set at 10 or 15% but could also vary according to the branch of activity and be determined by the social partners, provided that it does not exceed a ceiling of 25%. If the company cannot develop in a sustainable way by recruiting employees, this necessarily invalidates its business model.

4 - In certain sectors that employ a large number of self-employed people, such as passenger transport or home delivery, the remuneration offered by the principals is far from reaching the minimum hourly wage. For example, the International Labor Office (ILO) estimates that in 2017 self-employed workers working on behalf of digital platforms received an average hourly wage of €3.86, or just under 50% of the minimum wage in France. It is therefore imperative to **guarantee self-employed workers a minimum remuneration at the hourly SMIC**, which must obviously take into account the fixed costs borne by the worker (purchase and maintenance of equipment, etc.).

These proposals should not exonerate us from also moving forward with a reform of social protection for the self-employed. This reform, whose overall philosophy is based on the architecture that had been developed at the time of the Liberation when the Social Security was created, proves to be in many respects insufficiently protective and does not take into account the diversity of the situations concerned nor the evolution of the work of the self-employed over the last 75 years.

Our goal is not to hinder the digital revolution that is radically transforming our economy and consequently our way of working, which is spreading even in certain sectors of the traditional economy. But because we are socialists, we must ensure that these (r)evolutions take place with respect for the law - in this case labor law - and do not lead to deepening inequalities and further impoverishing populations, most of whom are already exposed or vulnerable. Let us make it clear: changes in work cannot and must not lead, through the competition of employees transformed into individual entrepreneurs, to the creation of a proletariat of the 21st century! We must, by rehabilitating the regulatory role of the State, set ambitious objectives for the protection of workers in order to orient economic development towards social progress and the general interest.