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Promoting employed worker status on digital platforms: how France's labour inspection and social security agencies address 'uberisation'

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Summary

In France, the growth of digital labour platforms has benefited from the support that has been provided by one section of the governing political class for the sake of the 'employment opportunities' that they are expected to generate. However, their operating model, which relies on outsourced labour carried out by supposedly self-employed workers, has been the subject of inspection operations and objections initiated by the social security agencies and institutions that ensure compliance with labour law. Based on interviews with these stakeholders – labour and social security inspectors – this article illustrates how they are seeking to reintegrate these workers into the employed workforce, not only for the purpose of maintaining their safety at work but also with a view to preserving the French social model. These inspectors rely on their traditional control tools but also on the framing of anti-fraud policies. Ultimately, their actions seek to inform legal disputes with a view to reclassifying the workers concerned.

Résumé

En France, l'essor des plateformes numériques de travail a bénéficié du soutien d'une partie de la classe politique au pouvoir, au nom des « emplois » qu'elles offriraient. Leur modèle, fondé sur l'externalisation des travailleurs, supposément indépendants, a toutefois fait l'objet de contrôles

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et de contestations de la part des institutions garantes du droit du travail et de la sécurité sociale. Reposant sur une enquête auprès de ces acteurs – inspecteurs du travail et inspecteurs de la Sécurité sociale –, l'article montre comment ils cherchent à réintégrer ces travailleurs dans le giron du salariat, au nom de la sécurité au travail mais aussi de la préservation du modèle social. Ils ont recours à leurs instruments de contrôle classiques, mais jouent également du cadrage par la lutte contre la fraude, et visent *in fine* à alimenter des actions juridiques visant à requalifier les travailleurs.

Zusammenfassung

In Frankreich hat ein Teil der herrschenden politischen Klasse den Aufschwung digitaler Arbeitsplattformen mit der Erwartung unterstützt, dass diese Plattformen zusätzliche „Beschäftigungsmöglichkeiten“ generieren. Allerdings haben Arbeitsaufsichtsbehörden und Sozialversicherungen das Geschäftsmodell dieser Plattformen, das auf ausgelagerte Arbeit von angeblich selbständigen Auftragnehmer/innen angewiesen ist, seit einiger Zeit verstärkt kontrolliert und in Frage gestellt. Auf der Grundlage von Gesprächen mit diesen Stakeholdern aus den Bereichen Arbeitsaufsicht und Sozialversicherung beschreibt der vorliegende Artikel den Versuch, diese Beschäftigten wieder in Standardarbeitsverhältnisse zu integrieren – nicht nur, um ihre Sicherheit und Gesundheit zu schützen, sondern auch, um das französische Sozialmodell zu bewahren. Diese Kontrollinstanzen verlassen sich auf ihre bewährten Instrumente, aber auch darauf, dass diese Maßnahmen als Betrugsbekämpfung dargestellt werden können. Letztlich zielen sie darauf ab, die Voraussetzungen für juristische Auseinandersetzungen zu schaffen, mit denen eine andere Einstufung der betroffenen Arbeitnehmer durchgesetzt werden soll.

Keywords

Digital labour platforms, employment contract, self-employment, labour inspection, social security, social legislation

Back in 1919, the Preamble to the Constitution of the International Labour Organization (ILO) denounced the ‘conditions of labour [. . .] involving [. . .] injustice, hardship and privation to large numbers of people’. To tackle that situation, the ILO relied on the Member States’ ratification of conventions laying down labour standards intended to guarantee ‘full employment’, ‘a just share of the fruits of progress to all’, and even ‘satisfaction’ in line with the 1944 provisions and ‘decent work’ as defined in 1999. With responsibility for ensuring that the safety, remuneration and social protection conditions were met, the inspection function was established as a necessity by the international organisation. ILO Convention No. 81, ratified by France in 1950 and requiring countries to apply ‘a system of labour inspection’ reinforced the work of the Labour Inspectorate, a special body which had been in operation since the late 19th century and was responsible for ensuring compliance with the first laws protecting workers. Today, a number of bodies contribute to overseeing compliance with legislation governing the French social state, which is primarily enshrined in two codes forming social law, namely the Labour Code and the Social Security Code, which share a number of similarities: in particular, they both make provision for inspectors and auditors (employees lower in grade to inspectors), operating under the Labour Inspectorate and URSSAF organisations (Organisations for the Collection of Social Security and Family Benefit Contributions) respectively.

The agencies governing labour and social security inspection mechanisms in France:

The Labour Inspectorate, which is the monitoring body responsible for enforcing labour law, is directly under the authority of the General Directorate for Labour which, in turn, is affiliated to the Ministry of Labour. It consists of labour inspectors and auditors who report to the regional directorates. Their mission is to monitor compliance with labour law (the Labour Code, collective bargaining agreements) in all its aspects: health and safety, operation of the staff representative bodies, working time, employment contracts, illegal work, etc. To fulfil this role, they have power to investigate and may issue formal notices, decide to suspend the work activity in the event of danger or even prepare reports for submission to prosecutors in criminal proceedings. Their control operations are guided by national plans, but inspectors also enjoy a degree of professional autonomy in this regard.

The URSSAF is a network of private organisations responsible for carrying out a public service mission, namely the collection of social security contributions earmarked for financing social protection. Organised at the regional level, they form a network under the direction of the URSSAF Caisse Nationale (National Fund), formerly known as ACOSS (Central Agency of Social Security Organisations). The URSSAF employees' anti-fraud mission leads them to monitor situations of concealed employment, thus complementing the work of labour inspectors and auditors in this field. The URSSAF organisations and the Labour Inspectorate are part of the 'social state', whose boundaries go beyond those of the state in the strict sense to include all the social security institutions, which are private organisations governed by trade unions, employers and the state.

Unlike in English-speaking countries (notably the United States), staff of these organisations enjoy a broad area of competence, covering all social and labour legislation and the vast majority of businesses and sectors of the economy (Piore and Schrank, 2018). Since their emergence and development in the 2010s, digital labour platforms have created a new focus of interest within the Labour Inspectorate and the URSSAF organisations.

Digital labour platforms are synonymous with indecent work conditions and social protection measures (Berg et al., 2018). They lie at the heart of many a dispute, especially those where the status of the workers comes into question. These platforms are essentially a hub for male-dominated work, in particular in the transport and delivery sectors. These types of platforms are the main focus of our study here because they are increasingly the target of public measures, thus creating the framework for our analysis. These degraded work conditions can be explained to a large extent by the fact that workers using these platforms are, in France and elsewhere, assumed to be self-employed and not employees (*salariés*). However, the status of employee was originally built up as a primary means of improving work, whether in terms of the working conditions or the related social rights (Castel, 1995; Didry, 2016). Platform workers do not, for example, benefit from any paid leave, nor do they receive any unemployment compensation in the event of a cessation of activity, nor any social security protections in the event of a workplace accident or occupational disease; they may, at best, be covered by lower-quality private insurance. Therefore, the status of these workers is a central issue for an array of stakeholders, given that circumvention of the protections afforded to employed workers is the cornerstone of the economic model underpinning these platforms. Courts in various countries are now regularly ruling in favour of employee status, as they consider the workers in practice to be in a position of clear subordination in respect of these businesses. France is no exception, as demonstrated by the criminal conviction imposed on the delivery platform Deliveroo in April 2022 for concealment of employed activities. This judgment is even more significant, as it is based on an investigation conducted by the Labour Inspectorate. Far from being an isolated incident, this is just one of a series of measures by the control bodies where the status of the workers is scrutinised. Although URSSAF and Labour

Inspectorate staff are experienced in distinguishing between salaried employment and self-employment, this task is made difficult by the manner in which digital labour platforms which reject the label of ‘employer’ conduct their operations, taking the view that they merely serve to put the service providers in contact with those requesting services by supplying a digital application for their use. This task is challenging also on account of the support granted to the platforms thus far by the highest levels of the state against the backdrop of the broader transformations of social law, gradually moving away from laws intended to protect employees against employer arbitrariness towards laws serving the businesses themselves (Gomel et al., 2009; Méda, 2018; Willemez, 2017), thus impacting the functioning and legitimacy of these control authorities. Consequently, how and to what degree can URSSAF and Labour Inspectorate staff strive to achieve a better quality of work on these platforms?

Following our presentation of the manner in which these institutions could challenge the conditions governing the performance of work on these platforms in spite of the support for these businesses provided through government and parliamentary majority, we will highlight the limited resources that these inspection bodies have at their disposal for carrying out their work, before revisiting their vital relationships with the judicial system, where adopting a position in law in support of employee status is essential to promoting better work.

This article is based on fieldwork conducted between 2019 and 2021 on a regional labour directorate and an URSSAF organisation from the same French region that had coordinated their actions in respect of digital labour platforms. We conducted 12 interviews, compiling information from some 30 staff in total (including at executive level) from these authorities and other institutions with which they coordinate their activities (police, Transport Ministry officials, judges, etc.). We also attended, in an observer capacity, three days of control operations on drivers using platforms. Finally, we scrutinised a collection of documents, some of which had been gathered in interviews and during observations, including reports drawn up by staff of these inspection bodies looking into these platforms. This multi-level ethnographic approach has therefore allowed us to create an overall picture of the constraints on these actions, whether they are political or administrative or whether they originate from the inspected entities, all the while facilitating an understanding of the motivations behind these inspection employees’ drive to regulate the work organised by the digital labour platforms (Dubois, 2012).

Opposing approaches within the state authorities towards digital labour platforms: is the focus ‘employment’ or ‘better work’?

The commitment of the two inspection bodies to their oversight of the digital labour platforms may come as a surprise if we are to regard these bodies as links in the chain of public action, bearing in mind that the highest levels of the French Government have been very supportive of the economic model adopted by these companies. Although they do not all have the primary task of safeguarding workers’ rights, these bodies nonetheless clearly appear to promote a ‘better work’ strategy, inasmuch as they are driven by the objective of protecting a social model that is still broadly underpinned by the employed workforce.

Safeguarding the operation model of digital labour platforms outside the context of salaried employment for the purpose of job creation

The *Uber files* leaked in July 2022 highlighted the relationships established in 2014 and 2015 between the current President of the Republic, Emmanuel Macron – then Minister for the Economy,

Industry and Digital Affairs – and the managers at Uber with a view to facilitating the company's establishment in France.¹ These revelations go some way to unveil the rationale behind the French Government's actions in support of digital labour platforms, first under the Presidency of François Hollande and then by his successor Emmanuel Macron. For these political leaders, the objective was to 'safeguard' the operation of these businesses – that is to say, essentially using workers with no formal relationship with those companies – because they felt that the platforms would be innovating and provide 'thousands of jobs', although the work conditions for the people working in those jobs had been heavily criticised, in particular by the drivers and deliverers using the platform (Abdelnour and Bernard, 2018; Abdelnour and Méda, 2019). This supposed policy of promoting job creation to the detriment of the quality of the work on offer was articulated to perfection by Emmanuel Macron during his campaign in the run-up to his election in 2017, when he commented in an interview: '*Go [. . .] and explain to all the young people working as Uber drivers that they would be better off hanging around on the streets or dealing. The neighbourhoods where Uber is hiring are the very areas where we have nothing to offer them. With Uber, they work 60 or 70 hours [a week] just to make the minimum wage. But the job gives them self-worth.*'²

These points of view were translated into texts promoting the operation model of the platforms, the objective of which was to incorporate the workers using those applications into the Labour Code as self-employed workers, whereas the Code is traditionally synonymous with the law governing employed workers. Recourse to this paradoxical provision has thus far arisen on two occasions: first, on the adoption of the 'Labour' Law of 8 August 2016, and only in relation to 'self-employed workers using one or more electronic platforms for the exercise of their professional activity', and, more specifically, the platforms establishing 'the characteristics of the service provided or the goods sold and fix[ing] the price', that is to say, those which are most subject to employment reclassification procedures. The self-employed workers concerned have the option to strike and to form trade unions, but this right does not extend to collective bargaining with those companies. They may also benefit, in some circumstances (depending, in particular, on turnover), from the platform's payment of their contributions into a private insurance scheme or even from a right to access professional training. Subsequently, the Mobility Orientation Law of 24 December 2019 introduced into the Labour Code the option for some platforms (solely for private-hire vehicles and for two- or three-wheeled delivery vehicles) unilaterally to establish 'social charters' setting out the main aspects of the work relationship (from the service price to social protection, also focusing on the conditions governing the termination of the business relationship) while stipulating that the charters' constituent features cannot be relied on in court to demonstrate an employer/employee relationship. In the light of these developments, the government moves in the direction of an irrefutable, i.e., undisputable, presumption of self-employment (Gomes, 2020) – a move which has been unsuccessful thus far following a decision by the Constitutional Council – and relies primarily on the 'social responsibility' of these companies for granting rights and protections to these workers. Three successive Senate bills, one proposing a procedure for establishing a third employment status (between employee and self-employed) and the other two proposing recognition of the status of employee for these workers, have, in turn, been rejected. However, reflecting the degree of autonomy enjoyed by the social state and its staff in respect of more liberal state groups, URSSAF and Labour Inspectorate staff have taken on an onerous task in overseeing the work activities outsourced by the platforms.

1 Henley J and Davies H, 'Emmanuel Macron secretly aided Uber lobbying drive in France, leak reveals', *The Guardian*, 10 July 2022.

2 Emmanuel Macron, Médiapart platform, 7 November 2016.

Inspection bodies operating a relatively autonomous agenda

The actions taken by URSSAF and Labour Inspectorate staff in response to the growth of platforms may differ in part, but they share the common aim of protecting a social model that these companies seek to circumvent, and are enabled by two key factors. First, they benefit from an institutionally guaranteed autonomy which allows staff to combat the degradation of work and social protection. Second, anti-fraud policies give them legitimacy to act.

First of all, the employees of these inspection bodies present a picture of the tasks and the autonomy of their respective administrations, which go some way to explain how they deal with platforms. As regards the Labour Inspectorate, its monitoring of platforms is shaped primarily by the individual agenda of inspectors. That discretion is underpinned by texts (see above), presented several times during the interviews, which establish their capacity to ensure the proper application of all aspects of labour law, in spite of the policy changes.³ Their focus on the platforms therefore stems from their concern for the protection of workers heavily exposed to occupational risks. It also occasionally follows on from reports from workers employed by the platforms, which in the past has provided the opportunity to investigate the platforms' practices in respect of those workers as well as the practices of their supposed self-employed users. Investigation of the platforms would then be supported by the Regional Labour Directorate studied. Autonomy was also mentioned by the inspectors interviewed to explain the possibility, in spite of the lack of inspection resources, of separate measures by the Ministry of Labour – involved in the drafting of texts promoting the self-employed status of workers using these platforms – and by the inspectors who, in contrast, construe the work relationship as that existing between the employer and the employee:

'You end up reaching a point where, unless there's someone willing to do the job, it doesn't get done. My colleagues have to address the urgent matters, which could be a worker who has had his hand torn off [. . .]. There is the national plan for tackling illegal work on the internet, but there's nothing in it; it's just as I said: the aim is to promote self-employed work, to promote platforms.' (Labour inspector, April 2019)

These inspectors see their role above all as standing up for these workers who do not benefit from any protections offered by an employment contract:

'In this type of platform activity specifically, there may be a very high accident rate, and in those circumstances a self-employed worker has no long-term contributions. Let's imagine there is a problem, and the self-employed worker has to stop working: he can collect no payment of any kind for the first six days, after which a calculation is made. There's a significant loss of earnings. So, often, and especially in the case of young workers, the reaction is simply to plough on in spite of the injuries that they still haven't recovered from and that, a few years down the line, cause them musculoskeletal disorders. This may have a huge impact. And these are the people who barely pay any contributions, and their occupational accidents are very rarely declared. It really is a problem. The protections available for self-employed workers are very limited.' (Labour inspector, April 2019)

These details of the work conducted on platforms as described by the labour inspectors interviewed point to a focus on work-on-demand platforms, especially those dealing with transport and delivery, rather than crowdwork platforms, or platforms commodifying non-work-related activity, or even the exchange of goods (De Stefano, 2016). Although the inspectors were supported by their

3 On the history and special features of the Labour Inspectorate as well as its recent trends, see in particular Bonanno (2020), Szarlej-Ligner (2017), Tiano (2003) and Viet (1994).

direct superiors, that support became weaker the further up the hierarchy towards the ministerial ranks it was granted:

‘At one seminar, attended by all the [regional] leaders, everyone was really proud to present the procedure that we had introduced. The departmental director gave the presentation on it. And then the Director General talked about how it was “good, but may I remind you that your priorities lie elsewhere”.’ (Interview with labour inspectors, September 2020)

Turning to the URSSAF staff, their role within the social security institutions – which were, in part, traditionally set up independently of the state (in terms of budget, specific funding sources, government bringing together state, trade unions and employers) (Palier, 2005) – undoubtedly explains how oversight of the platforms is now undertaken by the institution as a whole. Furthermore, the main task of the URSSAF organisations is not so much to safeguard workers directly but to ensure that businesses comply with their social security funding obligations. URSSAF employees therefore are not responsible for assessing whether or not the working conditions are decent. However, they are required to assess whether the status under which workers carry out their activity (as an employee or self-employed worker) corresponds fully with the actual conditions of work, or whether fraud is committed in this context due to a ‘*misclassification*’ of the work activity (Carré and Wilson, 2004) which leads to financial losses for the social security funds.

Interest in the platforms is derived less in this instance from a need to protect workers by conferring employed status on them and more from the desire, by the end of the 2000s, to investigate internet sales platforms (such as eBay), and to examine, in particular, the boundaries between the occasional individual user (who is not required to pay social security contributions) and the professional for whom these internet sales are the main work activity. Such interest also stems from a desire to monitor the social security declarations of self-employed workers, in particular those who, like many platform workers and as advocated by the platforms themselves, operate as micro-entrepreneurs. Micro-businesses are operated under simplified arrangements by self-employed workers whose turnover is less than a certain amount; these arrangements came into force in 2009 and rely on a package of aid measures for business start-ups (such as social and tax exemptions) (Abdelnour, 2017). Self-employed workers are problematic in terms of the resources that the URSSAF organisations can devote to them: many URSSAF employees are needed to monitor the thousands of these micro-entrepreneurs, even though the sums to be collected from them individually are small. Nevertheless, due in part to the platforms, this will probably be a growing demographic which will overwhelmingly avoid paying any social contributions:

‘Even if they start up their own business, micro-entrepreneurs make no contributions at all [. . .] at the very least, 90 per cent of them declare absolutely nothing, and when I say that, I mean that they do not even submit quarterly slips. And so, that’s what really jeopardises social security funding.’ (URSSAF employee, October 2019)

In view of the risks perceived by URSSAF staff to the adequate funding of the social security system, in the second half of the 2010s, micro-entrepreneurs and platforms were the focus of auditing plans drawn up at both national and regional level (by the URSSAF organisation investigated). Staff studied the business model for the platforms and classified them on the basis of the likelihood of fraud involving social security contributions and the bureaucratic resources that could be used to address those issues. For a whole series of online sales platforms (e.g. eBay, Le bon coin and Etsy), the URSSAF representatives are less interested in the self-employed status of the workers, which is not in question, than the actual declaration of income. However, other platforms specialising in delivery and transport, which rely massively on micro-entrepreneurs, have been considered

problematic in terms of the employment relationship. According to the URSSAF managers we have spoken to, by including these platform workers in the employed category, it would be possible to collect social security contributions without having to conduct the rigorous auditing of each and every micro-entrepreneur while reducing the opportunities for fraud. However, acquiring the URSSAF organisations' firm commitment to the auditing of digital transport or bicycle delivery platforms was not a foregone conclusion. Some staff recall that the (re)classification of platform workers has long been regarded – and still is, according to some state administrations – as a 'rear-guard offensive', and they may have felt that they were 'swimming against the tide' (URSSAF employee, October 2019). The first measures against Uber in 2014–2016 were proposed and initiated by inspectors in the field, and the dossier was seen through to the end only by virtue of the support of the URSSAF's regional director at the time.

Commitment to cross-cutting anti-fraud policies

Officials from the Labour Inspectorate and URSSAF staff therefore focus their efforts on the transport and delivery platforms: here, they can endorse a joint position in favour of employed status, given that they work in the field to tackle the concealment of employed work and intentionally fraudulent practices. Moreover, these measures form part of cross-cutting anti-fraud policies, thus providing additional resources and further legitimacy for their actions.

Fraud, and specifically social security fraud which covers both social security contributions and social security benefits, has in fact become a central concern in the political sphere as well as in the bureaucratic field, in the light of budgetary discipline and the 'moralising' of one section of the population since the 2000s (Dubois, 2021). In the context that is relevant here, this concern is translated into enhanced auditing objectives but also into the establishment of specialised teams for combating illegal work; most of the staff we interviewed have worked in these teams. It is also exemplified by inter-agency partnerships which, since 2008, have locally taken the form of CODAFs (Operational Departmental Committees against Fraud) under the authority of the relevant prefecture, bringing together the police, state administrations (Ministry of Transport, tax services, Labour Inspectorate) and social security bodies (including the URSSAF organisations), and the judiciary, bearing in mind that the response by the criminal justice system is regarded as pivotal in the treatment of fraud. These stakeholders can coordinate their actions, and share instruments without undermining their individual operating practices, rivalries or authority. These links between different agencies have consequently informed the investigations and audits on the platforms carried out by URSSAF and Labour Inspectorate staff. In this context, as pointed out by a judge playing an active role in these cross-cutting policies, it is not so much the protection of workers that provides the shared focal point for the different agencies, but rather the damage that the platforms cause to the public finances (state funds and social security funds) through the concealment of employed work:

'We felt it necessary to have an actual anti-fraud policy in place. This approach perhaps focuses less on the rights of employees, although we do try not to overlook those rights, but it does all the same focus less on employed workers and less on regarding the concealed employee as a victim, even though that is clearly the case and the courts have ruled accordingly, and more on considering that we are dealing with a loss in public funding.' (Judge examining platform-related cases, November 2019)

These findings are borne out by the French Court of Auditors (Cour des Comptes), an institution which has become an important vector for the policies for combating social security fraud (Dubois, 2021). Accordingly, one of the chapters of the Court's 2018 Public Report is entitled: 'Tackling

social security contributions fraud: a policy in need of relaunch' (Cour des comptes [Court of Auditors], 2018). The Court points out in the report that the development of activities on the internet and the exponential development of 'collaborative' activity now involve major risks of fraud, and it criticises the drop in the number of checks carried out with a view to tackling concealed employment. It calls for increased staffing in this area and ultimately recommends increasing the volume and frequency of measures to combat illicit work. These recommendations do not apply automatically to the bodies concerned by them, since the Court of Auditors has no hierarchical power over them. However, these specific recommendations will be included in the agreement on targets and management between the social security bodies and the state and will take the form of enhanced objectives with regard to the number of audits but will also involve establishing specialised teams for combating concealed or undeclared employment.

Policy regulation of platforms thus highlights the contradictions existing within the state administrations since, on the one hand, a series of stakeholders makes every effort to ensure that activity on the platforms is not hindered in the name of 'employment', whereas others demand that measures be stepped up in the fight against fraud. How can inspectors operate within the confines created by these contradictions to fulfil their mission of protecting the workers, in particular those on digital labour platforms?

Influencing the direction of the digital labour platforms model despite limited resources

Although the audits and investigations conducted by officials from the Labour Inspectorate and staff from the URSSAF organisations overlap in many regards, they are still different, as a result of the resources available to them and the – to some extent – different arrangements in place for dealing with the problems created by the platforms. The checks conducted by the URSSAF and labour inspection bodies differ in terms of the instruments mobilised and the targets of the inspections, namely the platforms and/or the workers using them depending on the circumstances. In any event, staff of these institutions are required to work together on the same cases where employee status is supported. They nevertheless come up against reduced resources and the large-scale circumvention of auditing measures.

Monitoring platforms with few resources and the prospect of an uncertain outcome

In practice, platforms occupy a residual position in the entire range of checks conducted by the Labour Inspectorate and URSSAF bodies investigated. However, the investigation points, in particular, to a strong mobilisation of staff specialised in combating illicit work within the two agencies.

Consequently, as regards the regional labour inspection office concerned in the investigation, there are a handful of officials (fewer than five) specialised in illicit work who have been monitoring platforms over the long term. However, officials can periodically provide back-up in the event of special inspection operations, for example, at a company's headquarters (20 officials in total mobilised in one instance). As regards the URSSAF, staff are mobilised in greater numbers, since two types of platform are placed under scrutiny. On the one hand, there are those not considered to be problematic from the point of view of the employment relationship, which are handled by half a dozen auditors in an 'online cell'. These audits involve carrying out 'offsite checks' remotely by comparing the platforms' files relating to the users' turnover with their income declarations to URSSAF in order to verify whether they are paying the correct and full amounts in respect of social security contributions. On the other hand, the number of inspectors looking specifically into

platforms where the employment status of their workers is questioned is more or less the same as the number of labour inspectors. Moreover, their methods of working on these platforms are very similar, if not the same, based primarily on ‘on-site’ inspection measures.

They carry out ordinary investigation work, which does not require any new skills or resources and aims to establish the practical arrangements under which the work is completed, to observe the relationships between the customer commissioning the work and the person carrying out the work, and to identify pointers for determining whether the worker is, in effect, employed or self-employed. These checks, which are conducted both at the French headquarters of the platforms concerned and on their users, must facilitate the collection of documents on the operation of the business: articles of association, contracts signed with the workers, invoices, training materials, etc. These operations may be carried out jointly or separately. In this context, a large delivery platform was subject to inspection in 2016 by the Labour Inspectorate which subsequently sent the related report to URSSAF staff for a calculation of the missing social security contributions, proceeding from the premise that the delivery workers were employees. Elsewhere, URSSAF staff, who are the pioneers of the administrative measures introduced with a view to reclassifying paid employment, independently conducted the audits in 2014–2015 on one of the largest platforms for drivers. Hearings were held in the autumn of 2014 to gather information from drivers declaring that they worked for the company concerned, and then control operations were conducted at the company’s headquarters in spring 2015. A more recent audit of another driver platform was conducted jointly by URSSAF staff and labour inspectors at the company’s headquarters. These investigations are therefore particularly costly in terms of bureaucratic resources, which are, in any event, limited, as explained by one labour inspector:

‘Dealing with a case like Deliveroo is extremely time-consuming. We’re talking about contractual relations for thousands of people. We have to look at the service contracts – there are around 5000 of those – and some 30,000 invoices. We’re talking about files with gigabytes of data. As it’s so time-consuming, you need the time to do this.’ (Labour inspector, April 2019)

Having the resources needed for such a large-scale set of operations by no means guarantees the success of the procedure. Although the employment relationship in France is a public policy issue, that is to say, it is beyond the control of the parties concerned, the courts alone have the power to undertake reclassification (under civil law) and to impose convictions for concealment of an employed activity (under criminal law). The inspection authorities have no direct means, administrative fines or other sanctions at their disposal to compel the platforms to change their operating model, apart from the power to submit a report to the Public Prosecutor’s Office which is not obliged to pursue proceedings (see below).

In view of this uncertain outcome of their inspection operations, on top of the limited resources available, staff of these two bodies opted to apply separate strategies to ensure that their checks are effective irrespective of whether they are ultimately successful in the courts. Officials from the Labour Inspectorate explain that they prioritise the monitoring of the most prominent delivery and transport platforms. Their objective is to turn work conditions into a public and publicised issue, thus offsetting the lack of resources available to the authority and enabling workers to become aware of their poor work conditions and options for action:

‘What I wanted to do was to look at businesses that carry weight socially or are prominent in the media and have the potential to make a serious social impact. One particular idea is to run a media campaign educating self-employed workers so that they are aware of their situation. Initiating proceedings against Deliveroo or other such companies has a massive media impact, and workers using other platforms hear about them.’ (Labour inspector, April 2019)

Turning to the URSSAF staff, although their inspection operations serve primarily to gather evidence for use in court proceedings relating to the platforms themselves, those operations can also be mobilised to encourage self-employed workers to fulfil their social obligations irrespective of any reclassification as employed workers. It is partly with this objective in mind that they coordinate with officials from the police and Ministry of Transport to launch inspection operations on drivers at train stations and airports; the labour inspectors whom we interviewed refuse to take part in these operations. For them, the purpose of these audits is ambiguous: is the aim to gather additional evidence of an actual employment relationship between the platforms and the drivers? Or is it to make sure that the drivers are working legally, both in terms of the sectoral legislation and in compliance with their social security obligations, without calling their status into question? Without dismissing these objectives, the director of inspection at the URSSAF organisation examined takes the view that checks on drivers are tactical in their objective, promoting a house-of-cards model to compel the platforms ultimately to change their operating model, but without having to demonstrate any employment relationship, which is a particularly lengthy and tedious procedure:

‘Instead of looking again at reclassification and having to unravel everything, demonstrating a relationship of subordination, in making people pay what they owe, the scheme per se will not work because they cannot pay: if they pay the contributions and everything that they owe, they won’t be left with much, and so the pressure on the platform will be such that either they will have to be organised differently or they will have to act [. . .]. In any event, they are pressurised into acting differently.’ (URSSAF executive, May 2019)

In all cases, the checks highlight that work conditions have significantly deteriorated and that these state measures have fallen foul of circumvention strategies.

‘Emptying the ocean with a teaspoon . . .’

On-site inspections, carried out at the headquarters of the platforms and on the workers, provide opportunities for assessing the difficulties faced by these authorities in improving work and the functioning of the business sectors nurtured by these platforms.

First, the inspectors identify those practices categorised as fraudulent, the volume of which far exceeds the resources at their disposal. The administrative checks on drivers using the platform applications show an overwhelming number of irregularities:

‘Q: And here, out of the 35 to 40 checks, how many instances of fraud did you uncover?’

A: Many. On average, 80 per cent involved fraudulent activity. We came across undeclared micro-entrepreneurs, fake cards, cars without a badge, unlawful exercise of the activity, [. . .]. And then occasionally we’d come across the lot: no card, no badge, no company. And yet the chap is actually registered on [a platform] and he’s working.’ (URSSAF inspector, October 2019)

Beyond that, in particular with regard to passenger transport, the checks bring to light subcontracting chains where companies act as intermediaries between drivers and platforms, leasing out cars and accounts on the platforms to drivers, thus exacerbating the degradation of work in this sector. Drivers are urged to accept these arrangements if they are to start working in this business before they have even obtained their licence, or where they have to hire a vehicle:

‘We all too often overlook subleasing, more’s the pity. We can’t imagine what this set-up might conceal: subleasing, accidents, etc.; these are things that appear to be minor, collateral damage, but they are not insignificant incidents. We have come to realise that, when you are a driver, you want to work, and you

can't afford to buy the cars, you link up with a third-party legal structure and you rent the car. So, every day, you are paying €70 to €80 for the right to use the car.' (URSSAF inspector, October 2019)

The intermediary companies, which arrange – on behalf of the platforms – for a large number of drivers to work but declare only some of them, are regularly the subject of proceedings by the social security authorities. However, the fact that these companies can declare themselves insolvent seriously complicates these proceedings.

Furthermore, for inspection staff, the main problem is still the digital labour platforms themselves, whose operating method is considered to be the source of degraded work in the sectors where they operate. Consequently, a large proportion of their investigation work is focused on the platforms so as not to dilute the bureaucratic resources available or water down the objectives:

'With operations like that, prioritising is a necessity. Therefore, we will not focus as a priority on micro-entrepreneurs either, because in this context, bearing in mind that we are at the reclassification stage and we are trying to claim that there is a relationship of subordination, we have agreed not to pull in two opposite directions. If we increase the contribution base for micro-entrepreneurs, then we are acknowledging their status as self-employed workers and are therefore saying that they are responsible for paying contributions. Since we are looking at both Uber and Chauffeur Privé with regard to the reclassification of drivers, we don't want to have to explain further down the line the fact that we took decisions which might be "recognised legally" as implying that we actively promoted self-employed worker status.' (URSSAF employee, October 2019)

However, there are also a number of obstacles when inspecting the platforms themselves, and they emerge at different stages. For example, during inspections at platform headquarters, inspectors have problems in seizing the content of servers and information systems, given that these businesses operate internationally and store their relevant information overseas. Similarly, following checks at the French headquarters of platforms, the inspectors may ask for additional documents to be submitted, but here again, not without obstacle or delay, even though the business is obliged to supply them:

'Employers are always running down the clock, meaning in practice that they are sent registered letters; three months later, we follow this up, and the employers then claim never to have received them; we then show them proof of receipt of the letters, and they tell us that they have mislaid them [. . .]. We had so very many problems like this.' (URSSAF employee, October 2019)

Ultimately, for these two inspection bodies, the objective increasingly involves drawing up reports to forward to the courts, rather than carrying out audits which – to quote one URSSAF inspector (interview, October 2019) – would be like 'emptying the ocean with a teaspoon'. The key in these circumstances is to resort to the law and rely on a longstanding precedent on subordination, in spite of the most recent laws in favour of platforms.

Contributing to the case-law in support of employed status for digital platform workers

Staff from URSSAF and officials from the Labour Inspectorate contribute mainly to the litigation process against platforms and, following audits and inspections, submit reports to the Public Prosecutor's Office. Of all the instruments available to these inspection bodies, recourse to the courts is usually marginal, with social scientists regarding reports as a 'residual sanction' (Dodier, 1988: 13) to be imposed only in exceptional circumstances (Mias, 2015). Here, however, no

accommodation can be made for digital labour platforms: since, from the perspective of the inspection bodies, the problem lies in the rejection of employment status at the heart of the platform model, it is impossible for these companies to regularise their situation following a check. URSSAF and Labour Inspectorate staff thus have recourse to the courts and, in so doing, operate almost like an investigation service for the justice system, the judges we interviewed referring to a woeful lack of resources for carrying out this work.

This transition into the legal arena means that the motivations of these staff and the bureaucratic arrangements in respect of these platforms need to be translated into legal categories of understanding. URSSAF and Labour Inspectorate staff adopt the same approach to French labour law which promotes employed status as a vehicle for improving work, and which is unaffected by political contingencies and immune to attempts at circumvention, even where such measures are supported by the government or parliament. Although one section of labour law may appear to have been challenged, thus eroding some protections afforded to workers (Willemez, 2017), these inspection staff are convinced that the very core of labour law concerning the *summa divisio* between employed work and self-employed work is preserved for now, and it is for them to make this section of labour law effective and robust:

‘There are policy decisions and there are changes. Like every public servant, we are not normally subject to political changes; we are here to ensure that the law is correctly applied and that, in our own field of expertise, the workers are protected. Furthermore, the texts relating to platforms cannot be applied to the workers for legal reasons because, when all is said and done, the fact is that we are dealing with subcontractors [. . .] but, in these circumstances, that doesn’t matter, as there are further legal texts which protect self-employed workers, and the provisions state clearly that, when they are in a situation of legal subordination, this amounts to concealed work because these workers should have been declared, as spelled out in black and white, and we acknowledge that, even though, for official purposes, they are looking for work.’ (Labour inspector, April 2019)

That is why the staff interviewed do not see platforms as a technological revolution set to overhaul work methods, employment relations and the legal arrangements for dealing with it. On the contrary, they view the rise of platform work in the context of the long history of labour law and the boundaries of the employed workforce:

‘We have kind of reached the conclusion that these platforms, technically speaking, are somewhat of a smokescreen as far as we’re concerned; the issue may have been brought up again, but it isn’t new [. . .]. In the end, the result of all this, apart from the novelty of the parties involved, is that it all boils down to whether or not we are dealing with self-employment, and therefore we end up going back to the question of social protection and labour law dating from the 19th century as we ask ourselves whether there is a relationship of subordination [. . .]. We will therefore look at the specific work activity concerned, because those involved in it will be able to give more details on it and determine the correct category for it, even though it is the courts that make that decision.’ (URSSAF executive, May 2019)

‘However, looking at the bigger picture, you have to keep in mind that it’s just a means of production. Yes, a dematerialised means of production, but it serves just as a medium for those activities that already exist. The activities aren’t new, we aren’t dealing with things that didn’t exist beforehand: we have couriers, taxi-drivers, hairdressers, we have driving instructors, you see, it’s just the medium we are dealing with. You are either in online shops or on virtual production lines.’ (Labour inspector, April 2019)

In other words, their commitment to the longstanding tradition of labour law analysis allows these staff from the inspection bodies to position themselves above the recent policies rolled out by the government to enshrine and protect the economic model for platforms. However, the people we

interviewed are alive to the political challenges involved in court proceedings initiated by them, which may lead to the reclassification of several thousand workers and, therefore, to some potential reluctance on the part of judges to hear and adjudicate on such matters in their favour. Citing the example of a transport platform, URSSAF staff have estimated that the loss to the social security contributions system resulting from concealment of employment activity is €96m over two years, a sum that is calculated on the basis of the turnover of drivers who have worked using this app. Consequently, reports concerning platforms are the focus of very careful attention: these documents are sizeable so as to support demonstration, are reviewed by a number of URSSAF and Labour Inspectorate staff, are endorsed by the legal services and the senior executives, and they are also referred to, in advance of their submission, at meetings held with the judges for the purpose of gauging their sensitivity to the relevant case:

‘The Labour Inspectorate looks into the social and economic implications of these platforms. But this is not the case for all stakeholders in the loop; so, it is important for these reports to be educational for their submission to the Prosecutor’s Office and the courts.’ (Labour Inspector, April 2019)

Inspection staff are therefore reliant on the gradual development of case-law, which would reclassify digital labour platform workers as employees, thus granting them a status affording greater protection and promoting a better quality of work.

Conclusion

It is clear from the above considerations how, by maintaining a distance from a political reorientation in favour of digital labour platforms, staff from the bodies overseeing France’s social state are trying to bring the workers using these platforms into the employee framework, thus granting them an employee status providing access to the most robust rights and protections. Using the specific example of digital labour platforms, we are seeking to shed light on activities of the social state which are rarely documented, and which, rather than looking at benefits and oversight of their recipients, focus on the monitoring of business activities, with a view to ensuring their compliance with the law and their contribution to the funding of national solidarity arrangements. By virtue of bureaucratic autonomy as well as the legitimacy and resources afforded by anti-fraud policies, the investigation reveals a social state defined by actions and run by people proven to be more or less directly responsible for safeguarding the employment model, in the face of stakeholders which, under the guise of innovation encouraged by the digital environment, seek to evade the protections that an employment contract guarantees for workers. The interviewed staff from the inspection bodies therefore play a major role in preserving the French social model but also in safeguarding more decent work as defined by the ILO. They contribute with some success, despite their limited resources, to promoting a labour law that protects workers using digital applications, arguing convincingly that these workers are employees. Where national pockets of resistance have defended an alternative model for platform workers, transnational forums have also been able to put forward recommendations in this regard. Accordingly, the European Directive, proposed by the Commission and subsequently adopted by the European Parliament in February 2023,⁴ lays the foundations for the generalised presumption of employee status for all platform workers, who would, on that basis, be protected by labour law and benefit from the social protection afforded to employees. It remains

4 European Commission, Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work, 2021/0414 (COD), 9 December 2021.

now to be seen how this text will be translated – or distorted – at national level, in France and elsewhere in the European Union. However, it should be noted in conclusion, but also with a view to undertaking research in this area, that this Directive as well as the measures taken by inspection authorities focus on male work platforms, to the detriment of commodification activities involving female work which is historically devalued or considered to provide a supplement income, activities which do not really command their attention.

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