

Platform Reps

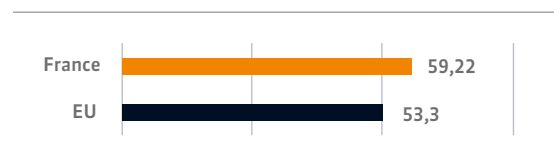
FRANCE: Country report 2022



1. Context: Social dialogue and work in platforms

According to Eurofound, the social dialogue quality in France is well above the EU average (see **Figure 1** below).

Figure 1: Industrial Relations Index (2013-2017)¹

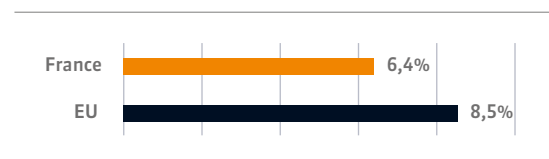


Source: [Eurofound Industrial Relations Index](#)

At the same time, measured as a share of the adult population, work in digital labour platforms (hereafter referred to as “platforms”) in France is two percentage points lower than

the EU average than in the EU (**Figure 2**).

Figure 2: The share of workers in platforms in the adult population (2021)²

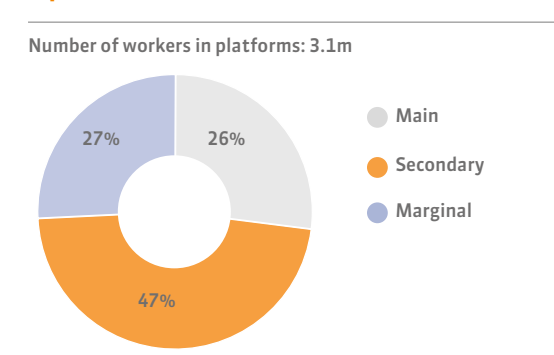


Source: EC (2021); Eurostat.

Nevertheless, workers in platforms constitute a sizeable group. In 2021, over 3 million workers were estimated to be working in platforms more than sporadically (i.e., at least 10 hours a week or contributing to more than 25% of

their income) in France, for over a quarter of whom it was their main occupation (**Figure 3**).

Figure 3: Number and categories of workers in platforms (2021)³



Source: EC (2021)

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1. The index measures the overall quality of the “collective and individual governance of work and employment” across four categories, based on 47 indicators. See: Eurofound (2018). *Measuring varieties of industrial relations in Europe: A quantitative analysis*. Publications Office of the European Union, Luxembourg., p. 1.

2. The numbers cited are an upper-bound estimation based on 2021 survey results. They cover all types of work in platforms from low- to high-skill and from on-location (e.g., transport, delivery) to online work (e.g., ICT, data entry, creative work). See: EC (2021). [Study to support the impact assessment of an EU initiative to improve the working conditions in platform work](#)

3. **Main** workers work through platforms for at least 20 hours a week or receive at least 50% of their income therein. **Secondary** workers spend between 10 and 19 hours per week or receive between 25% and 50% of their income from work in platforms. **Marginal** workers spend less than 10 hours a week working via platforms and get less than 25% of their income via platforms.

2. Current legal framework

2.1. LABOUR LAW

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In the labour market, employment relations are generally regulated by labour law (for employment contracts) or competition law (for commercial contracts). Nevertheless, **French legislation does not entail a legal definition of an employee or a self-employed person, and this status definition relies on case law.**

According to the French Supreme Court, an employment relationship exists when a person undertakes to work in the name and under the supervision of another in return for remuneration. The two most important principles applied by the French courts to determine worker status are:⁴

- **The existence of (legal) subordination:** The subordination relationship is determined through a bundle of evidence, such as the power to give orders and directives, the power to control the execution of work, and the power to sanction in case of failures or breaches by the worker.
- **The realism principle:** The existence of an employment relationship does not depend on the parties' will or the name given to their agreement but on the factual conditions in which the professional activity is carried out.

Furthermore, the French Labour Code provides that any person registered with the Commercial and Companies Registry or the Commer-

cial Agents Register (i.e., registered as self-employed) is presumed not to be an employee and not to provide services in a subordinate manner. However, the Supreme Court gives it practically no bearing by virtue of the realism principle.⁵

2.2. PLATFORM-SPECIFIC LEGISLATION

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The legal framework regulating work in platforms is rather broad and complex, although does not cover the entirety of issues (e.g., the question of worker status) and sectors (limited to the mobility industry). A non-exhaustive list of the key platform-specific laws is provided in **Table 1** below.

Table 1: Legislative framework for work in platforms in France

Legislation	Year	Key provisions
Law No. 2016-1088 (the El Khomri law)	2016	Applying only to self-employed workers in platforms, the Law entails a legal definition of platforms, provides individual and collective rights of workers in platforms, and defines the social responsibility of platforms.
The Bill on Transport Mobility (Loi LOM)	2019	The Bill extends the provision of the right to disconnect (as set up by the previous Law no. 2016-1088) for self-employed drivers in the mobility industry. It also entails drivers' freedom to refuse rides without penalties and codifies a requirement for platforms to notify the drivers of the distance and the minimal net payment before accepting a client.
Ordinance No. 2021-484	2021	The Ordinance sets the terms and conditions for the representation of self-employed workers. It establishes the Authority for Social Relations of Labour Platforms (ARPE) , responsible for resolving disputes and overseeing collective bargaining and representation for workers in platforms.
Ordinance No. 2022-492	2022	The Ordinance strengthens the autonomy of self-employed workers of platforms in the mobility sector and sets rules for platform-related sectoral social dialogue.

Source: Visionary Analytics, based on the sources in the hyperlinks.

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4. Interview results; Desprès, P. (2006). [France: The "Independent Worker" and "Employee" Status](#).

5. Interview results

A series of bills and ordinances passed in recent years to regulate work in platforms strongly focuses on the rights of the self-employed (including the El Khomri law and Loi LOM, which then paved the way for the 2021 and 2022 Ordinances). Furthermore, the Ordinances guarantee mostly collective bargaining rights for selected groups of workers (e.g., the 2022 Ordinance is limited to the mobility sector) and extend the right to run for elections to non-profit organisations under certain conditions, amongst which some pertain to their legal purpose (and not only recognised trade unions).⁶ Until then, it was not legally clear whether trade unions could represent self-employed workers. For example, CFDT created an association *Union-Indépendants* that aimed to organise the self-employed; in parallel, CGT expressed doubts about the legal certainty for trade unions to represent self-employed workers without jeopardising their representation of employed workers.⁷ The debate in France is ongoing on the optimal ways to ensure fair representation of truly self-employed workers while guaranteeing the possibility of reclassification of worker status as well as **access to rights for all workers with no exceptions and conditions** via legislation.⁸

The Authority for Social Relations of Labour Platforms (ARPE)

In deciding and regulating the current state of play, ARPE, established by the Ordinance No. 2021-484, takes up five main roles:

- Organising and supervising the election of platform workers' representatives, on behalf of the state
- Financing the training of those representatives
- Facilitating social dialogue between workers and platforms, particularly for the first round of social dialogue, approving the agreements signed between workers and platforms, and authorising or refusing demands for external expertise
- Settling disputes between workers' representatives and platforms
- Collecting the data transmitted by platforms and producing studies and statistical reports based on the collected data

Source: Visionary Analytics, based on Eurofound (2021). [Ordinance No. 2021-484 of 21 April 2021 to establish representation for platform workers.](#)

Besides the passed legislation, in 2020, a **proposal⁹ intended to create a separate employment status for workers in the gig economy was defeated in the French Senate**. It was put forward by a group of opposition senators and proposed to create a new type of labour contract, which would apply much of the French Labour Code but with certain accommodations.¹⁰ Although it proposed far-reaching provisions (including access to unemployment insurance, the general health insurance system, and the right to information regarding the algorithms), it would have assigned a hybrid status for workers in platforms (employment with special dispositions given the specificity of their activity, similar to the status of, for example, journalists, models, cleaning agents, care workers, etc). Some trade unions also deemed the bill insufficient in scope and advocated for the extension of rights to all independent workers finding themselves in a situation of economic dependence (and not necessarily working in platforms).¹¹

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6. CFDT (2022). [Travailleurs des plateformes: Représentation et négociation, acte final?](#)

7. Interview results

8. Interview results

9. See [Proposition de loi relative au statut des travailleurs des plateformes numériques](#).

10. Global Legal Monitor (2020). [France: Bill intended to create new status for platform economy workers defeated in Senate](#).

11. Interview results

3. State-of-play of workers' rights

Workers enjoy different access to labour rights, depending on their status, as summarised in **Table 1** below.

Table 1: Worker statuses and corresponding labour rights

Worker status	Legal basis	Social security	Union representation	Collective bargaining
Employee	Labour law	✓	✓	✓
Self-employed/independent workers	Civil law	✓ (self-paid)	unclear	✗
Self-employed workers covered by the Ordinances	Civil law and dedicated legislation	✓ (self-paid)	✓	✓

Source: Visionary Analytics.

Take Eat Easy court case

Since work (including work in platforms) in France is mainly regulated by case law, there have been relatively many instances when workers or worker representatives contested their status. Besides legal cases included in the digitalplatformobservatory.org, one example includes the reclassification of contract for workers in the Take Eat Easy food delivery platform.

A Take Eat Easy rider filed a complaint with the employment tribunal for reclassification of the self-employed status into an employment contract. Initially, the employment tribunal and the Court of Appeal (in April, 2017) rejected the claim since the rider was allegedly eligible to set their own working hours and disconnect without getting penalised by the company. However,

the Supreme Court overturned the decision on November 2018, based on two points:

- The Take Eat Easy app used geo-tracking to monitor the rider's position in real time, and recorded kilometres ridden.
- In employing a penalty/bonus system, the platform held disciplinary power over the rider by monitoring their performance, proving a subordination relationship.

This ruling set the scene for the reclassification of employment status of workers in platforms. More similar decisions followed in the cases of Uber and Deliveroo. Nevertheless, from the initial proceeding to the final decision, the process lasted over two years, and Take Eat Easy ceased its operations in the meantime.

Source: Visionary Analytics, based on Eurofound (2021). [Ordinance No. 2021-484 of 21 April 2021 to establish representation for platform workers.](#)

The El Khomri law created a “principle of social responsibility” for platforms, which includes the requirement that they pay for the workers’ insurance against work-related accidents and any professional training that they might require and respect their workers’ rights to unionise and to go on strike. Nonetheless, the prevalent classification as self-employed rather than salaried employees still means that workers cannot access full labour rights. Although improved in recent years, **the legal provisions still guarantee the self-employed a much lower protection level and access to rights.** For example, Fairwork finds that, in France, “bicycle delivery platforms are clearly better for people who have an employment contract than for self-employed workers”.¹² At the same time, most workers in platforms are self-employed, and only a handful of platforms (e.g., JustEat) employ their workers.

12. E.g., Just Eat, which hires its riders received the highest score of 8/10. See: Fairwork (2022). [Towards better working conditions on bicycle delivery platforms: France ratings 2022 p. 3.](#)

Discrepancies between platforms or sectors also persist, with policymakers and social partners prioritising the mobility sector and the remaining sectors overlooked. Finally, the current mechanisms of challenging the worker status (via court proceedings) involve a lengthy and costly process that relatively few workers can go through.

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13. Reportedly, in some cases, disconnections were made under the pressure from the Ministry of the Interior, under the threat of being sanctioned for clandestine work (based on interview results).

Apart from the worker status, several other challenges regarding the precarious working conditions in platforms have been identified:¹³

- **Low pay**, which has been further decreasing since platforms were established in France
- **Account blocking**, which deprives workers of their jobs overnight and is used by platforms as a sanction mechanism, e.g., following

strikes or other collective action

- **The situation of undocumented third-country nationals**, who have been, in some instances, deprived of their jobs by the platform, subjected to precarious working conditions and gangmastering practices through the sub-contracting of accounts

4. State-of-play of union action

Union action on behalf of workers in platforms in Belgium can be analysed at three levels, as summarised in **Table 3** below.

Table 3: Action taken on behalf of workers in platforms

Level	Actions
Established trade unions	The established trade unions build trade union structures among workers. They are also consulted in drafting the Ordonnance bills and Laws (see section 2 above).
Emerging movements	Workers organise themselves to pursue collective action, such as negotiations with platforms and strikes.

Source: Visionary Analytics.

Most crucially, based on the 2021 Ordinance, **the first elections were held in May 2022 for the representatives of self-employed workers in the mobility (delivery and transport) platforms** (see **Table 4** below for the election results). Some trade unions hope that collective bargaining, which

kick-started in autumn 2022, will yield significant positive results, especially on the workers' earnings (and, therefore, the price of the services).¹⁴ However, the election process has raised concerns among others, who point out several serious flaws in the voting process, including:¹⁵

- **Exclusion of the majority of de facto workers**, including undocumented and underage workers, workers who rent accounts (unlike those who sublet their accounts for a fee), and other workers who simply had not received their identifiers
- **Numerous technical problems** for those who could vote, deriving from the lack of preparation and complex and ever-changing procedures

This resulted in an extremely low turnout. Therefore, some unions alleged that the low participation could raise questions about the legitimacy of the representation for the upcoming negotiations.

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14. Interview results

15. Interview results; CGT (2022). [Rémunération, conditions de travail, protection sociale, ... Des élections qui ne règlent rien.](#)

Table 4: Collective representation election results in the two mobility sectors

Private chauffeur services		Delivery services	
AVF (Association des VTC de France)	42,81	FNAE (Autoentrepreneurs)	28,45
Union-Indépendants (CFDT)	11,51	CGT	27,26
ACIL (Chauffeurs Indépendants Lyonnais)	11,44	Union-Indépendants (CFDT)	22,32
FO	9,19	Sud-Commerces	5,69
FNAE (Autoentrepreneurs)	8,98		
CFTC	8,84		
UNSA	7,23		

Source: Visionary Analytics, based on information provided by trade unions.

Nevertheless, the state of trade union action and the level of representation is relatively high compared to other countries.

Furthermore, beyond the formal collective bargaining process, trade unions undertake action on the ground and support emerging movements such as co-ops and non-profits to both support workers and raise awareness of what collective action can do for them.

Source: Visionary Analytics, based on interview results and Eurofound (2022). [CGT delivery unions](#).

Despite progress, trade unions still face significant barriers in organising workers, as summarised in **Table 5** below.

Table 5: Obstacles to unionisation for workers in platforms

Legal	Social and cultural	Related to platforms' business model
<ul style="list-style-type: none"> - The legal framework does not ensure collective bargaining and worker participation (except for the mobility sector). 	<ul style="list-style-type: none"> - Some workers face precarity, especially many undocumented workers. - This workforce is not necessarily accustomed to organising collectively through unions. 	<ul style="list-style-type: none"> - The worker turnover is reported to be high. - Work is based on competition rather than collaboration between workers. - Workers are usually dispersed and not bound to a specific location. - As a result, it is hard to form bonds among workers and between workers and unions. - Unions do not have access to workers' contact information or to an interface to communicate confidentially.

Source: Visionary Analytics, based on interview results.

5. Action checklist

Potential application of the proposal for a Directive of the EC and/or the ETUC policy proposal

Some trade union representatives fear that the implementation of the EC proposal for a Directive would bear the risk of destabilising the traditional definition of employment, which is currently similar to that of the Court of Justice of the European Union (CJEU). Since the definition of employment rests solemnly on case law in France, the transposition of the Directive as proposed by the EC could further complicate the regulatory framework. In particular, if its transposition gives rise to an adoption of a legal definition of self-employed work in the French law, it could open up a debate on the employee definition (e.g., it might be required to include a written-down definition of an employee in the new law). This would not be without risk, as many liberal movements seek to challenge it. Furthermore, even if guarantees in terms of oversight by the labour inspection are laid down to ensure that the presumption is effectively applied and if the Directive provides for the right of legal recourse and access to evidence to be improved, one can question the actual effectiveness of these provisions given that the French labour inspectorates are under-resourced and courts – saturated.

At the same time, two things need to be con-

sidered in the ETUC's proposal. Firstly, drawing up a list of platforms to which the presumption would apply automatically could solve the problem of access to justice, insofar as it would no longer be up to the worker to take legal action in the event of a dispute. However, **this list must be updated on a frequent enough basis**, the mechanism of which is unclear. Secondly, the ETUC proposal (like the EC proposal) assumes the existence of a national definition of an employee or self-employed. The consequences of including such a definition in the French law are uncertain. Therefore, in both cases, **a simple reference to the CJEU definition of a worker would seem preferable.**

CGT delivery unions

CGT unions are another example of progressing capacity and structure building by established social partners. The first CGT union in the delivery sector was created in 2017 in Bordeaux. Today, there are five union branches dedicated to delivery work (in Bordeaux, Toulouse, Lyon, Nantes, and Paris). The unions work locally to defend the workers' rights and increase the membership base. They have also organised numerous actions, including strikes, and demands for better remuneration, a more stable employment status, the termination of illegitimate suspensions, the regularisation of undocumented third-country nationals, better

social protection, bicycle maintenance and insurance, etc. In parallel to the strike and rally action, CGT has been involved in several legal proceedings, aiming at the recognition of the employment status of workers in platforms.

CFDT's actions towards platform drivers

The first CFDT union branch for platform drivers was created in 2016 in Paris, followed by the union branch of Nice in 2017. These local unions work to collect workers' experiences, defend their rights, and increase the membership base. Today, these local unions work alongside the drivers' collectives of the association Union-Indépendants, created by the CFDT to defend the rights and interests of the self-employed workers. Amongst the organised actions, these entities have organized/coordinated strikes and rally actions to ask for better pay, the termination of unilateral and illegitimate suspensions, etc. These collectives are also active in bringing drivers' demands to the attention of local city councils.

Union-Indépendants' rider collectives

Since 2016, the CFDT (subsequently followed by Union-Indépendants) has been active in organising workers and voicing their demands to local and national authorities. The first collective in the delivery sector was created in 2019 in Angers. Today, there are four collectives

of riders across France: in Brittany (Rennes and Fougères), Nouvelle Aquitaine (Poitiers/Chatellerault), Lille and Ulliv of Angers. In parallel, Union-Indépendants coordinates 12 WhatsApp groups in order to communicate with about 1,500 workers across 12 cities. The

collectives work to collect workers' demands, support and inform workers in matters pertaining to their rights, social protection, training, etc. They have also organised numerous actions, including strikes and rally actions and demands for better remuneration, the

termination of illegitimate suspensions, the regularisation of undocumented third-country nationals, better social protection, bicycle maintenance and insurance as well as provide physical spaces for workers to regroup or even charge their phones.

Preliminary suggestions for actions to be taken by the national unions are summarised in **Table 6** below.

Table 6: Action checklist in two main areas

Policy	On-the-ground action
<ul style="list-style-type: none"> - Push for expanding the collective bargaining framework: The 2021 Ordinance “opened the door” for sectoral social dialogue in mobility platforms – there is no reason for other sectors to be excluded. - Campaign at the policy level: Much priority has been given in France to collective action, but legal changes are inevitable. Lobbying policymakers and raising awareness on the need for a presumption of the employment relationship are crucial for building good foundations for new policy creation. - Fight for better social dialogue processes: Clearer and more inclusive rules for voting in trade union elections are necessary, along with transparent rules for the representation of the self-employed. - Improve the perimeter of the social dialogue for the mobility sector: Including certain negotiation topics as compulsory and recurrent would be beneficial; social dialogue at the platform level could help address platform-specific issues. - Organise a strategy around homogenised social protection for all workers to ensure equal access to rights between employees and the self-employed. 	<ul style="list-style-type: none"> - Expand the coverage: The strong focus on the mobility sector has likely created an imbalance between working conditions and trade union density in delivery and transport platforms and other platforms. Achievements in the mobility sector can serve as a model for other areas where platforms operate. Expanding coverage of platform employees is another priority area. - Continue establishing a presence in platforms (especially in sectors not yet covered by collective bargaining): Higher union density would further empower unions to negotiate better working conditions. - Continue to create inclusive structures, including new local collectives in different cities as well as physical and digital spaces for discussion between workers and their representatives. - Gather specific needs and collective demands different groups of workers face.

Source: Visionary Analytics, based on interview results.