Working in the platform era

Upgrade required

July 2020

Synthesis

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EXECUTIVE SUMMARY

In April 2019, while a recent law on transports[1] was being examined by the National Assembly, the members of the french digital Council (CNNum) asked in the columns of French newspaper *Le Monde:* "***Do we really want to create a multi-speed society,*** *made up of employees, self-employed and hybrid status workers, whose conditions are then decided by judges on a case-by-case basis, leading* de facto *to the **creation of a new precariat**?*"

The discussions at that time on the social responsibility charters for the platforms, since then partly censored by the Constitutional Council, were an opportunity for the members of the CNNum to continue the reflection on platform workers, in the continuity of the report *Travail, Emploi, Numérique : les nouvelles trajectoires* in 2016 (*Work, Employment, Digital: the new trajectories*), and of the citizen consultations carried out for the *États généraux des nouvelles régulations du numérique (General Assembly on new digital regulations)* in 2019. In 2019-2020, the numerous strikes led by workers alerting about their conditions, the Constitutional Council's censor on social responsibility charters, the *Uber* decision of the Court of Cassation and the health crisis due to Covid-19 have strengthened the feeling that work on platform workers' conditions should be continued.

Convinced that **the development of digital work platforms is a social phenomenon**, which can be a source of great hope for employment and social progress, but also a vector of new forms of precariousness at work, **members of the CNNum have taken up the question of labour in the era of digital platforms**.

CNNum members have adopted a pragmatic approach based on real needs in formulating their recommendations. The Council hit the ground to meet **with platform workers as well as collectives and unions**. The members would like to thank all those who have particularly supported them in this process: the National Agency for the Improvement of Working Conditions (ANACT), the Collectif des Livreurs Autonomes de Paris (CLAP), the SCP-VTC union, Sharers & Workers, the European Trade Union Institute (ETUI), Heetch, Uber, the Association of Platforms of Self-Employed (*Association des plateformes d'indépendants*), the Self-Employment Observatory (*Observatoire du travail indépendant)*, the National Federation of Auto-Entrepreneurs (FNAE), the Union for the Collection of Social Security Contributions and Family Allowances (URSSAF), the Directorate General of Enterprises (DGE), the General Inspectorate of Social Affairs (Igas), and many others.

The first part of the report maps the controversies and issues related to the emergence of digital labour platforms. This work relies on an in-depth review of state-of-the-art academic literature. It is divided into three parts: a description of the issues related to the development of digital labour platforms, a state of the controversy on the legal status of workers and an analysis of collective mobilizations on the platforms.

On the basis of this work, members of the French Digital Council make fifteen recommendations, detailed in the second part of the report. Several principles guided their reflection:

1. *A sense of urgency.* The debate on platform work has been going on for too long while **certain facts require rapid responses,** as the health crisis linked to Covid-19 has forcefully reminded us. Thus, the CNNum wishes to propose **operational measures that can be rapidly activated**.

[1] In French, loi d'Orientation des mobilités.

2. *A spirit of construction.* Divided into short, medium and long term axes, the CNNum's recommendations are addressed to **public authorities as well as platforms, workers and consumers.**

3. *A spirit of balance.* The members of the CNNum observe that leaving the organisation of the market between workers and platforms in an equitable manner to an "invisible hand" has proven so far unsuccessful: **digital platforms, as new dimensions of labour, must be regulated.** It is also in the platforms' interest to result in a dynamic and precise regulation that should allow them to continue their activity. Relations between workers and platforms are currently unbalanced in favour of the latter. Platform work regulation must **aim to restore conditions of equity.**

4. *A spirit of trust.* CNNum members have confidence in the capability of platforms, citizen-users, workers and institutions to take up the proposals that are presented here. This is why they wished to focus on **empowerment** tools, such as **better information** or **greater transparency, for the benefit of all**.

1/ Digital labour platforms are at the origin of many changes, as much in terms of employment and autonomy as in economic and competitive, technological or digital terms.

Digital labour platforms have an ambivalent relationship to employment and the desire for worker autonomy. Their business model is partly based on a legal construction that turns their workers into self-employed. In this model, workers bear the economic risks and costs. In this respect, platforms are part of a larger aspiration for freedom, autonomy and emancipation in the workplace, which relies on self-employment and entrepreneurship tropes. However, the state of knowledge about workers, their profiles and aspirations makes it possible to qualify that assertion. Platform workers today tend to become more professional, as they tend to increasingly rely on their platform activity as their main source of income. In some cases, their formal self-employment contract masks the existence of a link of subordination with their principal. **Misclassifications are at the origin of a new precariousness by complicating access to social rights and protection.**

Nevertheless, digital labour platforms offer extraordinary opportunities for growth. Their organizational model offers the possibility of correcting certain dysfunctions of the market, by reducing transaction costs or information asymmetries. However, the business model of labour platforms renews regulatory issues, among which the difficulty of legally characterizing their nature. Should they be regarded as service operators or pure digital intermediation services, as they claim? Digital labour platforms are raising new competition issues. They benefit from network effects resulting from their positions as intermediaries in multi-faceted markets, which are a factor of increased market concentration.

A comprehensive understanding of digital labour platforms must necessarily take into account the intrinsically digital nature of their operation. Like the majority of companies in the digital economy, they are based on massive and continuous data collection, algorithmic workers control, and constant rating of their performances. **Digital intermediation, although it allows unprecedented agility and responsiveness, is also the source of novel suffering at work.** Platform work puts into question traditional frontiers, such as that between private and professional life or between work and leisure.

2/ The ambivalence of labour relations has given rise to a lively debate, which continues to this day, over the legal status of platform workers. Three scenarios are examined in the French context: the adoption of a third status, self-employed status and reclassification as employees.

It is tempting to end the debate between self-employment and employment by creating an intermediate legal category. This idea is not new, but has so far been rejected in France. It is now experiencing a renaissance, as some claim that a third status would be particularly well suited to the needs of the platform economy. Looking at examples in the United Kingdom, Italy and Spain, however, the report states that the implementation of third status in these countries is far from conclusive. They seem to have had effects that run counter to the initially pursued aims of legal clarification and simplification. The report notes, however, that recent legislative dispositions have contributed, in France, to the development of a *de facto* third status. Members of the french digital Council are convinced that the organisational and economic model of the platforms is likely to become more widespread in the future. Current platformisation of work is a major upheaval. However, it should not call into question the dichotomy between the status of self-employed and that of employees. **The CNNum therefore rejects the creation of a third status, which is considered to be a false good idea that does not provide a lasting solution. Two options then arise: the requalification of workers by the judges in the event that the platforms would derogate from labour law and the evolution of the guarantees and protections attached to the status of self-employed persons.** These two approaches are complementary.

The profiles of the self-employed have considerably changed since the 1980s. Formerly traders, craftsmen or farmers, they are now more and more numerous to work as graphic designers, developers or web editors. Some of these new self-employed workers enjoy greater autonomy, while others find themselves projected into new forms of subordination. This change is giving rise to new demands in terms of income, social protection and access to housing. **Many paths,** such as training, better information sharing or collective mobilization, **can be explored to let these workers become genuine entrepreneurs. Design tools could also be used to put workers at the centre of user experience and thus foster a more ethical and virtuous platform model.**

With recent court decisions, platform workers reclassification as employees is more than ever part of the horizon of possibilities. In countries all over the world, judges find that the elements characterizing the subordination of workers to a company are present on some platforms, including the most emblematic ones. The report examines the arguments of both sides. For some, traditional employment is an outdated model, incompatible both with the quest for autonomy in work and with the search for a profitable economic model. For others, the relationship of subordination does exist, only it has taken the face of new technologies. In this respect, one needs to stress that the reclassification issue is first and foremost a legal question. In the same way that there is no standard profile of platform workers, there are a myriad of digital labour platforms. Indeed, labour platforms differ according to their business model, some of them intermediating asynchronous activities, for instance, while others organise real-time task allocation. Platform involvement in the services and the functioning of the algorithms will thus differ according to these models. **Members of the Council therefore believe that platforms respectful of our laws and our social model should be encouraged**: they are de facto a new face of the world of work and an undeniable source of jobs in the digital age. **As in any state**

governed by the rule of law, it will be up to the judges to sanction platforms that refuse to comply with the rules of labour law, but we cannot stigmatize or condemn platforms simply because they exist.

As formidable sources of employment, developing innovative services for their clients, platforms remain nonetheless opaque as to the conditions under which they employ their employees. It is therefore essential to increase information about these platforms in order to empower their consumers and raise public awareness of their social impact. **To this end, the Council recommends the adoption, as soon as possible, of a "DIGISCORE" on all websites, mobile applications and other user interfaces.** Based on the model of the nutriscore in the agri-food sector[2], the DIGISCORE, which will be easy to read and clearly identifiable, will be designed to raise awareness among citizens who are consumers of platforms, by giving them a clear indication of compliance with several social criteria.

3/ Faced with these observations, social dialogue appears to be a promising path of regulation. The positions taken by the Council in 2019 called, in particular, for the implementation of a balanced and transparent social dialogue on digital work platforms. Subsequently, this proposal was included in Article 48 of the Mobility Orientation Act on 24 December 2019. **The "*États généraux des nouvelles régulations du numérique*" (*General assembly on new digital regulations*)[3], as well as the hearings and fieldwork, showed that this regulatory approach is widely supported by various stakeholders.**

The aim of reaching negotiated solutions between workers and platforms is of course shared by CNNum, but **achieving this will take time**. Indeed, the development of digital labour platforms is marked by numerous social conflicts, which the report analyses in a section devoted to collective mobilisations. **Social dialogue actors are still going through a structuration process,** on both sides, even if the situation has greatly improved in recent times.

Members of the CNNum observe that, **today, social dialogue cannot be implemented serenely, with a balance of power such that it prevents the conditions for a real exchange.** Workers and platforms have a relationship of mistrust that suggests that constructive negotiations would not be successful in the immediate future. In this regard, **social dialogue cannot and must not be reduced to mere consultations driven by platforms.** The conditions for balance between both parties, enabling them to negotiate, must be met; and it is the role of the State to ensure this balance. To this end, members of the Council recommend organising, as soon as possible, a consultation over several months bringing together all the players who would like to be involved in the co-construction of solutions, and creating an Observatory of the platforms with the aim of providing a neutral forum for consultation between the social dialogue stakeholders.

Beyond the question of platform workers status and social dialogue, **members of the french digital Council also formulate a set of recommendations aimed at accompanying, on the longer term, the development of this new form of work.** Indeed, platform work is a factor of **a broader transformation of the labour market** that should be anticipated, in order to best protect workers and our social model. More broadly, members of the CNNum recommend that the **status and protections**

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[2] This mechanism is detailed in Part II "Recommendations summary".
[3] CONSEIL NATIONAL DU NUMÉRIQUE. "La protection des travailleurs des plateformes". Synthèse des états généraux des nouvelles régulations du numérique. May 2020 [IN FRENCH].

of self-employed workers be reviewed in order to secure the trajectories of these new workers whose social model is inherited from the post-war period. The Council also advocates the launch of a "Citizen's Labour Convention" in order to collectively reflect on the place of work in society in the light of the development of self-employment and atypical work. Moreover, the intrinsically digital nature (massive data collection, use of algorithms in managerial decision-making, etc.) of these entities makes it necessary to redefine certain aspects of the regulations in force and to consider the creation of new standards to better protect the digital rights and freedoms of workers. Similarly, **digital work tools are not neutral. They must be designed in a loyal and responsible manner, in accordance with our social model.**

RECOMMENDATION SUMMARY

Axis I - Responding concretely to emergencies. Short-term measures:

1. Make it mandatory to display a platform-related DIGISCORE on all media interacting with consumers.
2. Ensure equal working conditions for workers on the platforms
3. Launch a consultation for social dialogue on the platforms
4. Establish a balanced and transparent social dialogue on work platforms and extending whistleblower protections to platform workers
5. Create a Social Observatory of platforms

Axis II - Durably improving work on platforms. Medium-term measures:

6. Extend industry bargaining agreements to self-employed workers
7. Strengthen the fight against misclassifications, concealed work and illegal employment
8. Enhance platform transparency
9. Financially support platform cooperativism by dedicating 20 million from the Investment for the Future Program to it
10. Involve local and regional authorities in digital work platform regulation

Axis III - Working differently in the 21st century. Long-term measures:

11. Review self-employed workers statuses and protections
12. Protect workers' digital rights and freedoms
13. Foster fair and responsible designs of digital working tools
14. Train social partners on the challenges of the digital transformation of work
15. Launch a "Citizens' Convention on Labour" modelled on the Citizens' Convention on Climate

RECOMMENDATIONS OF THE FRENCH DIGITAL COUNCIL

Axis I - Responding concretely to emergencies. Short-term measures

RECOMMENDATION 1
Make it mandatory to display a platform-related DIGISCORE on all media interacting with consumers.

OBJECTIVE: to ensure better information for all citizens-users.

TYPE OF MEASURE: incentive

WISHED TEMPORALITY: short term

SCALE: national

PLAYERS IN CHARGE: Social Observatory of Platforms; platforms; DGCCRF

Platforms could be encouraged to change their behaviour towards workers if the users of their services pushed them to do so. Thus, it is important to promote those that adopt virtuous behaviours in terms of working conditions by informing users, as has been done in the food industry. Informing users is an important lever for action that must be central to a platform regulation approach.

Such a score would allow all employees to access information about the platform and its behaviour in a simple and clear way. Workers could thus be encouraged to register on well-rated platforms and leave the others behind.

❖ **On the model of the "nutriscore" that exists in the food industry, require digital work platforms to establish a mandatory ethical declaration that will allow them to be assigned a score from A to E** on the basis of four simple criteria:

1. Remuneration and working time;
2. Occupational health and safety;
3. Labour relations and social dialogue;
4. Digital ethics: data protection, fairness and transparency of algorithms, accessibility, ethical designs.

Environmental and social impact criteria (e.g. contribution to labour market integration) could also be taken into account where relevant, in the form of "bonuses".

This score should necessarily be visible on all media interacting with consumers. In the event of refusal to display the score, it should also be available on a dedicated and independent Internet page, for example on the site of the Social Observatory of Platforms (see Recommendation 5).

Setting up

Coordination of the system could be entrusted to the Social Observatory of Platforms (see Recommendation 5). **It should start working quickly by carrying out a three-month prefiguration mission and should propose an initial mechanism in January 2021.**

Details of the mandatory ethical declarations of labour platforms should be made available for research purposes on the digital economy and platform work, as part of the tasks of the Social Observatory of Platforms.

A transitional phase

The role of the prefiguration mission will be to ensure the initial preparations during a transitional phase, in conjunction with the social partners:

→ **Define precisely the specifications and the methods for evaluating the above criteria and their weighting**.

→ **Determine how the DIGISCORE must be displayed** (e.g. on the application stores, on the platform's website homepage, etc.).

Taking DIGISCORE into account in public policies

In order to maximize the effectiveness of the system :

→ **Accompany the "DIGISCORE" launching with an impactful communication campaign**.

→ **Make the granting of public funds conditional upon the results of the impact assessment prior to the fixing of the "DIGISCORE"**. For innovation in artificial intelligence in particular, ask project leaders to indicate whether they use micro-work and, if so, via which services and for which activities.

In case of false statements:

→ **Consumers and workers could simply report behaviours** contrary to the platform's declarations on SignalConso[4], an online platform currently being deployed by the DGCCRF.[5]

→ **Entrust the DGCCRF with the mission of verifying the accuracy of the mandatory ethical statements and of sanctioning** in the event of inaccurate scores.

→ **Provide for an obligation for platforms to publish the sanction** on all their media interacting with consumers.

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[4] DGCCRF. « SignalConso, la nouvelle plateforme de signalement à destination des consommateurs ». 28 mars 2019. [IN FRENCH]

[5] See recommendations n° 22 in: AMAR, Nicolas et VIOSSAT, Louis-Charles. Les plateformes collaboratives, l'emploi et la protection sociale. Rapport de l'Igas no. 2015 - 121, mai 2016. [IN FRENCH]

RECOMMENDATION 2
Ensure equal working conditions for workers on the platforms

OBJECTIVE: to rapidly improve the working conditions and rights of platform workers.

TYPE OF MEASURE: regulation

WISHED TEMPORALITY: short term

SCALE: national and European

ACTORS IN CHARGE: Ministry of the Economy and Finance; Ministry of Transport; trade unions and professional federations; platforms

On revenue

It is currently necessary to develop European competition law to allow self-employed workers to benefit from a service minimum tariff, without it constituting a price agreement.

→ **Remove legal obstacles to the negotiation of a minimum tariff for self-employed workers.**

→ **The setting of this minimum price should then be decided at the level of industry agreements and collective agreements, and/or at the level of the ecosystem social dialogue** (see recommendations 4 and 6).

For platform workers who do not set their price, the income, once the platform commission is taken, should legally not be less than the national minimum hourly wage set for salaried workers. The calculation of the price should be carried out in such a way as to take into account: the legal minimum, the platform commission and the charges borne on average by the self-employed workers (e.g. for drivers, the cost of the car, petrol, insurance...).

→ **For platforms that set prices, specify by decree minimum prices that take into account the costs borne by self-employed workers.**

On working time

Platform workers value the time flexibility they enjoy on the platforms but may, depending on the sector of activity, lose control over their working time in order to obtain an income that allows them to live. This is particularly the case in the passenger transportation sector or in the bicycle delivery of goods.

→ **For transportation platforms: create an obligation to pay a kilometre-based remuneration, following the example of taxis, as a transitional measure.**

→ **For delivery platforms: create an obligation to return to the hourly rate system on an experimental basis. This obligation could be extended (for 1 year for example).**

In the medium term, the accounting of working time on all platforms should be the

subject of negotiations with the social partners, enshrined in an industry agreement.

<u>On occupational health and safety</u>

Occupational health and safety is one of the most pressing demands of mobility platform workers but concerns, more broadly, all platform workers. The crisis linked to the spread of Covid-19 has particularly illustrated this.[6]

→ **Apply the fourth part of the French Labour Code relating to health and safety to platform workers** by explicitly including platforms among the employers concerned by the obligations defined therein.

→ **Complement the insurance scheme created by article 60 of the El Khomri Act with the affiliation to the general social security scheme for compensation for industrial accidents and occupational diseases**. This system would also make it possible to collect valuable information on accidents at work in this type of activity.

[6] As defended by a collective of social partners, experts and economic actors through a forum: COLLECTIF. « <u>Protéger les travailleurs ubérisés, une urgence nationale</u> ». L'Obs. 10 avril 2020. [IN FRENCH]

RECOMMENDATION 3
Launch a consultation for social dialogue on the platforms

OBJECTIVE: to bring out the legitimate actors for social dialogue and to define a negotiated electoral protocol.

TYPE OF MEASURE: mediation

WISHED TEMPORALITY: short term

SCALE: local and national

ACTORS IN CHARGE: Prime Minister

The CNNum hearings have shown that the conditions necessary for a serene and balanced dialogue on crucial issues such as pay or working time are not currently gathered. **It is essential to begin first by creating the conditions for trust through the organization of a consultation of all the actors involved, which could aim in particular at negotiating the electoral protocol.**

The fact-finding mission to the Prime Minister on the "representation of workers on digital platforms" aims at defining the modalities of social dialogue on the platforms. **However, some precise modalities such as the electoral protocol should be the subject of consultation between all social partners.**

Under the aegis of the Prime Minister, this consultation should bring together all the actors concerned, first and foremost workers and workers' collectives, in the broadest possible way, with a view to negotiating the electoral protocol. It should bring these partners together on a regular basis in order to bring the negotiations to a successful conclusion in six months following the handover of the work of the fact-finding mission.

The aim of this consultation should be to:

→ **Negotiate precisely the terms**, including the electoral protocol, of the legislative framework defined by the ordinances of the recent transportation law (article 48);

→ **Achieve consensual arrangements for the election of workers' representatives for both workers and platforms.**

It could thus be launched as early as January 2021 and be implemented at the local level under the aegis of municipalities.

Pending the holding of elections to designate representative actors, it is necessary to provide for transitional arrangements. The organization of such a consultation could provide an opportunity to see the emergence of legitimate actors on a transitional basis to conduct negotiations before the elections are held.

→ **Allow collectives of independent workers constituted as trade unions** (pursuant to articles L.2131-2 and L. 7342-6 of the Labour Code) **to appoint representatives on a transitional basis** before the elections.

RECOMMENDATION 4
Establish a balanced and transparent social dialogue on work platforms and extending whistleblower protections to platform workers

OBJECTIVE: to set up the collective bargaining bodies on the platforms, to integrate union information into the application and to protect claim holders.

TYPE OF MEASURE: obligation and negotiation

WISHED TEMPORALITY: short term

SCALE: national and local

PLAYERS IN CHARGE: Ministry of Labour, Employment and Insertion; platforms; trade unions

The hearings conducted by the CNNum highlighted high expectations for social dialogue, but also mistrust between workers and platforms. It is therefore crucial, in order to achieve constructive negotiations, to create a balanced social dialogue, conducted at the sectoral level and ensuring fair representation of all stakeholders and protection of workers and their representatives.

Cross-platform elections

Following the social dialogue consultation on the platforms (see recommendation 3), **digital labour platforms should be obliged to hold elections to appoint representatives of workers' interests**. These elections should be held according to sectors: elections of workers' representatives on transportation platforms, delivery platforms, etc.

> → **Designate workers' representatives through cross-platform elections, on a sectoral basis.**

> → **Empower these representatives to participate in social dialogue bodies at both sectoral and platform levels.**

Platform-by-platform elections would make no sense as workers in one sector are often registered on several platforms simultaneously. The terms of sectoral social dialogue are the subject of recommendation 6. **Elected cross-platform representatives should be able to participate in sectoral social dialogue bodies and platform social dialogue bodies (stakeholder committees)**.

Stakeholder Committee

Creating an obligation for each platform whose turnover is above the threshold set by the French decree n°2017-774 to set[7] up a stakeholders' **committee** including representatives of the platform and employee representatives.

> → **Include in the law the objectives and scope of the Stakeholder Committee:**

[7] Decree no. 2017-774 of 4 May 2017 relating to the social responsibility of electronic contact platforms, issued in application of article 60 of the law of 8 August 2016 relating to work, the modernisation of social dialogue and the securing of professional careers. The turnover threshold set by the text is 13% of the annual Social Security ceiling. [IN FRENCH]

this is the forum for negotiating the conditions relating to the platform's digital intermediation nature. It is therefore competent to deal with issues relating to data portability, algorithms explicability, incentive design mechanisms and any other issue specific to the platform (and not to the sector).

→ **Set by decree the operating procedures of the Stakeholder Committee.**

→ **Provide for the possibility of including external experts and representatives of other categories of platform users** (restaurants, etc.) **in stakeholder committees,** ensuring that their total votes do not exceed those of employee representatives.

If internal mediation procedures fail (see Recommendation 8), the stakeholder committee may be empowered to deal with individual situations (e.g. in the event of a dispute following a downgrade).

Whistleblowers

Platform workers who alert on the actions of certain platforms should be able to benefit from specific protections. Today, the protections enjoyed by whistleblowers are reserved for salaried workers. These protections could usefully be extended to platform workers and adapted to their situation.

→ **Transpose the directive 2019/1937 on *"the Protection of Persons who Report Violations of European Union Law"* by explicitly including platform workers** in its scope as well as reports of violations of labour law, social law, competition law, fundamental freedoms or privacy.

Protection of representatives

→ In line with the El Khomri law, **extend the rights, guarantees and duties enjoyed by employees' trade union representatives to the representatives of self-employed platform workers' interests, by defining a status of "protected worker".**

As with whistleblowers, certain safeguards, such as protection against dismissal, can be adapted to protect these representatives from disconnection, dereferencing or drying-out of tasks. In the event of a dispute, the burden of proof should be reversed by requiring the platform to prove the absence of discrimination against the worker.

Harnessing the potential of digital technology

Civic tech tools could be mobilised to facilitate social dialogue and, in particular, relations between workers and trade unions. Indeed, digital tools are particularly well suited to the situation of these workers who have the particularity of being geographically dispersed and atomised.

→ **Enable employee representatives of a given platform to communicate with employees by e-mail**, along the lines of the agreement negotiated by the *Independent Drivers Guild* with Uber in New York, which allows them to access the platform's drivers' contact information.

→ **Guarantee access to the application to collectives of representatives**, as the equivalent of the workers' intranet, at least to display some essential

information[8].

→ **Inform workers of the existence of the stakeholder committee and the decisions that result from it. Set up a trade union information page** (e.g. contact information for representatives) that is **easily accessible** on the application used by the workers.

→ **Provide trade unions and workers' collectives with a civic tech solution in the form of an independent online consultation platform that would facilitate exchanges between workers and representatives**. In particular, workers could be consulted by trade unions on the terms and conditions and contribute to the negotiation of the terms and conditions through these digital tools.

This digital tool for participatory democracy, designed in compliance with the administration's specifications (accessibility, eco-design, open-source...), could then be implemented and disseminated by the representatives themselves.

As a communication tool between workers and their representatives, this space will have to be distinct from the platform, i.e. developed and hosted independently of the platform. Every worker should have access to it as soon as he or she registers on a platform.

This tool could also include, in a clear and pedagogical way, information on all the rights of platform workers, whether in terms of digital rights and freedoms at work, health, safety, remuneration or even the possibilities of appeal (internal mediation procedure, etc.).

Transparency of social dialogue

The implementation of social dialogue by the platform, the course of negotiations and the resulting decisions could be subject to a transparency obligation.

→ **Create an obligation to publish the progress of social dialogue,** following the example of the extra-financial performance report required for large companies under Article L. 225-102-1 of the French Commercial Code. This document would be made public annually by the platforms operating on national territory.

The decisions of the Stakeholder Committee should be systematically made public on the platform's website. In the event of non-compliance, stakeholders can appeal to the social courts.

Ecosystem social dialogue

At the local level, setting up an ecosystem social dialogue which would aim at addressing problems specific to the territories as well as opportunities for experimentation under the aegis of local authorities. It could thus deal, for example, with issues of public infrastructures use (roads...), links with actors of the social and solidarity economy (following the example of Lulus dans ma rue) and will allow local authorities to better know and understand the platforms and their activity.

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[8] CONSEIL NATIONAL DU NUMÉRIQUE. Travail, Emploi et Numérique : Les nouvelles trajectoires. 2016. [IN FRENCH]

→ **Create forums for dialogue and consultation**[9]**,**particularly in the metropolises where the platforms operate, to discuss problems specific to the territories.

→ **Enable local associations and collectives of workers, local sections of trade unions, representatives of platforms and cities to participate** without constraints of representativeness. This type of dialogue groups together the forms of inter-company dialogue and project-based dialogue.

[9] This recommendation stems from a previous report of the CNNum: CONSEIL NATIONAL DU NUMÉRIQUE. Travail, Emploi et Numérique : Les nouvelles trajectoires. 2016. [IN FRENCH]

RECOMMENDATION 5
Create a Social Observatory of Platforms

OBJECTIVE: to get to know the digital work platforms better.

TYPE OF MEASURE: transparency

WISHED TEMPORALITY: short term

SCALE: national

ACTORS IN CHARGE: Ministry of the Economy and Finance; Ministry of Labour, Employment and Insertion; experts and researchers

Social dialogue must be built with the actors considered legitimate by workers. Thus, the creation of an Observatory of platforms could make it possible to bring together the conditions of social dialogue on platforms, by offering a better knowledge of platforms and by constituting a forum for reflection and consultation on this new mode of distribution of labour.

The objectives of this Observatory[10] would be to :

1. Identify the data sources and information surrounding work platforms.

2. Identify existing initiatives for dialogue between workers and platforms from all sectors.

3. Be a forum for consultation.

4. Be a forum for sharing information on income and working conditions.

5. Develop training on social dialogue and on the digital economy.

To this end, it should **bring together the main administrations concerned** (Labour Inspectorate, Acoss, URSSAF, Direcctes, Anact, Pôle Emploi, DGE, etc.) **and rely on the Service à compétences nationales (SCN) set up by the Direction Générale des Entreprises (DGE)**. This body could, for example, be hosted by entities such as the Economic, Social and Environmental Council (CESE), France Stratégie or the CNNum.

In addition, the Observatory could be given the task of :

→ **Organizing, on a regular basis, national and local consultations of the social partners.**

→ **Coordinating the implementation and allocation of "DIGISCORE"** (see Recommendation 1) **and, to this end, making available an online consultation**

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[10] The proposal to create a Social Observatory of Platforms emerged during the consultations organised during the États généraux du numérique between 2018 and 2019. In particular, it was developed and driven by the contribution of the Sharers & Workers think tank. See : CONSEIL NATIONAL DU NUMÉRIQUE, « La protection des travailleurs des plateformes ». *Synthèses des États généraux des nouvelles régulations du numérique,* mai 2020. [IN FRENCH]

space[11] **on the platforms** where users and workers would share their experiences and opinions on the functioning of the platforms. These data could then be used by researchers and public authorities to better understand and monitor the platforms.

[11] The creation of a "rating space" for the platforms is notably proposed by the member of the French Assemby Pascal Terrasse in his report on the collaborative economy: TERRASSE, Pascal. Rapport du Député Pascal Terrasse sur le développement de l'économie collaborative en France. 2016. [IN FRENCH]

Axis II - Durably improving work on platforms. Medium-term measures

RECOMMENDATION 6
Extend industry bargaining agreements to self-employed workers

OBJECTIVE: to enable workers to negotiate their working conditions.

TYPE OF MEASURE: obligation

WISHED TEMPORALITY: medium term

SCALE: national

ACTORS IN CHARGE: Ministry of Labour, Employment and Insertion

Some platforms fit into sectors that already exist and where collective agreements are already in force. In these cases, the Council recommends to include the **platform workers in the scope of these agreements and to include both platforms and workers representatives in the existing negotiating bodies.** Depending on the nature of a platform's activity :

→ **Include platforms**, whose turnover is above the threshold set by the French decree n°2017-774[12] and operating in a given sector of activity, **in the collective agreement applicable to the sector.**

→ **Include provisions for platform workers in industry agreements and collective agreements in the sector.** These could include the setting of a minimum wage.

→ **Enable trade union organisations and collectives representing platform workers to participate in the negotiation of industry agreements and collective agreements in the sector.**

Trade unions could organise prior consultations with workers before the negotiations.

[12] Decree no. 2017-774 of 4 May 2017 relating to the social responsibility of electronic contact platforms, issued in application of article 60 of the law of 8 August 2016 relating to work, the modernisation of social dialogue and the securing of professional careers. The turnover threshold set by the text is 13% of the annual Social Security ceiling. [IN FRENCH]

RECOMMENDATION 7
Strengthen the fight against misclassifications, concealed work and illegal employment

OBJECTIVE: to put an end to the practice of misclassifying genuinely subordinate workers as self-employed workers.

TYPE OF MEASURE: control

WISHED TEMPORALITY: medium term

SCALE: national and European

PLAYERS IN CHARGE: Labour Inspectorate: Commission nationale de lutte contre le travail illégal; URSSAF

Misclassifications and concealed work

→ **Increase the human and financial resources of the control and collection administrations.** In particular, **increase the staff of the national Internet unit for combating illegal employment hosted at the URSSAF in Paris.**

→ **Integrate digital work platforms into the scope of random controls or data mining in order to better assess the quantitative stakes of fraud in this field,** by developing a concerted URSSAF/ Labour Inspectorate strategy.

→ **Develop digital tools** (datamining) for the **detection of hidden work** for control and recovery administrations.

→ **Create a legal database listing the requalification of self-employed workers as employees** in order to provide decision support tools to the control and collection administrations.

→ **Extend the scope of inspections carried out by the Labour Inspectorate by aligning the powers of investigation (communication, consultation) it has with those of the URSSAF and DGCCRF inspectors.**

During impact assessments of draft and proposed labour and employment laws :

→ **Include an assessment of the foreseeable impacts in terms of hidden work, as recommended by the Central Agency for Social security organisms (Acoss) for the High Council for social protection financing (HCFiPS).**

Illegal work

Illegal work is punishable under Articles L.8221-5 and L.8221-6 of the French Labour Code. In the event of a requalification of digital work platforms as an employer, the provisions of Article L.8221-5 of the French Labour Code would apply without the need to prove the existence of a relationship of subordination.

The effectiveness of article L. 8221-5 must therefore be ensured by stepping up the fight against illegal employment.

→ **Step up the fight against illegal employment by continuing cooperation between administrations and platforms, in particular against the phenomenon of subcontracting of accounts to minors or illegal foreign workers.**

→ **Include digital work platforms in the list of priority sectors defined by the Plan national de lutte contre le travail illégal (2019-2021) drawn up by the Commission nationale de lutte contre le travail illégal (CNLTI).**

→ For platforms convicted of illegal work, and in accordance with the procedures (duration...) defined by the Social Observatory of Platforms**, transform the DIGISCORE display so as to show the conviction and refer to the judgment.**

RECOMMENDATION 8
Enhance platform transparency

OBJECTIVE: to inform workers of structural changes in their work environments.

TYPE OF MEASURE: transparency, mediation

WISHED TEMPORALITY: medium term

SCALE: national and European

ACTORS IN CHARGE: Ministry of Labour, Employment and Insertion; Ministry of Economy and Finance; platforms

Workers are currently not always informed of changes in their digital working environment (in the mobile application, for example), even though these changes can have a significant impact on their working conditions. This is the case for changes in how task allocation algorithms or rating calculation work.

Worker information

The European *Platform to Business*[13] regulation (P2B) aims to improve platform transparency. Certain provisions could usefully be further developed at national level.

→ **Enrich the provisions on platform transparency contained in the P2B regulation with elements relating to pricing.**

→ **Extend the deadline for notifying workers before the entry into force of any changes to the Terms and Conditions from 15 days to 1 month.**

These notifications must be fair, clear and understandable. For example, platforms could implement pop-up notifications containing relevant worker information, on a model similar to user consent banners implemented after the adoption of the General Data Protection Regulation (GDPR).

When the change relates to an essential element of the employment contract (for example, rules on the calculation of remuneration) :

→ **Introduce an obligation to inform workers within one month before implementation,** along the lines of the provisions of the *Platform to Business*[14] Regulation.

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[13] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 promoting fairness and transparency for business users of online intermediation services, known as "*Platform to Business*". In the event that platform workers are self-employed, the provisions of the Regulation apply (see KILHOFFER, Zachary, DE GROEN, Willem Pieter, LENAERTS, Karolien, SMITS, Ine, HAUBEN, Harald, WAEYAERT, Willem, GIACUMACATOS, Elisa, LHERNOULD, Jean-Philippe, ROBIN-OLIVIER, Sophie. Study to gather evidence on the working conditions of platform workers. *European Commission Final Report*. VT/ 2018/ 032. December 2019). It may be advisable to strengthen the mediation and transparency mechanisms set up by the Regulation.

[14] Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 promoting fairness and transparency for business users of online intermediation services, known as "*Platform to Business*".

<u>Internal Mediation</u>

→ **Extend the obligation to appoint an internal mediator to platforms with less than 50 employees and less than EUR 10 million turnover**[15].

The mediator could easily be contacted by platform users via an app-embedded feature.

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[15] FRENCH DIGITAL COUNCIL. <u>"The protection of platform workers</u>". *Synthèses des États généraux des nouvelles régulations du numérique*, May 2020. [IN FRENCH]

Platforms with more than 50 employees and more than EUR 10 million in revenues are already subject to this obligation under the Platform to Business regulation.

RECOMMENDATION 9
To financially support platform cooperativism by dedicating 20 million from the Investment for the Future Program to it.

OBJECTIVE: to foster the development of platform cooperativism.

TYPE OF MEASURE: investment

WISHED TEMPORALITY: medium term

SCALE: local and national

PLAYERS IN CHARGE: General Secretariat for Investment; Caisse des Dépôts et Consignations; local authorities

Some platforms have opted for a more sustainable economic model, notably through the cooperative structure. Cooperative platforms represent a promising alternative model, but one that is currently suffering from a lack of investment from private financiers. Public authorities could come to fill this market gap and thus support, at national and local levels, these actors in order to ensure a fair remuneration and representation of workers in the collaborative economy.

→ **Use the Future Investment Program (*Plan d'investissement d'avenir,* PIA) to finance cooperative platforms, with 20 million euros from the Social and Solidary Economy envelope being earmarked for this purpose.**

Another possibility to promote platform cooperativism is for the public authorities themselves, especially at the local level, to participate in the creation of public platforms :

→ **Launch experiments within local and regional authorities.**

RECOMMENDATION 10
Involve local and regional authorities in digital work platform regulation

OBJECTIVE: to regulate the development of platforms at local level and compensate for their negative externalities.

TYPE OF MEASURE: control

WISHED TEMPORALITY: long term

SCALE: local

PLAYERS IN CHARGE: local authorities; Caisse des Dépôts et des Consignations and Banque des Territoires

Platforms contribute to reinforcing real and symbolic territorial divides between metropolises and rural territories, both in terms of access to employment (rural territories rarely benefit from platforms' positive impact on employment) and living standards (access to a service provided by a digital platform has become a urban social marker). Members of the Council therefore recommend to :

→ **Create a fund to compensate for negative externalities linked to "metropolisation" and the strengthening of the territorial divide, fed by platforms**. This will make it possible to finance actions in favour of digital inclusion in the territories.

→ **Create Public Interest Groups (GIPs) in rural territories on the model of digital work platforms, but managed by local authorities,** to operate certain activities that are part of the public service and can easily benefit from such an organisation: services for the elderly or passenger transport, for example.

→ **Introduce a prior operating licence**, issued by local administrative police bodies (prefectures) for platforms whose activity has consequences on local public order, as exists in London or New York. These consequences may be assessed in the light of the traditional concept of public order established by the case law of the Council of State as well as in the light of new criteria, such as environment preservation objectives set by international treaties signed by France.

Axis III – Working differently in the 21ˢᵗ century.
Long-term measures

RECOMMENDATION 11
Review self-employed workers statuses and protections

OBJECTIVE: to strengthen the protection and secure the career paths of self-employed workers.

TYPE OF MEASURE: Harmonisation

WISHED TEMPORALITY: long term

SCALE: National

ACTORS IN CHARGE: Ministry of Solidarity and Health; Ministry of Labour, Employment and Insertion; Ministry of the Economy and Finance

On social protection

The changing profiles of the self-employed and the gradual universalization of certain social rights, such as unemployment insurance, imply a thorough review of the protection enjoyed by these workers and the financing of such protection.

The High Council for the Financing of Social Protection (HCFiPS) has noted that there is an inequity between the social rights of salaried workers and self-employed workers, *especially* when the latter have low incomes.[16] In this context, the members of the Council recommend that :

→ **Align the level of social protection of self-employed workers with that of employees.**

→ **Redesigning the micro-enterprise regime so as to limit windfall effects and strengthen the protection of micro-entrepreneurs[17].**

→ **Establish rules for degressive earnings-related contributions for self-employed persons.**

→ **Widen the conditions for access to unemployment insurance for self-employed persons.**

→ **Extend the conditions of access to the Visale housing guarantee for self-employed workers over 30 years of age.**

On collective bargaining

It is important to make the right to collective bargaining effective for self-employed

[16] HAUT CONSEIL POUR LE FINANCEMENT DE LA PROTECTION SOCIALE. Note d'étape sur le financement de la protection sociale pour les travailleurs indépendants. Diagnostic et propositions. 4 mars 2019. The HCFiPS recalls that in 2018 90% of micro-entrepreneurs had declared an income below the SMIC. [IN FRENCH]

[17] As also recommended in a report by the Senate Social Affairs Committee: FORISSIER, Michel, FOURNIER, Catherine et PUISSAT, Frédérique. Travailleurs des plateformes : au-delà de la question du statut, quelles protections ?. *Rapport d'information fait au nom de la commission des Affaires sociales du Sénat* n° 452, mai 2020. [IN FRENCH]

workers:

> → **To develop the modalities of representation of self-employed workers so that they can be represented by the social partners of the salaried sector[18].**

> → **Determine specific funding and representation arrangements and recognize unions of the self-employed.**

<u>Towards a single asset status</u>

The Council has already declared its full support for the overall target set by the Personal Activity Account (PAA) under discussion for 2015.[19] The principle is to attach rights to the individual and not to his/her contract or professional status and to allow a better circulation of rights via a points system (by making them portable from one activity to another and/or fungible from one right to another).

In 2020, the personal activity account gives access to rights relating to training, prevention of arduous work and the promotion of voluntary civic activities. It therefore includes the personal training account (CPF), the citizen engagement account (CEC) and the tedious prevention account (CPP).[20] Every citizen aged 16 and over can benefit from it.[21]

The CPA is currently not up to the initial ambition of securing career paths through continuity and access to rights. Moreover, it would be massively underfunded.[22] However, the health crisis linked to Covid-19 has brought to the fore the need to offer each citizen a portfolio of social rights, portable from one activity to another throughout life and vectors of individual encapacitation. This objective must be pursued without transferring responsibility from companies to individuals.

> → **To pursue the initial ambition of the CPA to make it the portal for access to all social rights, particularly unemployment insurance and pensions[23].**

> → **Create a paid holiday fund integrated with the CPA.**

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[18] OCDE. <u>Negotiating Our Way Up : Collective Bargaining in a Changing World of Work</u>. Paris : *Éditions OCDE*, 2019.

[19] CONSEIL NATIONAL DU NUMERIQUE. <u>Travail, Emploi, Numérique : les nouvelles trajectoires</u>. 2016, p.93. [IN FRENCH]

[20] 20 PREMIER MINISTRE, DIRECTION DE L'INFORMATION LÉGALE ET ADMINISTRATIVE (DILA). « <u>Qu'est-ce que le compte personnel d'activité ?</u> ». 15 janvier 2020. [IN FRENCH]

[21] <u>Article L5151-2 of</u> the Labour Code. [IN FRENCH]

[22] MARTINOT, Bertrand and SAUVAT, Estelle. <u>Un capital emploi formation pour tous</u>. *Study by the Institut Montaigne*, January 2017. [IN FRENCH]

[23] This is in line with the bill establishing a universal pension system which extends this protection to self-employed workers: Article 4: "*a euro contributed gives the same rights, regardless of when it was paid in, regardless of the status of the person who contributed*". [IN FRENCH]

RECOMMENDATION 12
Protect workers' digital rights and freedoms

OBJECTIVE: to strengthen privacy protections offered by labour law following digital platforms development.

TYPE OF MEASURE: law

WISHED TEMPORALITY: long term

SCALE: national and European

ACTORS IN CHARGE: Ministry of Labour, Employment and Insertion; French Data Protection Authority (CNIL); Labour Inspectorate; National Institute for Labour, Employment and Vocational Training (INTEFP); platforms and employers

The intrinsically digital nature (massive data collection, use of algorithms in managerial decision-making, etc.) of platforms makes it necessary to redefine certain aspects of the regulations in force and to consider the creation of new standards to better protect workers' digital rights and freedoms. The constant use of digital tools at work creates new challenges for privacy protection in the framework of labour relations, an area in which the notion of consent is difficult to apply. Through their use of digital tools and data, platforms are in this respect indicative of a wider transformation of the labour market.

Virtual workplace

Most of a platform worker's interaction with the client takes place via a digital interface, usually a mobile application. Digital work platforms are thus changing the habit of going to the workplace to take orders, report, etc., which has become a common practice. The boom of telework, following the Covid-19 crisis, also calls for a definition both physical and virtual of the "workplace".

A mobile application could be considered as the "workplace" of a courier or a VTC driver who carries out his activity via a platform.

> → **Make the legal definition of workplace evolve to take into account the emergence of new digital, or virtual, workplaces.**

Changing this definition would solve problems faced by labour inspectors who, in the absence of a determined workplace for workers, are unable to carry out checks. A labour inspector could thus have the possibility of connecting to the back office of a digital work platform when carrying out his or her duties.

Privacy Policy

Article 88 of the GDPR gives EU Member States the power to legislate to ensure the protection of employees' digital rights and freedoms in their employment relationships.

The collection of personal data is carried out continuously by the platforms through computational processes. This particularity makes it necessary to evaluate the existing legal tools for the protection of privacy at work.

> → **Review existing safeguards and protections relating to privacy in labour relations.**

→ **Assess whether they are sufficiently satisfactory and effective in terms of the digital organisation of work by the platforms.**

These provisions may relate to the strengthening of the protection of employees' privacy, sensitive devices such as facial recognition or geolocation in the working environment, algorithmic control, real-time scoring, data collection and processing, gaming, dematerialisation of the workplace, transparency and information obligations, etc.

→ **Refer the matter to the French Data Protection Authority (CNIL) and the Labour Inspectorate so that they can jointly draw up recommendations relating to the digital transformation of the environment and labour relations that can subsequently be adopted in a "GDPR" inspired text in the Labour Code at national level. This process could be enriched by a consultation of citizens and social partners.**

→ **Carry out this work in close cooperation with the European Observatory of Platforms and the European Data Protection Board (EDPB).**

On personal data portability

Article 15 of the GDPR guarantees platform workers the right to portability of their personal data. However, the effectiveness of this right may be hindered by an overly strict definition of the scope of personal data in the work environment.

→ **Refer the matter to the European Data Protection Board to issue clarification guidelines valid for all EU Member States.**

→ **Refer the matter to the CNIL to clarify the scope of the notion of personal data for the specific case of platform workers.**

On algorithmic decisions

Article 22 of the GDPR enshrines the right not to be subjected to a fully automated decision, except in two cases: (1) when the decision is necessary for the conclusion or performance of a contract between the worker and the platform; (2) when the person has explicitly consented to it. The second exception cannot be applied in the context of a work relationship, so that remains only the first exception.

→ **Add to the first exception the condition that the platform must prove that there is no less privacy-intrusive solution for employees than the automated decision system put in place for the execution of the contract.**

On the right to algorithms explicability

The right to algorithm-based decisions explicability should be extended to all algorithms significantly impacting workers. This would apply for instance to dynamic pricing, task allocation or scoring algorithms. Workers would therefore enjoy a right to information on the algorithm in question, but also a right to obtain the information needed to understand the operation of that algorithm from the employer, provided that such information does not infringe legally protected business secrecy.

→ **Extend the right to the explicability of algorithm-based decisions to labour relations.**

Furthermore, workers should be able to make full use of their right of appeal to challenge this decision.

On algorithmic discrimination prohibition

Article L. 1132-1 of the Labour Code prohibits all forms of discrimination at work.

> → **Supplement Article L. 1132-1 with a paragraph prohibiting discrimination resulting from an automated decision-making system.**

The GDPR requires that a prior privacy impact assessment be systematically carried out.

> → **Systematize the consideration of the discriminatory or non-discriminatory nature in a dedicated section of the impact study imposed by the GDPR.**

In the event of proven biases, the platform has a duty to make every effort to correct these biases before deploying the device and to inform users in a clear, fair and transparent manner.

> → **Ensure the application of the right to non-discrimination in algorithmic decisions.**

The problems of algorithmic discrimination are also an issue of judicial response. It is therefore essential that the independent administrative authorities and the social judge be better trained and better equipped to investigate cases relating to algorithmic bias.

On a "collective right to data"

The current legal approach is based on an individualistic conception of data. However, platforms' big data use requires the inclusion of a collective dimension to data right.

This would imply the need to grant collective rights to a group, such as trade unions, to enable effective and efficient data protection.

> → **Support research projects on a "collective right to data" in the context of labour relations.**

On the evolution of supervisory labour authorities' missions

Abusive designs can indirectly lead to labour law infringements: for example, nudging features can encourage workers to engage in behaviours that are dangerous to their safety and that of others. Triggering a stopwatch as soon as a race was accepted on delivery platforms, for example, encouraged couriers to take reckless risks.

> → **To develop algorithms auditing methods for work environments and to enable the Labour Inspectorate to audit algorithms (in particular, pricing algorithms), using the General Directorate for Enterprises (DGE)'s Service à compétences nationales (SCN) where appropriate.**

> → In connection with the National Institute of Labour, Employment and Professional Training (INTEFP) and the training of public agents: **to reflect on the evolution of the missions of labour administrations to take into account the stakes related to the digital transformation of work, and in particular to appreciate the practices of algorithmic management or misleading designs.**

> → **Integrate interface design and analysis into the competences of the Labour Inspectorate and other control administrations.**

> → **Strengthen teams by recruiting designers.**

RECOMMENDATION 13
Foster fair and responsible designs of digital working tools

OBJECTIVE: to put human beings at the center of digital working tools by design.

TYPE OF MEASURE: design

WISHED TEMPORALITY: long term

SCALE: national

ACTORS IN CHARGE: platforms; higher education; Social Observatory of Platforms

Abusive designs are the choices made by the architects and designers of digital platforms that mobilize users' cognitive biases in order to influence their behaviors[24]. The notion of deceptive design refers to practices that aim to represent elements in such a way that they could mislead the individual. Dangerous designs refer to methods that may make the worker directly or indirectly vulnerable. These designs may encourage workers to commit offences. For example, stopwatches were automatically triggered on some delivery applications when accepting a ride. This could encourage couriers to commit traffic violations by playing on cognitive biases.[25]

→ **Train designers in ethical issues and more specifically in labour law, for example by creating cross-training within law and design curricula.**

→ **Implement within the platforms' product teams methods for diagnosing design choices in order to assess whether they are likely to deceive the user[26].**

→ **Valorize platforms whose tools are free of deceptive and/or dangerous designs through labelling approaches such as DIGISCORE (see recommendation 1).**

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[24] LABORATOIRE D'INNOVATION NUMÉRIQUE DE LA CNIL. La forme des choix. Données personnelles, design et frictions désirables. *Cahier IP innovation et prospective* n°6, 2019. [IN FRENCH]

[25] This design has since been abandoned by the platform in question.

[26] See for example: DESIGNERS ÉTHIQUES. « Méthode de diagnostic du design attentionnel ». 28 janvier 2019. [IN FRENCH]

RECOMMENDATION 14
Training social partners and unions on the issues of the digital transformation of work

OBJECTIVE: To empower social partners and administrations by giving them the keys to understanding the digital and platform economy.

TYPE OF MEASURE: training

WISHED TEMPORALITY: long term

SCALE: national

PLAYERS IN CHARGE: Social Observatory of Platforms

The hearings conducted by the Council highlighted both growing expectations of collective bargaining on platforms and a lack of knowledge on the part of social partners (unions…) of these new forms of labour. Indeed, work on platforms poses new challenges to social dialogue: atomisation and geographical dispersion of workers, algorithmic management, misleading designs, personal data protection, etc. It is therefore necessary to train stakeholders in all these issues in order to give them the means to successfully carry out their negotiation mission. The same applies to supervisory authorities, which must take these new methods into account in detecting fraudulent practices. Training these players should ultimately lead to a fine regulation of this economy, adapted to its challenges.

> → **Train all workers' representatives (trade unions, collectives on the field…) in platform economics and digital issues, such as the notions of nudge, algorithmic management, deceptive designs, data portability, RGPD.**

> → **Train field collectives in social dialogue, labour law and commercial law.**

This training could be provided by the Social Observatory of Platforms (see Recommendation 5).

> → **Train platform representatives in social dialogue and collective bargaining[27].**

These training sessions could take place in the framework of the common training sessions for social dialogue provided for by the El Khomri law.

Labour administrations traditionally play an important role in the organisation of social dialogue in France. However, they still lack knowledge on labour issues specific to digital work platforms.

> → **Train labour administrations and other supervisory authorities in platform economics and digital issues.**

This training could be based on two axes: the notion of work platform and its insertion in the digital economy and new forms of work intermediated by technology

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[27] SIMONPOLI, Jean-Dominique et GATEAU, Gilles. Accompagner la dynamique du dialogue social par la formation et la reconnaissance de ses acteurs et par la valorisation des meilleures pratiques. *Rapport remis à la ministre du Travail*, 16 février 2018. [IN FRENCH]

(algorithmic management, nudge, misleading designs, RGPD, but also micro-work...)[28]. It could draw on the expertise of the National Institute for Work, Employment and Professional Training (INTEFP) and the French Digital Council (CNNum).

[28] CONSEIL NATIONAL DU NUMÉRIQUE. Travail, Emploi et Numérique : Les nouvelles trajectoires. 2016. [IN FRENCH]

RECOMMENDATION 15
Launch a "Citizens' Convention on Labour" modelled on the Citizens' Convention on Climate

OBJECTIVE: to redefine the place of labour in society in the light of the development of self-employment and atypical work.

TYPE OF MEASURE: citizen consultation

WISHED TEMPORALITY: long term

SCALE: national

PLAYERS IN CHARGE: Prime Minister; Economic, Social and Environmental Council (CESE); French Digital Council (CNNum)

The hearings, as well as the *Estates General on the new digital regulations* conducted by the CNNum, brought to light many questions about the need of a new meaning for labour in our society. Professional activity, worker's statuses and the rights and protections attached to them are at the core of these reflections, marked both by a strong desire for social protection and greater autonomy and emancipation through labour. Moreover, these reflections on work and employment are coupled with greater awareness on ecological challenges.

These societal interrogations were expressed even more acutely at the time of the health, economic and social crisis linked to the spread of Covid-19. Platform workers were then perceived as new symbols of a broader labour crisis. They claimed more social protection regardless of their status, hence finding an echo among all self-employed workers. In the wake of the health crisis, the idea of a universal basic income has even resurfaced. **CNNum members hence suggest launching a Citizens' Convention on the status of labour in society**.

Following the model of the Citizens' Climate Convention, the Government could commit itself to taking up the proposals made in this framework.

This major national consultation could for instance **deal with the relationship between the status of the self-employed and that of employees**.

For the self-employed, it could help to **identify possible avenues for changes in the overhaul of their status**.

On the subject of **salaried employment**, it could make it possible to **reflect on ways of transforming salaried employment so that it corresponds to the social demand for autonomy, without going back on the protections and guarantees it offers**. It could also **explore the possibilities for changing the status of micro-entrepreneurs and its consequences on employment**.

COMPOSITION OF THE FRENCH DIGITAL COUNCIL

Chair and leader of the working group
Salwa TOKO

Vice-President
Gilles BABINET

Co-leader of the working group
Hind ELIDRISSI

Members of the Platform Workers Working Group
Maud BAILLY
Gérald ELBAZE
Henri ISAAC
Loubna KSIBI

Members
Yann ALGAN
Annie BLANDIN-OBERNESSER
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Litzie MAAREK
Laura MEDJI
Françoise MERCADAL-DELASALLES
Jean-Michel MIS
Hervé PILLAUD
Jean-Charles SAMUELIAN
Christian VANIZETTE
Alexandre ZAPOLSKY

Writing
Philippine RÉGNIEZ, Policy officer
Joséphine HURSTEL, Policy officer
Clément LE LUDEC, Policy officer (until December 2019)

Proofreading
Charles-Pierre ASTOLFI, Secretary General
Vincent TOUBIANA, Deputy Secretary-General
Marylou LE ROY, Head of Legal and Institutional Affairs
Leila AMANAR, Policy officer
Nathalie BOUAROUR, Policy officer
Myriam EL ANDALOUSSI, Policy officer
Jean-Baptiste MANENTI, Policy officer
Ménéhould MICHAUD DE BRISIS, Policy officer
Hugo BESANÇON, trainee Policy officer
Farah FEJJARI, trainee Policy officer

General Secretariat
Éric BERNAVILLE, Executive Assistant

ABOUT THE FRENCH DIGITAL COUNCIL

The French Digital Council is a French independent advisory commission created on 29 April 2011 by the French presidential decree n°2011-476. It was reorganized and expanded by another French presidential decree on 13 December 2012, to expand its spectrum of actions to all the questions set up by the development of the digital in society and economy. The Council issues independent opinions and recommendations on any question relating to the impact of digital technologies on economy and society. The government can consult the Council on new legislation or draft regulations. The Council's thirty members come from across the digital spectrum, and include researchers and activists. The Council organises public consultations at both local and national level, and is in constant contact with France's digital ecosystem, including elected officials, members of civil society, researchers, digital experts, entrepreneurs and professional organisations.

Press contact:

Agathe Bougon
Head of communication
presse@cnnumerique.fr,
06 14 87 41 66
https://cnnumerique.fr | @CNNum

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