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Renewing social protection in a post-pandemic digital world: the example of Platform Workers in France and the UK

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1. Introduction

Platform Workers’ Social Protection in France and the UK might seem too small a subject. According to Eurostat, platform workers are a small category¹. Platform work is defined by the European Commission as “any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service”². For Eurofound, it is “an employment form in which organisations or individuals use an online platform to access other organisations or individuals

¹ According to the European Commission, more than 28 million persons work via a digital platform in the EU. They could be 43 million by 2025. European Commission, Proposal for a directive on improving working conditions in platform work, COM (2021), 762 final, 9.12.2021.

² Proposal for a directive of the European Parliament and of the council on improving working conditions in platform work, COM/2021/762 final.

to solve specific problems or to provide specific services in exchange for payment”³. Even if it is growing, it is not many people.

What makes it interesting is that platform work appears in all States worldwide and in a wide number of situations. It includes for instance deliveries (Amazon...), collaborative consumption systems (Deliveroo, UberEATS...), systems of products or house rental services (Airbnb...), redistribution markets (eBay...) collaborative lifestyles (Facebook...). It thus puts together diverse profiles, diverse activities, and diverse legal statuses.

It thus becomes a test to social protection systems. Platform work questions the rationale behind the whole social security system and its equality purposes. Concretely, because many of these workers are independent workers even if they do not necessarily have a very independent job, it raises the question of the access to social protection of new independent workers by comparison to employees. If these workers are to multiply and endanger the predominant status of employees, it requires a rethinking of the whole system.

This question must be studied in light of the two main social security models: the Bismarckian and the Beveridgian. This study focuses on two examples coming from these two systems: France and the UK. It compares platform workers’ access to social protection in these two countries during and beyond the COVID-19 pandemic.

This study compares the evolutions in delivery platform workers’ social protection that emerged in response to the COVID-19 crisis in France and in the UK. This subject raises descriptive and prescriptive questions around the interaction and balance between public authorities, platforms, trade unions and private insurers both in the state of emergency and in the longer term. In particular it questions social protection universalism.

This study will outline the consequences of these legal changes and their limits to inform some theoretical directions of modern social protection in light of a pandemic. It will start by describing the welfare state models in France and in the UK (I). It then focuses on the existing public protections of platform workers in France and the UK. They consist in the universal basic benefits which are given to most people in need by the French and

³ <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary/platform-work>; (15/4/20); Communication de la Commission européenne, COM 2016/184.

British welfare states. We cannot examine all branches of social security, but we will focus on social assistance and healthcare benefits. These support mechanisms were slightly improved to face the pandemic (III). This description is a necessary background to understand the main or major public actions taken by France and the UK: the French “state of emergency” or “*Etat d’urgence*” and the British “coronavirus acts”. These laws aimed at helping most workers but often forgot nonstandard ones and specifically platform workers even if there were evolutions for the second and third waves of the pandemic (III). The fourth part will be devoted to two platforms’ policies to provide their workers with supplementary help and insurance. These actions, which are often neglected in studies because of their private nature, are part of the reality of the platform worker’s support (IV). This link between public and private support is worth a specific analysis: the moving balance between public and private protection (V). This is to be seen in light of EU law recent developments (VI). Shows a growing awareness of the need to protect vulnerable populations and specifically platform workers, a new balance between public and private actors in enacting this protection and maybe the bases of a rudimentary theory of modern social protection in France and UK in light of international law (VII).

2. *French Bismarckian model versus UK Beveridgian model*

France has built a system inspired by the Bismarckian model, while the British system was remodelled by Beveridge, the other father of the welfare state. These two systems differ in that the former is a system of social protection centred on the insurance of salaried income, whereas under the latter the entire population benefits from a basic welfare system organised by the State and funded by taxation⁴. Against the background of the opposition between these two philosophies, both countries have been the scene of power struggles and compromises between the State and enterprises. In France and in the United Kingdom, companies’ initiatives on behalf of their workers during the 19th century were not only charitable: they were intended to fix

⁴ It is necessary to add the “doctrine of the three Us”: unity, uniformity, universality. See KERSCHEN, *Universalité et citoyenneté sociale*, in DAUGAREILH, BADEL, *La sécurité sociale, Universalité et modernité, Approche de droit comparé*, Pedone, 2019, chap. 29, p. 451.

and stabilise the workforce and avoid lawmakers creating a system over which the employers would not have had full control⁵.

We might expect that these two systems would deal differently with platform workers' access to healthcare since a Beveridgian system should theoretically give access to social protection and healthcare to all workers and non-workers. This might imply that employment statuses do not impact the access to healthcare. On the opposite, Bismarckian systems like France would reserve social security, protection, and access to healthcare to workers and might also distinguish between different employment status such as employees and independents.

The reality is far from these theories. It turns out that there has been a convergence between the two models. Both in the UK and in France, we find different accesses and different statuses. We must even say that the UK has an extra/third employment status for "workers" who are not employees or independent⁶. Beyond the existence of employment status, both Beveridgian and Bismarckian systems have felt that they should protect the most vulnerable part of the population, thus creating universal protections.

3. *Existing public universal protections of platform workers in France and the UK and their slight increase to face the pandemic*

This part aims at reminding the reader what universal protections are available for British and French platform workers in need. It is difficult to get a clear picture of the situation of platform workers, as a whole, in France and in England. But it is known that temporary workers have been hit hardest by the pandemic and that many of them have lost their jobs⁷. This analysis is not exhaustive. It focuses on three universal protections: access to minimum wage by proposing a short analysis of the fluctuations of the British Universal credit and the French RSA; platform workers' access to healthcare in France

⁵ PELLET, SKZRYERBAK, *Droit de la protection sociale*, PUF, Thémis Droit, 2017, p. 54.

⁶ An intermediate category between employees and self-employed workers, see *Uber BV and others (Appellants) v Aslam and others (Respondents)*, UKSC 5 19 February 2021.

⁷ Insee, *Une photographie du marché du travail en 2019*, in *Insee Première*, n. 1793, February 2020; EC, *Proposal for a Joint Employment Report*, 9 March 2021; MATSAGANIS *et al.*, *Non-standard employment and access to social security benefits*, Note 8/2015, Brussels, European Commission.

and UK; and help in case of professional disease and analysis of platform workers' access to it.

On the one hand, access to replacement incomes have been increased and extended both in France and the United Kingdom. In France, the “active solidarity income” benefit (*Revenu de solidarité active*, RSA), which provides a minimum income to those with no resources and is available to French people over the age 25⁸ and legally resident foreigners⁹, was extended during the crisis¹⁰. It was also increased in 2020 and slightly in 2021¹¹. An exceptional solidarity grant (*aide exceptionnelle de solidarité*¹²) was also introduced. In the United Kingdom, access to Universal Credit, which is already relatively wide¹³, was facilitated by the addition of a month's payment without the need to go to a job centre¹⁴. Access to this benefit was opened to the self-employed, but the level of the allowance remains low¹⁵. The “Independent Workers Union of Great Britain” (IWGB), which generally defends the rights of platform workers and precarious workers¹⁶, brought an action

⁸ On the additional condition of not being a student or unpaid trainee in a company.

⁹ See Law n. 2008-1249 of 1 December 2008 “extending the scope of the *Revenu de Solidarité Active* and reforming integration policies”.

¹⁰ Order n. 2020-312 of 25 March 2020 had automatically prolonged entitlement to the RSA. It allows beneficiaries of the RSA to continue receiving the benefit until 12 September 2020, without reassessing their entitlement. This mechanism was reiterated in Order n. 2020-1553 of 9 December 2020 extending the benefit until 30 April 2021. Entitlements to the RSA will be reassessed after this period, including for the past period.

¹¹ It was € 564.78 for a single person with no children after the re-evaluation on 1 April 2020. The re-evaluation on 1 April 2021 led to a slight reduction (from € 565.34). See Decree n. 2021-530 of 29 April 2021 re-evaluating the flat-rate amount of the RSA.

¹² Decree n. 2020-519 of 5 May 2020 allocating an exceptional health-emergency solidarity grant to the most disadvantaged households, concerning households receiving certain benefits specifically listed in the texts, namely: RSA and RSO in the overseas collectivities, APL and ALF, ASS; and finally the flat-rate return-to-work benefit. The amount of this exceptional grant is € 150 per beneficiary, plus € 100 per dependent child under the age of 20; those receiving housing benefits only get the grant for children. The allocation of this grant was repeated in October and December 2020 (Decree n. 2020-1746 of 29 December 2020). See also the conclusion of BADEL, *L'indemnisation du chômage total à l'heure du COVID-19*, in DS, n. 9, 2020, p. 687.

¹³ A person aged over 18 years and below the retirement age living in the United Kingdom must have a very low or non-existent income and savings of less than £16,000: <https://www.gov.uk/universal-credit/eligibility>.

¹⁴ <https://www.understandinguniversalcredit.gov.uk/coronavirus/>.

¹⁵ £409.89 per month, equivalent to € 481.

¹⁶ See, for example a recent judgment of the Court of Appeal on the right of Deliveroo

in March 2020 against the social security law¹⁷ on the grounds that the conditions for granting benefits discriminated against minorities¹⁸, women and collaborative economy workers, particularly during a public health crisis¹⁹. Furthermore, the United Kingdom allowed income tax to be paid monthly and modernised an employment allowance (“New Style” Employment & Support Allowance – ESA) which was initially reserved for the disabled and then extended to those unable to work because of COVID-19²⁰. Finally, some local authorities were sometimes able to pay special allowances to platform workers²¹.

On the other hand, sickness coverage, as well as the access to healthcare have not changed – or only slightly. The pandemic did not lead to any major changes. Sickness benefits are limited to certain workers (most often employees – *salariés*) in France and in England. Although overall, in France, it is to be welcomed that there is “system of sickness insurance [...] accessible to all residents, regardless of their professional activity and their resources”²², platform workers nevertheless frequently found themselves unable to access it. It could have been assumed that lawmakers would extend access to atypical workers, but this did not happen. In England, sick pay²³ is only available to employees, and only those paid more than £118 per week²⁴. Precarious workers or platform workers are excluded from this scheme. This differen-

delivery workers to collective bargaining: Court of Appeal (UK), *The Independent Workers Union Of Great Britain V The Central Arbitration committee e- And Rooffoods Ltd T/A Deliveroo*, 24 June 2021, EWCA Civ 952.

¹⁷ Statutory Sick Pay Act 1994: <https://www.legislation.gov.uk/ukpga/1994/2/contents>.

¹⁸ Minorities known as “BAME” (Black, Asian and Minority Ethnic workers).

¹⁹ <https://iwgb.org.uk/page/support-our-campaign>.

²⁰ <https://www.gov.uk/employment-support-allowance>.

²¹ For example, in Belfast, it is specified that only those who could not benefit from the self-employed fund could apply for a grant: <https://consultations.nidirect.gov.uk/dfi-driving-policy-branch/taxi-drivers-financial-assistance-scheme/>.

²² MARIÉ, *Variations autour du régime juridique des indemnités journalières de sécurité sociale en période épidémique*, in *DS*, 2020, n. 9, p. 683.

²³ £95.85 per week since 6 April 2020, i.e. less than 30% of the minimum wage; HENDY, *The Gaps in the Government’s Coronavirus Income Protection Plans*, Institute of Employment Rights, 2020.

²⁴ See UK Employment Rights Act 1996, s. 230. <https://www.gov.uk/statutory-sick-pay/eligibility>. This entitlement is granted as of the first day and not, as normal, the fourth day for those isolating due to suspected coronavirus. It does not cover those who have to isolate for twelve weeks because they are particularly vulnerable.

tiation led the IWGB to add to its action the fact that these benefits discriminate against collaborative economy workers²⁵.

As far as access to healthcare is concerned, once again the pandemic has not led to any changes. Healthcare is free and open to all in England under the National Health Service (NHS). But not all services are covered. In France, self-employed people benefit from less generous coverage than employees²⁶. According to the Council of the European Union, evidence shows that some non-standard workers and some self-employed persons have insufficient access to the branches of social protection which are more closely related to participation in the labour market²⁷.

Finally, in both countries, although formal coverage of platform workers is guaranteed by the social protection systems, coverage seems not to be entirely effective²⁸. In particular, access to voluntary protection schemes shows how workers can be theoretically covered but do not actually make the choice to be effectively covered (often for reasons of cost). In view of the difficulties faced by workers, both the UK and France adopted special pandemic schemes.

4. *Public actions from France and the UK to face the pandemic: the French “Etat d’urgence” and the British “coronavirus acts”*

This part aims at presenting the main measures adopted by France and the UK to face the work disruption caused by the pandemic. The social protection of platform workers has seen some adaptations to cope with the emergency, and in different ways in France and in the United Kingdom. Several universal benefits have been increased and new benefits have been created, in the context of a state of emergency, by means of solidarity funds.

²⁵ <https://iwgb.org.uk/en/post/iwgb-to-sue-uk-government-over-its-failure-to-protect-precarious-workers>.

²⁶ PELLET, SKZRYERBAK, *cit.*, p. 50. Concerning how complementary insurance works: *ibid.*, p. 380.

²⁷ PÉDROT, *L'accès aux soins des personnes les plus démunies à l'épreuve de la COVID*, in *RevDSS*, n. 2, 2021, p. 255. See also §13 of the preamble to the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed, 2019/C 387/01, ST/12753/2019/INIT, OJ C 387 of 15 November 2019, p. 1.

²⁸ See the distinction proposed by SPASOVA, *cit.*, p. 22. Furthermore, the question of gender and the fact that women are more often excluded protection schemes must be raised.

But these funds have often ignored, in both countries, the specific needs of platform workers. Regarding France, we will present the French law of 24 March 2020 and implementing decrees as well as the changes subsequently brought in 2021 to learn from previous mistakes (particularly of exclusion of some independent workers including platform workers) and to adapt to a slow return to a more normal situation. Regarding the UK, we will look at the “coronavirus acts” in light of platform workers needs and the IWGB claim to complain about the situation of platform workers among others as well as the follow up measures.

Faced with the pandemic, the French government was relatively quick to take emergency measures. When it declared the state of health emergency on 24 March 2020²⁹, the government brought in various measures by way of government orders³⁰, in particular in the area of labour and social security law³¹, making a distinction between employees and the self-employed. Employees had access to a partial furlough-type job-saving scheme³²; self-employed workers, who had only recently been granted – restrictive – access to an unemployment-type benefit³³, were entitled to an indemnity thanks to the creation of a solidarity fund which paid a grant directly to very small enterprises (TPEs), micro-enterprises and self-employed workers, who were the victims of temporary lay-offs.

²⁹ Emergency Law n. 2020-290 of 23 March 2020 aimed at dealing with the COVID-19 epidemic, JORF n. 0072 of 24 March 2020, text 2.

³⁰ See the list of social texts in France: <https://www.leclubdesjuristes.com/blog-du-coronavirus/textes-autres-sources/droit-social/>.

³¹ <https://www.vie-publique.fr/dossier/273985-les-ordonnances-COVID-19-mars-et-avril-2020-dossier>. For a brief summary of the French situation in English, see: MOIZARD, *COVID-19 and Labour Law: France*, in *ILLEJ*, 2020 vol. 13, n. 1: <https://illej.unibo.it/article/view/10782/10690>.

³² Article R. 5122-1 of the French Labour Code. See DALMASSO, *Les trois âges de l'activité partielle*, in *DS*, 2020, n. 7, p. 612; TOURNAUX, *Activité partielle en période de crise sanitaire: rupture ou continuité?*, in *RevDSS*, 2020, p. 954.

³³ Dossier *Assurance chômage, un nouveau modèle?*, in *DS*, 2018, p. 580. See also BADEL, *L'indemnisation du chômage*, cit., p. 687. The 2018 Law for the “Freedom to choose one’s professional future” grants the self-employed an indemnity in the event of the loss of activity. But it excludes entrepreneurs who cannot prove that they have at least two years’ non-salaried activity on behalf of a single company (which is the case of most ride-hailing drivers), as well as “micro-entrepreneurs” with an income of less than € 10,000 over the last two years. JORF n. 0205 of 6 September 2018: <https://travail-emploi.gouv.fr/le-ministere-en-action/loi-pour-la-liberte-de-choisir-son-avenir-professionnel/>.

A comparison with employees, on the one hand, and companies³⁴, on the other, showed that platform workers, who are most often self-employed with a specific status called the “*auto-entrepreneur*” status³⁵, were at a disadvantage. Employees actually had access to extra forms of protection: on top of the advantages linked to their status (better sick pay and access to unemployment payments)³⁶, they also had better protection in terms of working from home³⁷, distance measures or “*gestes barrières*” and access to training under a government scheme known as “FNE-Formations”³⁸. Finally, the status of *auto-entrepreneur* does not entitle platform workers to withdraw from their workplace if they consider that the situation is too dangerous.

Above all, platform workers barely benefited from this “public coverage of the income of employees and the self-employed”³⁹ because it was difficult for them to meet the conditions of eligibility⁴⁰, since these did not take into account the fluctuations in their turnover, the lack of any substantial length of service in activity or the insufficient income generated⁴¹.

These difficulties were heard by the government during the second lockdown. Whereas a Decree in August 2020 had restricted the list of beneficiaries of the solidarity fund⁴², another Decree in November 2020 allowed

³⁴ <https://www.gouvernement.fr/info-coronavirus>.

³⁵ Except exceptional cases of changes of status, *infra* §IIB.

³⁶ In addition there are provisions intended to improve the situation of jobseekers following the end of lockdown: non-taking into account of the period of lockdown in the calculation of future entitlements; postponement of the new method of calculating the reference salary (from 1 April to 1 September). Art. D. 2020- 425 14 April 2020, and D. 2020-361 27 March 2020. See also LAFORE, *Le système de protection sociale à l'épreuve du COVID-19: des constats et quelques enseignements*, in *RevDSS*, p. 981.

³⁷ Art. L. 1222-11 of the Labour Code.

³⁸ For example on training, see Art. L. 6314-1 and L. 6313-11 of the Labour Code, as well as the conditions of implementation of Art. L. 6313-11.

³⁹ LAFORE, *cit.*

⁴⁰ Several conditions: to have started their activity before 1/2/2020, have fewer than 11 employees, post a turnover of less than €1 million in the last completed financial year, have a taxable profit of under €60,000 for the last completed financial year, be up to date with the payment of their taxes or social contributions at 31 December 2019. It is also necessary to have been obliged to close due to the public health measures (bars, restaurants, etc.) or to have posted a turnover in March 2020 at least 50% lower than in March 2019 (and so on for the following months). The aid is equal to the difference in the turnover between March 2020 and March 2019, up to a limit of €1,500.

⁴¹ BADEL, *L'indemnisation du chômage*, *cit.*, p. 687.

⁴² Decree n. 2020-1048 of 14 August 2020 amending Decree n. 2020-371 of 30 March

a company or auto-entrepreneur to obtain assistance if they had lost at least 50% of their turnover over the period from 1 October 2020 to 30 November 2020⁴³. And the start of the activity was moved forward in order to encompass all companies, including the most recent ones⁴⁴. Later, auto-entrepreneurs were able to receive a compensatory grant (*subvention compensatoire*), regardless of the size of the loss of turnover⁴⁵. In addition to this there were contributions waivers and assistance with their payment⁴⁶, as well as an exceptional financial grant (*aide financière exceptionnelle*, AFE COVID) proposed by the self-employed workers' social protection council (*Conseil de la protection sociale des indépendants*)⁴⁷.

The restrictions imposed to combat the spread of the COVID-19 epidemic were then progressively lifted. The government has begun to reduce its coverage of furlough schemes to finally end it. The benefit *auto-entreprise* started being reduced in June 2021⁴⁸ and the end of all forms of aid was set at 31 December 2021⁴⁹. The government has, however, once again extended

2020 on the solidarity fund for companies particularly affected by the economic, financial and social consequences of the COVID-19 epidemic and the measures taken to limit its spread.

⁴³ Decree n. 2020-1328 of 2 November on the solidarity fund for companies particularly affected by the economic, financial and social consequences of the COVID-19 epidemic and the measures taken to limit its spread.

⁴⁴ Before 31 August 2020 or before 30 September 2020.

⁴⁵ Decree n. 2021-553 of 5 May 2021 on the adaptation for April 2021 of the solidarity fund for companies particularly affected by the economic, financial and social consequences of the COVID-19 epidemic and the measures taken to limit its spread.

⁴⁶ Decree n. 2020-1103 of 1 September 2020 on the social contributions and dues of companies, self-employed workers and artist-authors affected by the public health crisis.

⁴⁷ Aid scheme known as "AFE COVID" specifically for self-employed people whose activity has been interrupted since 2 November 2020 due to administrative closures decided by the public authorities. Depending on the economic situation of the independent business, and if the arrangements introduced by the URSSAFs are not sufficient, it is still possible to apply for the Aid for Contributors in Difficulty (ACED) or the classic Exceptional Financial Aid (AFE). See: <https://www.secu-independants.fr/action-sociale/aide-coronavirus/>.

⁴⁸ <https://www.auto-entrepreneur.fr/actualite/mise-a-jour-de-l-aide-pour-les-auto-entrepreneurs-suite-au-covid-19>.

⁴⁹ Order n. 2021-135. A Decree dated 3 June 2021 extended the application of the exemption and aid schemes for the payment of social contributions due for 2020 and 2021 for self-employed workers. See Decree n. 2021-709 of 3 June 2021 on the extension of the measures concerning the social contributions of businesses and self-employed workers provided for by Article 9 of Law n. 2020-1576 of 14 December 2020 on the funding of the Social Security for 2021 and the adaptation of the furlough job-saving scheme for domestic workers and child-minders.

the application of the furlough scheme that provides indemnities and a partial furlough allowance⁵⁰.

In England, two types of measures were rushed through in emergency for workers in difficulties⁵¹. First of all, a Job Retention Scheme enabled a company to suspend the activities of its workers: they did not work⁵² and were paid 80% of their salary up to £2,500 per month. This scheme only applied to employees, and more generally to workers specifically registered on the PAYE tax scheme⁵³. It was supposed, according to the government, to include platform workers and precarious workers⁵⁴. But several reports have shown that the latter were frequently overlooked: for example, an Uber driver working for a platform without an employment contract⁵⁵, and whose customer is not the employer (typical platform economy model) was excluded from this scheme⁵⁶. More generally, the scheme was criticised because it gave the employer the choice of letting a worker go rather than putting them on the job retention scheme⁵⁷.

Platform workers were nevertheless able to try and benefit from the self-employed workers' scheme⁵⁸. The Self-employed Income Support Scheme (SEISS) is similar to the model above, but applies to the self-employed, who can obtain 80% of their profits up to a maximum of £2,500 per month. Platform workers were supposed to be able to access this scheme more easily. However, there were many conditions: to obtain the income

⁵⁰ See Decrees n. 2021-671 and n. 2021-674 of 28 May 2021 adapting the rate of benefit in the event of long-term partial furloughing.

⁵¹ Social Security Contributions and Benefits Act 1992 (amended by the Coronavirus Act 2020); Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020; S.230(3)(b) Employment Rights Act 1996.

⁵² The interruption in working cannot be partial.

⁵³ PAYE (*Pay As You Earn*) is the income tax withholding scheme of HMRC (*Her Majesty's Revenue and Customs*). HENDY, *cit.*, p. 7.

⁵⁴ Platform workers may have the following statuses: agency workers, those on zero-hours contracts, independent workers, employees, etc. See FORD, *The Fissured Worker: Personal Service Companies and Employment Rights*, in *ILJ*, 2020, vol. 49, n. 1, p. 35.

⁵⁵ Analysis proposed just before the Uber judgment in February 2021 which would create an exception.

⁵⁶ HENDY, *cit.*

⁵⁷ In English "furlough"; HENDY, *cit.*

⁵⁸ BOGG, FORD, *Furloughing and fundamental rights*, UK labour law blog: <https://uk-labourlawblog.com/2020/04/06/furloughing-and-fundamental-rights-the-case-of-paid-annual-leave-by-alan-bogg-and-michael-ford/>.

support, it was necessary to have been self-employed for the last three years. Those who received £50,000 profit less than in the previous year, or the average of the three previous years, obtained a one-off payment from the *Inland Revenue* in June 2020. This scheme would only cover 62% of the self-employed and exclude the new workers on the market⁵⁹. Finally, only employees could refuse to work in their working place for health and safety reasons⁶⁰. Legal actions were brought by the IWGB: it claimed that that there was a failure – a refusal even – to extend this right to precarious and self-employed workers as well as that the measures proposed by the government for the self-employed were inadequate⁶¹. The SEISS was quadrupled and improved⁶² during the second lockdown, and has been offered twice since then⁶³. It was accessible again at the end of July 2021⁶⁴. However, it remains difficult to obtain for platform workers.

In spite of the improvements, it seems that overall neither France nor England altered their general inclusion rules or their classic employment categories in dealing with the pandemic. In other words, in spite of the extensions, atypical workers were not brought into the schemes or into categories to which they normally did not have access. The workers who did not benefit from the forms of aid described above (employees/self-employed workers) had to turn to the welfare system. To compensate the lack of these benefits, some platforms provided private help and insurances to their workers.

⁵⁹ HIRST *et al.*, *Coronavirus: support for businesses*, House of Commons Briefing Paper, 3 April 2020, p. 13.

⁶⁰ BALES, *COVID 19 and the Future of Work*, 2 April, 2020: <https://legalresearch.blogs.bris.ac.uk/2020/04/covid19-and-the-future-of-work/comment-page-1/>.

⁶¹ <https://iwgb.org.uk/page/support-our-campaign>; <https://iwgb.org.uk/en/post/iwgb-to-sue-uk-government-over-its-failure-to-protect-precarious-workers>.

⁶² The improvement consists of faster payment of the aid, but the persons eligible remain the same as before.

⁶³ Amount available increased to 40% of the income on 24 September 2020, then 80% of that on 31 October 2020.

⁶⁴ <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>.

5. *Private help and insurances from some platforms*

This part aims at searching outside the box. When many authors stopped at regretting the lack of public support, this paper aims at going further by looking at other solutions. Faced with the lack of effectiveness of the formal cover, several platforms have chosen to complement the state insurance systems with supplementary financial assistance, granted subject to certain conditions to some of their workers if they test positive for COVID-19, on top of a protection offer negotiated with private insurance companies. In this study, we focus on Deliveroo and Uber in France and UK to examine two extra types of support: platforms' policy to help some categories of workers: Analysis of Uber and Deliveroo's actions and evolution towards the end of the crisis as well as platforms' private supplementary insurances: Presentation of Uber and Deliveroo's insurance policies and assessment (Axa or Bikmo).

Several service or delivery platforms, and in particular those whose workload increased due to the pandemic, took measures to help out their workers. In the same way as certain platforms introduced "contactless" deliveries, with the aim of protecting both the delivery worker and the consumer, they also endeavoured to promote deliveries under safer health conditions. Uber thus reimbursed the costs of buying sanitisers up to a value of €25 on presentation of receipts⁶⁵. Deliveroo gave out free hygiene kits (mask and hand sanitiser) to all its riders⁶⁶. Furthermore, Deliveroo and Uber paid indemnities to riders and drivers forced to quarantine or contaminated by the coronavirus, and offered teleconsultations at no charge. Both platforms have undertaken, in France as in the United Kingdom, to pay compensation for a maximum period of 14 days to any driver with COVID-19 – or obliged to isolate. Uber offers a maximum of £100 (equivalent to €115)⁶⁷ or €100 per week. This policy of support has been difficult to implement due to the difficulty of obtaining medical certificates⁶⁸. Deliveroo later ended this spe-

⁶⁵ <https://www.uber.com/fr/blog/update-covid-19-financial/>.

⁶⁶ Since 4 January 2021: <https://riders.deliveroo.co.uk/en/news/latest-covid-19-updates>.

⁶⁷ Uber United Kingdom: <https://www.uber.com/en-GB/blog/covid-financial-assistance/>; Uber France: <https://www.uber.com/fr/blog/update-covid-19-financial/>.

⁶⁸ https://www.bbc.co.uk/news/business-52092722?intlink_from_url=&link_location=live-reporting-story; <https://www.Theguardian.com/world/2020/apr/17/uber-driver-dies-from-covid-19-after-hiding-it-over-fear-of-eviction>.

cific scheme in the United Kingdom⁶⁹. Uber restricted it by means of an extension of the personal scope and a concomitant reduction in the allowances paid before it also ended it⁷⁰. Initially this amount was calculated only on the basis of the history of average weekly incomes over the last 3 months before the driver or rider's application for the allowance. In April 2020, Uber added a ceiling corresponding to the average income of all drivers, or all the delivery riders working in the city where the driver or rider works⁷¹. It should also be added that the allowance is not guaranteed, the drawback being that the application for the allowance automatically leads to the temporary suspension of the account⁷², at least until the application is processed (at most 7 days).

Independently of their allowance schemes, Uber and Deliveroo also contacted insurance companies to offer their workers extra insurance coverage. For example, Deliveroo France has joined forces with Wakam and Qover to offer its workers sickness insurance applicable if they are contaminated with COVID-19. In France, Deliveroo's partner riders are protected as long as they have completed at least 30 deliveries with Deliveroo in the last 8 weeks⁷³. In the event of a total inability to work due to an illness certified by a doctor and lasting more than 7 consecutive days, the riders are entitled to an allowance of €30 a day up the fifteenth day off work inclusive⁷⁴. It should be noted that subcontractors cannot take advantage of this cover. This cover has not been provided in the United Kingdom. Although Deliveroo has called upon insurance company Bikmo to offer two types of insurance (civil liability and accident insurance), but not sickness insurance as the UK's universal social security system is deemed sufficient⁷⁵. Uber

⁶⁹ <https://riders.deliveroo.co.uk/en/food-safety>. The last of these provisions no longer exists. The platform now explains in detail on its site the public measures taken and how to benefit from them.

⁷⁰ See <https://www.uber.com/fr/blog/update-covid-19-financial/>, and compare to <https://www.uber.com/fr/blog/faq-sur-le-covid-19-pour-les-chauffeurs-and-livreurs/>.

⁷¹ This amount will be different from one city to another. The total amount could not be less than €50 in France. The minimum amount varies according to the country.

⁷² <https://www.uber.com/fr/blog/update-covid-19-financial/>.

⁷³ Several conditions must be added: the insured person can claim cover if: a) there are aged under 70; b) they are affiliated with the relevant social security scheme; c) they are legally resident and permitted to work in France; and d) they have a valid courier's contract with the Group Policy Holder to carry out deliveries.

⁷⁴ <https://riders.deliveroo.fr/fr/indemnité-maladie>.

⁷⁵ For Deliveroo, see: <https://riders.deliveroo.co.uk/en/support/new-riders/what-does-deliveroo-free-rider-insurance-cover>.

France, for its part, has called upon insurance company Axa to propose a social protection offer known as “health and personal risk” cover for its self-employed drivers and riders. This partnership was extended to the whole of Europe in 2018⁷⁶. This extra insurance allowed residents who had tested positive for COVID-19, subject to eligibility, to claim an extra allowance under the “Partner Protection” cover.

In the United Kingdom, the situation is more or less the same. If a driver catches COVID-19 and is unfit to work for at least 7 days, after that the scheme pays a fixed amount of £65 (approximately €75) per day for a maximum of 15 days while they are unfit to work⁷⁷. Only “Active Uber Partners” can claim these payments, during the insurance period. They must prove that the serious illness started during this insurance period and that a doctor has ascertained that the driver’s inability to work was a direct consequence of this illness. It was cancelled on 30 August 2021⁷⁸. These policies also cover several other risks. For instance, Deliveroo has offered its delivery riders four insurance policies: civil liability, accident, professional training and sick pay⁷⁹.

This mechanism is not the first of its kind, and there is a history of links between public and private insurance. This is reminiscent for example, of the subtle interplay of the “complementary insurance” with public insurance and the welfare system⁸⁰. But this association is nevertheless rather extraordinary in the context of platform work where everything is still to be tested and regulated. It raises questions in terms of the balance to be found, and also the possible theoretical changes that could be made to social protection in light of the crisis.

6. *The moving balance between public and private protections*

This part aims at contextualising the equilibrium to be found between public and private protections. It goes back in time to the history of the

⁷⁶ <https://www.argusdelassurance.com/produits-services/sante-prevoyance/protection-sociale-axa-renforce-son-partenariat-avec-uber.129760>.

⁷⁷ <https://www.uber.com/en-GB/blog/covid-financial-assistance/>.

⁷⁸ https://uber.app.box.com/s/4oil45dto63oz39145ksykw8lalna526?uclid_id=f479f8bc-936c-409d-8bac-b6e61d756915.

⁷⁹ <https://riders.deliveroo.fr/fr/support/toutes-vos-assurances-deliveroo/maladie>.

⁸⁰ PANNERRE, *L’impact de la crise sur la protection sociale complémentaire*, in *DS*, 2020, n. 9, p. 672.

game of cat and mouse between public and private powers for workers' social protection since the XIXth century, history which is rather similar in France and UK despite the opposition of philosophies between the French Bismarckian model and the British Beveridgian model. It then comes back to today's game by assessing public incentives and legal obligations or constraints. It takes the example of the "LOM" law in France and the lack of actual legislative change in UK despite the Taylor report.

The use of the insurance technique first appeared at the end of the 19th century⁸¹ as a way of setting up solidarity policies on an objective basis⁸². Insurance could then be public or private (private insurance, mutual societies, social security, public authorities, etc.) and already public and private schemes were complementing each other⁸³.

Not only can it be said that the Bismarckian and Beveridgian models are moving closer together⁸⁴, but it must also be added that in both countries, private insurance has come to complete the public system. The boundary between public social protection and the private operators is shifting, over time and according to sectors, without the change turning into an overall privatisation⁸⁵ or leading to the disappearance of private insurance⁸⁶. The question arises as to whether private insurance complements the public system or whether the minimal public system fills in the gaps in the private insurance cover. The two propositions are not incompatible. The complementarity of public and private actors appears to be in what is still today a shifting balance.

It cannot be said that the platforms are less involved in social protection than their predecessors, in other words companies when they had to provide their employees with social protection. However, at this stage, they are not forced by law to provide assistance to workers, but only encouraged to do

⁸¹ PELLET, *L'Europe et la privatisation des Etats providences*, in *DS*, 2011, n. 2, p. 48.

⁸² BOURGEOIS, *Solidarité*, Paris, Armand Colin, 1896.

⁸³ For example, the occupational accident/illness risks and retirement cover have been completed by private complementary insurance schemes which play a more important role than the public system even though they are not obligatory.

⁸⁴ DAUGAREILH, BADEL, *cit.*

⁸⁵ See the response of PELLET, *cit.*, p. 199, to SUPIOT, *L'Esprit de Philadelphie, la justice sociale face au marché total*, Seuil, 2010, chap. II.

⁸⁶ The disappearance of the mutual societies in the United Kingdom when the welfare state laws were passed whereas they had played an important role before that has not prevented other types of private insurance from being introduced. PELLET, *cit.*, p. 54.

so by the threat of legislative action. History has shown how public and private actors were still playing “cat-and-mouse” as the latter sought to avoid legislation that would be too costly by unilaterally taking generous measures. This game appears, if we examine the behaviour of certain platforms, to be going on again, both in France and in England. In France, we saw it when insurance was introduced in 2017. Uber’s partnership with Axa dates from the passage of the El Khomri Law⁸⁷ against a background of legal tensions and accusations of “disguised employment”⁸⁸. Likewise, in the United Kingdom, as already mentioned, the partnership with Axa is changing because the above-mentioned *Uber* judgment has transformed the platform’s obligations. The passenger users of Uber UK were sent a message the day after the judgment saying that Uber drivers would now automatically be entitled to paid holidays, a pensions scheme and would be guaranteed the national minimum wage, pointing out that “Uber was proud to be making these changes for drivers, who are an essential part of our everyday lives”, and that “making these changes is the right thing to do, and we hope other operators will join us in taking this important step”⁸⁹. The trend is for the platforms and private insurance companies to become more involved in the collaborative economy sector, which is still under construction. This trend is being encouraged and regulated by the public authorities.

An original development is the greater responsibility given by the State to private entities. It could correspond to the State disengaging from its role as framework and creator and guarantor of hard law. This appears, for example in the Orientation of Mobilities Law known as the “LOM”⁹⁰ which only applies to a certain, small number of platforms⁹¹, but which introduces the

⁸⁷ As far as occupational accidents are concerned, Law n. 2016-1088 of 8 August 2016 on work, the modernisation of social dialogue and the securing of career paths, known as the “El Khomri Law”, requires that intermediation platforms that determine both the characteristics of the service provided (delivery, transport) and the price of the service provided (price scale) take care of occupational accident cover.

⁸⁸ FREEDLAND, *Le contrat de travail et les paradoxes de la précarité*, lecture given at the Collège de France, in *RDT*, 2016, p. 289.

⁸⁹ Letter sent by Uber to consumers: *At least the National Living Wage. This is a floor, not a ceiling and drivers will still be able to earn more, as 99% already do.*

⁹⁰ Law n. 2019-1428 of 24 December 2019 on the orientation of mobilities (“LOM”).

⁹¹ Special provisions of the LOM concerning car transport or meal delivery platforms of the “above-ground” part of platform working. See VAN DEN BERGH, *La charte sociale des opérateurs de plateformes: Couvrez cette subordination que je ne saurais voir*, in *DS*, 2020, p. 439.

concept of the social responsibility of enterprises into French law; it gives the platforms the possibility of establishing a charter setting out the conditions of exercise of the professional activity and any complementary social protection guarantees negotiated by the platform from which the workers may benefit. We find it again in a draft bill⁹² and in the Decree on platforms that attempts to introduce social dialogue within the platforms⁹³ in 2021. Once again lawmakers are not imposing anything binding on the platforms. They are urging them to negotiate with the workers. The rule becomes one of incentivising and not obligation imposed by French law. This is not the case in the United Kingdom, where lawmakers have yet to take any action⁹⁴. Though one might note the role of the UK Supreme Court's decision in the Uber case which has led Uber to recognise a British union, the GMB, to conduct negotiations with its drivers⁹⁵.

7. *EU law impact*

This part aims at assessing the evolutions in European Union (EU) law by examining the recent and ongoing developments such as EU social rights pillar, the minimum wage directive proposal and more recently the platform workers working conditions directive proposal.

After the EU social rights pillar and the minimum wage directive – which was adopted in September 2022 – the European Commission proposal regarding platform workers' working conditions is probably the most interesting for platform workers as it goes towards a general framework. It goes

⁹² Bill n. 187 on the protection of self-employed workers by creating a duty of vigilance, the defence of employee status and the fight against pseudo-self-employment, presented by Jacquin and al., recorded with the Office of the President of the Senate on 4 December 2020.

⁹³ See new Order n. 2021-484 of 21 April 2021 on the methods of representation of self-employed workers using platforms and the conditions of exercise of that representation, as well as the dossier entitled *Quel avenir pour les plateformes après le rapport Frouin?* in DS, 2021 n. 3.

⁹⁴ Government's refusal to act after the Taylor Report, see: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/853886/Queen_s_Speech_December_2019__background_briefing_notes.pdf.

⁹⁵ <https://www.theguardian.com/business/2021/may/26/uber-agrees-historic-deal-allowing-drivers-to-join-gmb-union>.

beyond mere social protection matters to focus on digital and labour rights of platform workers (whether these are online or *in situ* workers). It raises the question of social protection when assessing the needs of platform workers. The presumption of employment (which leads to the requalification of a contract when several clues are found) shows the will of the European institution to protect the existing distinction between employees and independent workers. This choice does not go against the recognition of universal rights but it maintains a distinction between different categories of workers. It is difficult to reconcile with the principle of neutrality which was established by the recommendation of November 2019 on access to social protection for workers and the self-employed: it specifically refers to platform workers and aims at lowering the differences between independent workers and employees in line with the European Pillar of Social Rights. A recent study from the European trade Union institute also shows that this presumption might lead to the requalification of 60% of the contracts, thus maintaining a good proportion of workers without the same rights as employees. If this proposal does not bring much in terms of social protection, it is interesting to emphasize the contradiction between the broadening of the status of employment on the one hand and the announced equality between statuses on the other hand. This hesitation appears again in the solo self-employed workers guidelines, which aims at strengthening independent workers collective bargaining rights without imposing any hard law. It is also in line with Directive 2019/1152 on transparent and predictable working conditions. It shows the paradoxes the EU and the States are in when it comes to choosing a path for a better social protection. This European framework is completed by numerous calls for change.

8. *Towards the bases of a theory of modern social protection in a post-pandemic digital world: discussing social solidarity*

This part aims at assessing the evolutions proposed and discussing social solidarity in light of international law and specifically the ILO calls regarding the national margin of manoeuvre for a changing social protection.

The pandemic and the platforms' reactions have put a spotlight on the gaps in the public social protection systems. The Confederal Secretary of the European Trade Union Confederation (ETUC), Liina Carr, has stated that

“Europe’s welfare systems have fallen behind the pace of change in the economy over decades and the COVID crisis badly exposed the huge gaps that were created”⁹⁶. This general remark applies more particularly to non-standard workers⁹⁷ and platform workers, who have often been overlooked by the authorities and have not been the subject of particular relief measures in the face of the pandemic⁹⁸. The coronavirus crisis has at least had the merit of drawing attention to the need for the Welfare State to assist all citizens or humans⁹⁹, given that the measures taken by certain countries to contain the spread of the virus and provide a certain safety net to workers struggle to protect the most vulnerable of them¹⁰⁰. On this point, progress is being seen in the overall reflection.

For a long time, fundamental rights texts have emphasized social human rights¹⁰¹. The pandemic has heightened calls to provide atypical workers with guaranteed access to prevention measures in terms of health and safety, social protection and respect for their fundamental rights and employment rights. According to Alain Supiot, “only the shock of reality can awaken from a dogmatic sleep”; in other words, the pandemic can be an opportunity to rebuild on new foundations¹⁰². The International Labour Organisation asserts that “policies to broaden and develop social protection coverage are needed

⁹⁶ <https://www.etuc.org/fr/pressrelease/les-systemes-de-protection-sociale-ont-echoue-au-test-covid-dans-tous-les-pays-de-lue>; For more information: <https://www.etui.org/publications/non-standard-workers-and-self-employed-eu>.

⁹⁷ Eurofound, *cit.*; OECD, *cit.*

⁹⁸ OKAMURA, *cit.*, p. 12.

⁹⁹ <https://www.gov.uk/government/publications/queens-speech-december-2019-background-briefing-notes>.

¹⁰⁰ ETUC, *Red card for platform abuses in the COVID-19 crisis*, ETUC documents: <https://www.etuc.org/en/document/red-card-platform-abuses-covid-19-crisis>.

¹⁰¹ Such as the International Labour Organisation (ILO Declaration on Decent Work, SERVAIS, *L’OIT et le travail décent. La difficile médiation entre croissance, création d’emploi et protection des travailleurs*, in *RDCTS*, 2011, n. 1, p. 71. At European level, see the European Commission proposal for the European Pillar of Social Rights of 26 April 2017. See also the minutes of the Council of Ministers of 15 February 2017, which mentions that “the third objective aims to protect citizens against the hazards of life at a time when the global economy is undergoing major changes”: <https://www.gouvernement.fr/conseil-des-ministres/2017-02-15/le-socle-europeen-des-droits-sociaux>.

¹⁰² SUPIOT, *Seul le choc avec le réel peut réveiller d’un sommeil dogmatique*, in *Alter Eco*, 21 March 2020: <https://www.alternatives-economiques.fr/alain-supiot-seul-choc-reel-reveiller-dun-sommeil-do/00092216>.

¹⁰³ ILO, *World Employment and Social Outlook: The Changing Nature of Jobs*, 2015.

in light of the changing nature of work”¹⁰³, and reiterates this postulate in a period of crisis as its “Work in the time of COVID” report shows¹⁰⁴. This can still be seen in France and in the United Kingdom.

If a theory of modern social protection is to be identified in a post-pandemic digital world, it would have to reflect the calls for a more uniform social protection independently of the worker’s status. But these international and European calls are difficult to implement at national level.

The pandemic has led to identifying another trend of this social protection theory: the lack of willingness of the States to oblige the platforms to provide a strong social protection to their workers. In other words, in France and in the UK, platform workers are at the interplay between public social protection and private insurances and measures. The game of cat and mouse shows two paradoxical tendencies: on the one hand platforms are in front of strong and protective States which are able to nationalise social protection to help the population face COVID-19. On the other hand these same States hesitate as to incentivise or oblige the platforms to participate to their workers’ social protection in a world transformed by digitalisation and flexible work. France and the UK do not radically transform unemployment benefits affiliation or access to universal credit, but they gradually draw a new social contract.

Is this an extension of neoliberalism? Does it signal a more general movement by governments of downloading or delegating responsibilities to platforms? This remark slightly transforms the argument of the absence of social protections for platform workers, it goes on to reflect on governments’ role. It is not to say that the French and the British states are abdicating their responsibilities, but there is a change of nature. The balance between private and public actors is transformed in light of a new concept of social solidarity.

In this evolving framework, it is necessary to rethink the rights (waiting periods, calculation rules, benefits duration) and the rules regulating contributions (minimum work period condition...) so that they do not prevent platform workers from accessing or aggregating benefits because of their statuses¹⁰⁵. Public powers will need to find a compromise between incentives and obligations in order to provide the necessary benefits to protect platform workers’ dignity.

¹⁰⁴ ILO, *Work in the time of COVID*, May 2021.

¹⁰⁵ According to the expression in the Council Recommendation of 8 November 2019 on access to social protection for workers and the self-employed (2019/C 387/01).

Abstract

This contribution aims to assess the logic behind social protection systems by focusing on digital platform work. It tests its scope, rationale and equality purposes. More specifically this study compares the answers brought by a Bismarckian and a Beveridgian social security model, i.e. France and the UK, to platform workers' issues in terms of access to social protection during and beyond the COVID-19 pandemic. This subject raises descriptive and prescriptive questions around universalism and the interaction between public authorities, platforms, trade unions and private insurers.

Keywords

Digital platform work, comparative labour law, EU labour law, Covid-19 platform worker.