Chapter 10
Social Security in the Platform Economy: The French Example – New Actors, New Regulations, Old Problems?

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I. Introduction

Digital technologies have led to new business models bearing various (mostly positive) names, e.g. "platform economy" or "collaborative economy". The only common factor of all these models is, however, that digital technology is used and that in most cases a physical workplace is not necessarily required for these activities. The organisation model of digital platforms is based on a triangular relationship.[1] A platform can play the role of an intermediary between a professional service provider and a "(platform) user-consumer", or of an intermediary between a "non-professional user-provider" and a "user-consumer". Work could be paid in each situation, but the provided work could also be without any payment. There is a great variety of business models active in multiple sectors, each of which has its own market characteristics.[2]

Both the overall organisation of the French social security scheme and the status of the worker influence the financing of social security. The compartmentalisation of social protection systems between employees and self-employed persons, and between the different categories of self-employed persons is one of the core characteristics of the French basic social security organisation (*sécurité sociale*). Apart from family benefits and health care, French Social Security includes several schemes, each covering one or more specific socio-professional categories:

– The general scheme covers employed persons and any person entitled to residence rights for family benefits and health care benefits. Unem-

1 *Dirringer, Josépha*, L'Avenir du droit de la protection sociale dans un monde ubérisé, in: Revue française des affaires sociales (RFAS), (2018) 2, p. 34.

2 *Petropoulos, Georgios*, An Economic Review on the Collaborative Economy, Policy Department A: Economic and Scientific Policy. Study for the IMCO Committee, May 2016, pp. 6, 12 f., https://www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL_IDA(2016)595358. Accessed 19 June 2020.

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ployment insurance is not part of the administrative organisation of *sécurité sociale* for historical reasons; it is instituted as a special fund.

- The specific schemes are geared for self-employed persons; most of the latter are managed by the general scheme,[3] while some of them – especially the so-called "liberal professions" (attorneys, medical doctors, etc.) – have kept their own old age and invalidity pension systems.[4] French self-employed workers are not insured against unemployment, accidents at work or occupational diseases.
- The agricultural regime (*Mutualité sociale agricole*) covers employed and self-employed workers in agriculture.
- "Special schemes" cover employees who are not in the general scheme (e.g. public servants, employees of SNCF and of the French utility companies providing gas and electricity).

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3 Social security for self-employed workers ("*Régime social des indépendants*" – RSI) has been integrated in the general scheme as of 1 January 2020.

4 The construction of social protection in France is historically linked to the development and structuring of the employed salaried workforce. However, although it originally only covered employees, according to its founding order of 4 October 1945, the social security system was intended to cover all workers and their families. However, the non-agricultural self-employed occupations strongly resisted this generalisation for economic and sociological reasons, with the exception of compensation for family benefits. A compromise was finally reached with the public authorities, with the agreement that social security would be extended to self-employed persons, however through their own schemes to take into account the specific characteristics of their activities and aspirations. Established in stages, first in the form of autonomous pension insurance schemes starting in 1948, then health insurance schemes from the 1960s, the social security system for self-employed persons is characterised by a juxtaposition of different basic social security schemes which are themselves subject to a range of managing organisations. Membership with these schemes is mandatory.
The pension scheme for traders and the pension scheme for craftspeople are both managed by the *Régime social des indépendants* (RSI), which is under its way to be integrated into the general scheme under the name of *Sécurité sociale des indépendants* (SSI).
The pension scheme for the self-employed and the pension scheme for lawyers, are respectively managed by different funds under an overall umbrella of the fund for the self-employed (*Caisse Nationale d'Assurance Vieillesse Profession Libéral*, CNAVPL) and the national fund for the French bar (*Caisse Nationale des Barreaux Français*, CNBF).
The health insurance scheme for traders, craftspeople and the liberal professions, managed formerly by the *Regime social des indépendants* is now administratively integrated into the general schema via the SSI.
The health insurance scheme, pension scheme and occupational accident scheme for farmers is managed by the agricultural social mutual scheme (MSA).

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While one can observe a (slow but steady) move towards a harmonisation of the social protection schemes, there is a persistent gap between the costs of contributions and the coverage of social risks. Compulsory complementary pay-as-you-go old age pensions schemes, compulsory private collective health care insurance schemes, as well as complementary schemes on incapacity and invalidity based on collective agreements provide for a substantial part of social protection for employees. Self-employed persons who choose to do so can take out optional complementary insurance with a health plan or insurance company to top up their pension, health or unemployment insurance. Since the so-called "Madelin" Act of 1994,[5] they have been able to benefit from tax advantages, whereby they can deduct the amount of the contribution or insurance premium from their professional income. In 2013, within the framework of a National Inter-Professional Agreement (NIA), the French government required all employers (irrespective of the size of their businesses) to offer private complementary health insurance to their employees, and this agreement was taken over by the legislator to become law. This "generalisation" of complementary group health insurance to all employees is accompanied by tax incentives which target both the nature of contracts (collective), the content of collective health insurance contracts, and the fact that the individual premium has to be independent of the individual state of health of the insured ("responsible contracts"). In 2013, the "responsible contract" was still defined as a contract that encourages compliance with the gatekeeping pathway and does not reimburse non-refundable franchises but has to offer higher packages for dental and optical care.[6] The self-employed are not affected by these compulsory private health insurances but they can fall under the means-test criteria of the so-called "C2S" system.[7]

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5 Law No. 94-126 of 11 February 1994 (Loi Madelin), in: Journal officiel de la République française (JORF), No. 37, 13 February 1994, p. 2493 ff.

6 The "Subsidized Individual Supplementary Health Insurance Program" ("*Complémentaire Santé Solidaire*", CSS) enrols insured individuals who are entitled to health care coverage on the basis of their employment or legal ongoing residence in France and whose income is below an amount that is determined by their household makeup. Income taken into account is that of the 12 months prior to their application. CSS members' health insurance expenses are covered by their health insurance funds and by the delegated supplementary insurer ("*organisme gestionnaire*") which they have chosen. These insurers will benefit from a tax relief.

7 Individual complementary health contracts, whether publicly aided (C2S) or not, will concern self-employed individuals, civil servants, students, precarious workers, the long-term unemployed, some inactive persons and a majority of retired persons. This population is composed of "good" risks and of "bad risks" such that it is

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Platform workers are not a particularly homogeneous group in terms of legal status.[8] In France, in relation to services provided to the user-consumer of a particular platform, involved "platform workers" have the status of either an employee – for example for the storage of goods by Amazon – or that of a single-person limited company (*entreprise unipersonnelle à responsabilité limitée*, EURL) combined with the status of micro-entrepreneur, which is a subtype of self-employed status (see below). Others – especially the high-skilled work force – tend to opt for the single-person corporation (SASU[9]): a president of such a simplified company is considered an employee of the company and so pays normal social security contributions to the general system (except for unemployment insurance).[10] "Platform work" is, in this case, the expression of individuals of a preference for self-employed work or, of persons who may dread being submitted to a hierarchy and prefer to work on their own, the wish to deliver a higher performance under the conditions of self-employed work. The contractor can conclude a contract with the platform for the provision of services (*louage d'ouvrage*, as defined in Article 1710 of the Civil Code). The advantage for the platform lies in the set of conditions applicable to the

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difficult to state how the risk structure of the individual collective health insurance market will evolve and whether this will result in an increase in premiums rates.

8 For alternative classifications: European Commission, "Don't Gig Up!" State of the Art Report. Working Paper 2/2019, April 2019, p. 5, http://www.ires.fr/index.php/etudes-recherches-ouvrages/documents-de-travail-de-l-ires/item/5935-n-02-2019-don-t-gig-up-state-of-the-art-report. Accessed 15 June 2020; *Allaire, Nolwenn/Colin, Nicolas/Palier, Bruno/Tran, Laurène*, Covering Risks for Platform Workers in the Digital Age. Working Paper. Sciences Po, Chaire numérique, gouvernance et innovations institutionnelles, 1 May 2019, p. 10, https://www.sciencespo.fr/public/chaire-numerique/wp-content/uploads/2019/05/covering-risks-plateform-workers-digital-age.pdf. Accessed 15 June 2020.

9 A SASU (société par action unipersonnelle) is a one-man company and a simplified version of an SAS (société par action simplifiée), which can be set up by a single person. The minimum capital is EUR 37,000 or EUR 25,000 if you want your stock to be publicly traded. *Abdelnour, Sarah/Méda, Dominique*, Les nouveaux travailleurs des applis, Paris: PUF, 2019.

10 As an example, many UBER Drivers opt for single-owner limited liability companies (EURL), simplified shareholder company (SAS), or simplified single-shareholder company (SASU). According to preliminary results, more than 30 percent of UBER independent drivers have a SAS-SASU status, 15 percent are auto-entrepreneurs (AE), 15 percent have a EURL/SARL/EI/EIRL status, whereas others are employees or cumulate different statuses. *Abdelnour, Sarah/Bernard, Sophie*, Vers un Capitalisme de Plateforme? Mobiliser le travail, Contourner les régulations, in: La nouvelle revue du travail, 13 (2018) 2, doi: 10.4000/nrt.3797.

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manpower: fee-for-service arrangement, possibility to terminate the contractual relationship at any time, and possibility to circumvent labour law and social contributions and unemployment contributions as an employee.

In this context, several parallel discussions have taken place. A "classical" debate has been on the labour law status of the worker sometimes leading to the requalification of service contracts to employment contracts, which has implications for the social security status of the platform workers. Classification as an employee will result in the payment of social contributions related to that status. The *Court de Cassation*, the French highest court in private litigations, has held on 28 November 2018[11] that delivery riders working for online delivery platforms are to be treated as employees rather than self-employed workers. French Uber drivers also claimed to be in a subordination relationship with Uber. The French Court of Cassation has decided to reclassify the contractual relationship between Uber and a driver as an employment contract. Indeed, when connecting to the Uber digital platform, a subordination relationship has been established between the driver and the company. Hence, the driver does not provide services as a self-employed person, but as an employee.[12] Consequently, the French Social Security Recovery Agency, i.e. the institution in charge of collecting social security contributions (*Union de recouvrement des cotisations de Sécurité Sociale et d'Allocations Familiales,* URSSAF) has publicly claimed that the regularisation of the reclassification of platform workers as employees is Uber's responsibility, who is required to declare and pay social security contributions for its drivers. The French Social Security authority also stated that they "may subsequently initiate actions on their own initiative to check whether the expected regularisation has indeed been carried out".[13]

This chapter will deal with the financing of social security *stricto sensu.* We will examine the major outputs of a discussion mostly driven by a taxi

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11 Cour de cassation, Social Chamber of 28 November 2018, Case No. 137 (17-20.079), ECLI:FR:CCASS:2018:SO01737, https://www.courdecassation.fr/jurisprudence_2/chamber_sociale_576/1737_28_40778.html. Accessed 16 July 2020.

12 Cour de cassation, Social Chamber of 4 March 2020, Case No. 374 (Uber), https://www.courdecassation.fr/IMG/20200304_arret_uber_english.pdf. Accessed 16 July 2020.

13 *Taquet, François*, Les démêlés d'Uber avec l'Urssaf... : Uber 1/Urssaf, JSL, 2017, No. 433, p. 27 ; Dernièrement, Cour de cassation, Chambre civile 2, 28 novembre 2019, 18-15.333, F-P+B+I (No. Lexbase: A3474Z4G); *Meiffret-Delsanto, Karine,* Recours à un auto-entrepreneur et contrôle URSSAF: attention au redressement!, Lexbase Social, 2020, No. 809 (No. Lexbase: N1858BYH).

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drivers' riot against VTC drivers,[14] by the creation of a professional association of self-employed VTC drivers (called "union") and by the requalification of self-employed persons as employees and the application of the corresponding social security contributions. In Section III, we will examine the major output of this debate, namely specific legislative measures trying to protect VTC drivers beyond the social security system. In Section IV, we will examine the other path that has been chosen by the French legislator on the income of short-term furnished rentals.[15] With the so-called "*Airbnb rule*" the French legislator has tried to combine two goals: collect social security contributions on income generated by such rental activity via a platform, but also promote these individual activities by (partial) exemptions of some of that same income. In Section V, the new anti-fraud measures will be reviewed. Indeed, France has introduced, via Law No. 2018-898 of 23 October 2018, the obligation for all electronic platforms to transfer to tax authorities the complete data on transactions, bank accounts used, and all identification details, including those of the service provider. Under the Amending Finance Act for 2016 and, in particular, the Anti-Fraud Act of October 2018, platforms are now required to submit the data on income received by each person renting out this kind of accommodation to the tax authorities, which in turn share this information with the social security collecting institutions. So as to understand these – most often very sophisticated – sectorial rules, Section II will deal with the overall financial organisation of the French social security system(s).

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14 In January 2016, French taxi unions had staged a nationwide strike, shutting down roadways across Paris in a protest against ride-hailing companies like Uber. Thousands of taxi drivers participated in demonstrations across Paris today, disrupting traffic to and from the French capital's two major airports. Protesters burned tires at a major thoroughfare on the western edge of Paris, where police used tear gas to disperse some, and two taxi drivers were injured after a shuttle bus drove through a blockade at Orly airport.

15 In the area of short-term furnished rental, in particular relating to Airbnb, France has adopted a complete regulation. The rules focus on owners who offer short-term rental of dwellings they do not occupy, i.e. secondary residences. It is then necessary, before any announcement online, to make an administrative pre-rental declaration, and to address it to the mayor of the municipality where the housing is located. The platforms are also responsible for and have an obligation to inform the owners about their obligations, and must ask them for a declaration on the honour attesting the respect of the rules. The municipal declaration number must appear in the ad on the site. The platform must also ensure that an owner who rents his own accommodation does not exceed 120 nights per year, beyond which the dwelling can no longer be considered as his main residence.

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II. Financing Social Security: Main Principles

The French Social Security is mainly financed through contributions based on income. All income earned from professional activities is subject to social contributions. Social security contributions are a major part of taxation in France, as they represent 37.1 percent of total tax revenues, and with 17 percent of GDP, French social security contributions are the highest among OECD countries. The share nominally ascribed to employers is also more important in France than in other countries, representing 11.3 percent of GDP, more than twice the OECD average of 5.2 percent.[16] As a general trend, the overall percentage of contributions is slowly decreasing; the part of taxes or assimilated taxes is growing especially for employees. The general scheme for employees and the "special schemes" for certain categories of employees and civil servants are mainly financed through contributions from both employees and employers. The rates applicable differ according to the nature of the risk. These rates, set by decree, are uniform and are intended to apply to all employers and employees. Only the rates for accidents at work are determined according to the activity and the value of the risk specific to the company (i.e. the cost of accidents at work or occupational illnesses arising for employees).

Although self-employed workers are now administratively integrated into the general scheme, the level of their contributions is still slightly different from that of employees and depends on the legal and tax status of the company. Since 2009, a simple business status has been available to anyone who wishes to establish a small business in France. The term micro-entrepreneur (formerly known as auto-entrepreneur) is the usual term for the "*régime micro-social*" tax system. It is not a legal form (the legal status is still that of one form of single company), but a simplified reporting system and payment of contributions and social charges is effected by proportion of turnover, according to the principle of "no turnover, no dues". The micro-entrepreneur is not registered for VAT and limits are imposed on annual turnover: EUR 170,000 for commercial businesses and EUR 70,000 for service professionals and artisans. Those adopting this status run the business as a *micro-entreprise*, which leads to a rather complex and often changing contribution system, i.e. the self-employed social security scheme, which

16 *Bozio, Antoine/Breda, Thomas/Grenet, Julien*, Incidence of Social Security Contributions: Evidence from France, March 2017, https://www.tresor.economie.gouv.fr/Articles/231ab136-d997-4563-9ece-f885dac3c8a5/files/1c6489fa-099b-4ed6-ab6a-0554305997d3. Accessed 15 June 2020.

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could be summed up in (i) a liability to social security contributions based on cash receipts, not on profit or loss, and (ii) relief for new micro-enterprises available at the rate of 50 percent for the first year of activity.

Earmarked taxes (*impôts et taxes affectés*, ITAF) are mandatory withholdings that are explicitly earmarked for social security financing. These include the General Social Contribution (*Cotisation Sociale Généralisée*, CSG), which alone amounts to more than half of all ITAF and various other taxes especially on the pharmaceutical sector. This CSG, but also the Social Debt Repayment Contribution (*Contribution pour le Remboursement de la Dette Sociale,* CRDS) are paid on employment income, replacement income, property income, investment income and gambling income. All persons treated as French residents for income tax purposes and subject to a French compulsory health insurance scheme are liable to CSG at the following rates:

- 9.2 percent on employment income,
- 6.2 percent on "replacement incomes" (e.g. daily sickness benefits, unemployment benefits, retirement pensions etc.).

Individuals drawing a French pension are either exempted from or liable to CSG, CRDS and/or CASA (*Contribution Additionnelle de Solidarité pour l'Autonomie,* Additional Solidarity Contribution for Autonomy[17]) as determined by their reference taxable income.

A steadily growing part of the *value added tax* is dedicated to the financing of social security. The main idea of what is sometimes called "Social VAT" in the French debate is reducing the tax burden on labour via an exemption from social security contributions by offsetting the loss of revenue to the public finances caused by an increase in VAT. As an example, VAT earmarked to finance social security reached EUR 10.1 billion in 2018; it had been no less than EUR 46 billion in 2019 according to the projections of the High Council for the Financing of Social Protection. This is mainly due to the 6-point reduction in the health insurance contribution rate, estimated at almost EUR 23 billion.[18]

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17 See: Comment s'applique la contribution de Solidarité pour l'Autonomie (Casa)?, March 2020, https://www.service-public.fr/particuliers/vosdroits/F31408. Accessed 16 July 2020.

18 Haut conseil du financement de la protection sociale, Etat des lieux du financement de la protection sociale, May 2019, https://www.strategie.gouv.fr/sites/strategie.gouv.fr/files/atoms/files/hcfips-2019-05-10_etat_des_lieux_actualise.pdf. Accessed 16 July 2020.

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III. First Legislative Initiatives to Take Account of the Platform Economy

The French Labour Code contains express provisions seeking to assimilate particular typologies of workers, such as journalists, models, performing artists, etc., to the legal regime applicable to standard employees and, as an important consequence thereof, the application of the rules of the general social security system to these categories. Also, Article L.311-3 of the Social Security Code lists the professional categories that are integrated in the general scheme, such as managers of limited liability companies and private limited liability companies with minority or egalitarian remuneration, chairmen and chief executive officers of public limited companies and private limited companies, and chairmen of the cooperative banking companies. However, the French legislator has, up to now, chosen another path for "gig workers".

1. The Premises: The Mettling Report and the France Stratégie Report

The issue of digital labour and the awareness of digital transformation with its consequences on the labour market has re-launched the debate. Two reports were published in 2015 within a short period of time: the Mettling report "*Transformation numérique et vie au travail*" (digital transformation and life at work)[19] and the France Stratégie[20] report "*Le Compte personnel d'activité (CPA): de l'utopie au concret*" (the personal activity account: from utopia to concrete practices).

For its part, the Mettling report lays out recommendations in order to "reintegrate the new forms of work into our social protection scheme". The report underlines that digital technology is increasing the number of freelancers and the porosity between salaried activity and other forms of

19 It follows various reports on the topic since 2013, but it is the first study on the implications of the digital transformation for the workplace. This work was complemented by studies entrusted to several major consulting firms and a survey carried out among 4,500 young company managers. It is based on interviews with a number of leading figures in the trade union sector, but also with consultants, and has resulted in thirty-six recommendations.

20 Stratégie, administratively called "Commissariat général à la Stratégie et à la Prospective" (CGSP), is an institution attached to the Prime Minister. Its objective is to contribute to the determination of the broad guidelines for the nation's future and the medium- and long-term objectives of its economic, social, cultural and environmental development, as well as to the preparation of reforms.

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work. It demonstrates the need for a set of rights attached to the person and transferable from one company to another, from one status to another. The new forms of work must also contribute to the financing of social protection. Recommendation No. 17 of 36 proposes to update the jurisprudence concerning the classification as a salaried worker, by introducing a wider range of criteria, such as the level of autonomy at work, the exclusivity of services, the decision-making of remuneration, etc.

The France Stratégie's report states that "no one knows exactly what its consequences will be for work and employment, but it is clear that its emergence calls into question the belief in a generalized trend towards a monoactivity wage model. It is therefore important, as a matter of urgency, to rethink the mechanisms for the protection and support of individuals for a world where there will be a plurality of activities and statutes". In 2016, France Stratégie published another report called "*Nouvelles formes de travail et de la protection des actifs*" (New forms of work and protection of the workforce). It stresses the new risks to consider (fluctuation in revenues for independent workers, accidents and disease for freelancers and nomadic workers) and exposes (not so surprisingly) the different options for a new social protection scheme, namely (i) to maintain the distinction between employment and independent work, while broadening the scope of salaried work and improving transition security, or (ii) to create a third status for economically dependent self-employed workers, or (iii) to go beyond the distinction between employment and independent work, while establishing a unique worker's status.

The CESE (*Conseil économique, social et environnemental*) has also recommended[21] to develop the social dialogue between public authorities, social partners and representative bodies of the self-employed; to promote the responsibility of third parties (social responsibility of platforms and BEC, extension of the status of "*entrepreneur-salarié*", etc.); to secure the social rights of the new independent workers, especially by allowing workers on digital platforms to benefit from unemployment insurance in case of total

21 *Thiéry, Sophie*, Les nouvelles formes du travail indépendant, in: Les Avis du CESE, Journal officiel de la République Française, November 2017, https://www.lecese.fr/sites/default/files/pdf/Avis/2017/2017_25_travail_independant.pdf. Accessed 16 July 2020;
Conseil économique social et environnemental - The Economic, Social and Environmental Council (ESEC) is a constitutional consultative assembly. It represents key economic, social and environmental fields, promoting cooperation between different socio-professional interest groups and ensuring they are part of the process of shaping and reviewing public policy.

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revenue loss. An IGAS report has discussed various scenarios regarding the extension of the unemployment scheme to the self-employed.[22]

2. *Legislative Attempts*

The legislative attempts are exclusively aimed at "Uber drivers" or "VTC drivers".[23] No overall rule for platform workers has been adopted yet.

a) First Attempt: Law on Work, Modernising the Social Dialogue of 2016

VTC platforms owe their success to a reduction in transaction costs (lack of taximeters and dispatchers, integrated payment system), better allocation of resources (increased vehicle utilisation rate, reduced waiting time) and, in principle, more efficient price information than taxis. Tensions between French taxi drivers and VTC (Uber) drivers in 2015, with Uber drivers and taxi drivers taking aim – literally – at each other's cars have prompted the French legislator to become active. The so-called "Labour Law" of August 2016[24] has established a legal framework under which the relations between some digital platforms and workers are regulated and, above all, has established a definition of collaborative platforms. The legislator has defined the scope of its intervention. An "electronic platform" (this is the terminology in the French Labour Code) is understood as a "company that irrespective of its place of establishment puts into electronic contact a client and a worker, with the purpose of selling or exchanging a good or service". This definition echoes the definition of Article L.111-7 of the French Consumer Code, which considers as an online platform provider "any natural or legal person offering, on a professional basis, including for free, an online communication service to the public that is

22 Inspection Générale des Affaires Sociales (IGAS), Rapport: Ouverture de l'Assurance chômage aux travailleurs indépendants, No. 2017-096R, October 2017, http://www.igas.gouv.fr/IMG/pdf/Rapport-Assurance_chomage_independants.pdf. Accessed 16 July 2020. The IGAS is the French Government audit, evaluation and inspection office for health, social security, social cohesion, employment and labour policies and organisations.

23 French law distinguishes "taxis", heirs of cabs and then of so-called square cars, and "transport vehicles with drivers", heirs of so-called discount cars.

24 Law No. 2016-1088 of 8 August 2016 (regarding work and modernising the social dialogue), in: JORF, No. 0184, 9 August 2016.

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based on: 1) ranking or referencing contents, goods or services offered or uploaded by third parties by using computerised algorithms; 2) allowing several parties to get in contact with one another for the sale of goods, the provision of services or the exchange or sharing of content, goods or services".

It also created a social responsibility for platforms by inserting Articles L.7341-1 to L.7341-6 into the Labour Code. According to Article L.7342-1 of the Labour Code, "when the platform determines the characteristics of the service provided or the good sold and fixes its price, it has, with regard to the workers concerned, a social responsibility that is exercised under the conditions provided for in this chapter". Article 60 of the so-called "*loi travail*" conferred two specific rights concerning social protection on platform workers. The regulation supports platform workers in receiving professional training and introduces coverage against accidents at work to these platform workers. This provision does not apply to all platforms, but only to those that determine the characteristics of the service provided or of the goods sold, and that fix the price of the service.[25]

The first part of this social responsibility requires the platform to cover insurance costs related to the risk of occupational accidents.[26] Platforms must either reimburse the contributions paid by self-employed workers in respect of their subscription to an insurance covering the risk of accident at work or their subscription to voluntary insurance against accident at work,[27] or otherwise offer self-employed workers a collective insurance contract covering the risk of accidents at work.[28] When the self-employed worker has taken out insurance covering the risk of accidents at work or joins the voluntary insurance scheme for accidents at work, the costs are covered by the platform if the self-employed worker has achieved a turnover greater than or equal to 13 percent of the annual social security ceiling.[29] For 2020, the annual social security ceiling is EUR 40,524. The worker's turnover must therefore be equal to or above EUR 5,268.12 (EUR 40,524 x 13 percent). Where the self-employed person works for several collaborative platforms, the costs shall be reimbursed by each of them in proportion to the turnover which the self-employed person has achieved

25 Article L.7342-1 of the Labour Code.
26 *Desbarrats, Isabelle*, Quel statut social pour les travailleurs des plateformes numériques? La RSE en renfort de la loi, in: Droit social, (2017) 11, p. 971.
27 Article L.7242-2 para. 1 of the Labour Code.
28 Article L.7242-2 para. 2 of the Labour Code.
29 Article D.7342-1 of the Labour Code.

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through it, in relation to the total turnover which he has achieved through the platforms.[30]

The contribution due by the platform is equal to the contribution due for voluntary insurance against accidents at work and occupational diseases, assessed by means of an annual salary lower than a minimum determined on 1 April of each year calculated on the basis of the change in the annual average of consumer prices, excluding tobacco, published by the National Institute of Statistics and Economic Studies on the penultimate month preceding the date of revaluation of the benefits concerned.[31] The rate of the voluntary insurance contribution is equal to 80 percent of the rate of the contribution for accidents at work and occupational diseases fixed for the same type of activity.[32] The maximum amount of contribution paid by the platform will therefore be calculated as follows[33]: accident rate × 80 percent × reference minimum wage.

The overall financing of social security is concerned: each self-employed person can deduct the cost of this insurance from his revenue. The decree specifies that the worker who wishes to be reimbursed for these costs must apply to the platform, justifying the costs and indicating the turnover achieved. This request can be made online and free of charge. The platform must inform its workers of the existence of such repayment terms.[34] If the aforementioned conditions are met, the platform reimburses contributions up to a ceiling equal to the contribution due under the voluntary insurance for accidents at work and occupational diseases, calculated on the basis of the minimum wage.[35]

The platform is exempt from this obligation if the worker adheres to the collective insurance contract the platform puts in place for its workers, provided that the platform contract offers guarantees at least equivalent to those provided for by the individual insurance.[36] In the absence of any indication to the contrary, it does not seem that the worker must subscribe to the collective insurance contract put in place by the platform. Therefore, it would seem that the worker who prefers to take out voluntary or individual insurance rather than subscribe to the collective insurance con-

30 Article D.7342-4 of the Labour Code.
31 The Decree of 4 May 2017 and the Interministerial Circular published on 8 July 2017.
32 Article D.24-6-11 of the Social Security Code.
33 Circular DGT-RT1-DGEFP-SDPFC-DSS-2C 2017-256 of 8 June 2017.
34 Article D.7342-5 of the Labour Code.
35 Article D.7342-2 of the Labour Code.
36 Article L.7342-2 of the Labour Code.

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tract will be able to obtain the reimbursement of contributions paid. When the worker subscribes to a collective contract that includes guarantees at least equivalent to those provided for in the voluntary insurance for accidents at work, the contribution to this contract is entirely paid by the platform.[37]

Many platforms have partnered with insurance companies to offer insurance policies for accident and liability protection. Uber announced a partnership with AXA in July 2017, and in May 2018 it declared that it was expanding the partnership on a European scale. Deliveroo also entered into a partnership with AXA in March 2017. On their part, Brigad – a platform connecting companies from all sectors with qualified freelancers and specialists in the hotel and restaurant business – offers its self-employed partners (known as "Brigaders") access to complementary health care at a negotiated rate, with progressive reimbursement by the platform according to the worker's level of activity. There is no actual discussion on this topic but a recent report of the French Senate states that these attempts to build up private social protection beyond the social security system might be unsuccessful given that "while they may be beneficial to workers, these initiatives fall short of genuine social protection in the face of major risks, in particular that of accidents at work".[38]

b) Second Attempt: Law to Choose One's Professional Future of 2018

In a second attempt the so-called "Law to Choose One's Professional Future"[39] the legislator tried to include additional provisions that would have given platforms the possibility to set up a "social charter" in favour of these workers. The purpose of this charter was to afford workers a higher level of protection while setting aside any risk of reclassification of the contractual relationship as an employer-employee relationship. Thus, the Constitutional Council has declared that the article related to Article 66 of the Law was

37 Article L.7342-2 al. 2 of the Labour Code.

38 *De Forssier, Michel/Fournier, Catherine/Puissat, Frédérique*, Travailleurs des plateformes: au-delà de la question du statut, quelles protections? Rapport d'Information No. 452 (2019-2020). Fait au nom de la commission des affaires sociales, 20 Mai 2020.

39 Law No. 2018-771 of 5 September 2018.

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adopted according to a procedure contrary to the Constitution and therefore void.[40]

c) Law on Mobilities of 2019

Following this unsuccessful attempt, the measure reappeared in the draft of a "Law on Mobilities" (*Loi d'orientation des mobilités*), presented by the Council of the Ministers on 26 November 2018 and adopted by the National Assembly on 19 November 2019, and is still under discussion at the Parliament; it offers platforms to voluntarily enter into a charter additional social rights for the self-employed in return for the non-reclassification of a legal relationship of subordination between the platforms and the workers. Article 20 of the Law foresees that, through a charter, platforms offer additional social rights to self-employed workers. Among the various provisions relating to VTC platforms the Law encourages the latter to set up social responsibility charters (forthcoming Articles L.7342-8 and L.7342-9 of the Labour Code). This Article states that "the platform may establish a charter determining the terms and conditions for the exercise of its social responsibility, defining its rights and obligations as well as those of the workers with whom it is in contact". Concerning social protection, the Article adds that the charter specifies in particular "under its point 8° the supplementary social protection guarantees negotiated by the platform and from which workers may benefit, in particular for the coverage of the risk of death, risks affecting the physical integrity of the person or linked to maternity, risks of incapacity for work or disability, as well as the provision of benefits in the form of retirement pensions, allowances or bonuses for retirement". This charter must first be validated by the administration responsible for measuring its relevance.

On 27 November 2019, the Constitutional Council was called on by more than 60 Members of the National Assembly in an ex ante review pro-

40 Constitutional Council Decision No. 2018-769 DC of 4 September 2018 "The last sentence of the first paragraph of Article 45, last sentence, of the Constitution states: "Without prejudice to the application of Articles 40 and 41, any amendment shall be admissible at first reading if it is related, even indirectly, to the text tabled or transmitted". Introduced at first reading, Article 66 does not have any link, even indirectly, with the provisions contained in the bill tabled on the National Assembly's desk. It was therefore adopted according to a procedure contrary to the Constitution".

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cedure[41] especially on Article 20. The Members of the National Assembly, who referred the matter to the Constitutional Council, questioned the various aspects of this reform. The authors of the referral deplored the purely "optional" nature of the social responsibility charter. In addition, the uncertainties surrounding the legal value and normative scope of this charter raised questions about its opposability. They also emphasised the presumption of a non-salaried status for platform workers. According to them, the option would seek to circumvent the judicial judge's case law on the subordination relationship, whereas in a judgment of 28 November 2018, the Social Chamber of the Court of Cassation opened the way for a possible reclassification in relation to employee benefits.[42] The legislator would thus have favoured as far as possible the legal security of the economic model of platforms to the detriment of the effective protection of the "self-employed" in their relationship with these platforms. The initiators of the referral also complained that the legislator had confined himself to listing eight mandatory topics to be included in the charter without specifying the minimum social guarantees that should apply to platform workers. Finally, the wording of the provisions concerned would establish, for several reasons, a difference in treatment between self-employed persons in relation to a platform and that of other self-employed persons. According to the law providing for the scope of the charter to be reserved for workers on VTC, not all self-employed workers would be covered, nor even all workers independent of electronic contact platforms. On the other hand, there would also be a breach of equality between self-employed workers in relation to a platform having established a charter and those in relation with a platform that has not engaged in this approach.

41 The Constitutional Council is seized on a mandatory basis with organic laws and the regulations of the Houses of Parliament prior to promulgation of the former and prior to the entry into force of the latter.

42 Cour de cassation, Social Chamber, 28 November 2018, No. 1720079 FPPBRI. In this case, a rider filed a claim before the Court to obtain the reclassification of the relationship with Take Eat Easy into an employment contract. The Labour Chamber of the Court of Cassation admitted the status of employee, on the grounds that the platform included a geo-tracking system to monitor the rider's position in real time and record the number of kilometers ridden. In addition, the company held disciplinary power over the delivery rider (in particular based on the bonus/malus system applied by the platform), and would give the rider instructions. The Court of Cassation granted the status of employee to the self-employed delivery driver.

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The Constitutional Council has given its decision on 20 December 2019[43] regarding the conformity of the "Law on Mobilities" with the French Constitution. Most of the provisions referred to the Constitutional Council were validated, but the latter nevertheless censors the provision which provided that compliance with the commitments established in the charter cannot characterise a relationship of subordination between the platform and the worker. For this matter, the Constitutional Council recalls that "while, in principle, workers in relation to a platform that has established a charter exercise their activity independently, it is up to the judge, in accordance with the Labour Code, to reclassify their relationship as an employment contract when it is characterized by the existence of a legal relationship of subordination". Yet, the contested provisions were intended to prevent such reclassification by the judge, which leads to a change in the calculation of social security contributions and to sanctions against the platform then considered as an employer.

IV. New Sources of Financing in a Gig Economy: The Example of Rental of Furnished Accommodation for Short Periods

France has adopted on 24 July 2019 a Digital Tax Bill.[44] The tax consists of a 3 percent levy applied to revenue derived from specific digital activities by companies with a qualifying revenue of more than EUR 750 million worldwide and EUR 25 million in France. The tax is applied retroactively as of January 2019 with the first payments due in November 2019.[45] As re-

43 Constitutional Council Decision No. 2019-794 DC of 20 December 2019.

44 Largely inspired by the EU Directive, for which no consensus was found.

45 The following services are subject to the DST:
"The supply, by electronic means, of a digital interface that allows users to contact and interact with other users, including for the delivery of goods or services directly between those users";
"Services provided to advertisers or their agents enabling them to purchase advertising space located on a digital interface accessible by electronic means in order to display targeted advertisements to users located in France, based on data provided by such users.
These services include, among others, the buying, stocking and diffusion of advertising messages and the management and communication of users' data.
The Law excludes from the scope the following services:
Direct sale of goods or services online;
Making a digital interface available as a primary means to provide users with digital content, communication services and payment services".

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gards social contributions and, moreover, the financing of the basic social security schemes, in principle all income derived from professional activities is subject to social contributions and results in affiliation to a social security regime (see above Section II). But the picture is a little more complicated than that as shows the example of rental by private persons of furnished accommodation. The rise of digital platforms in the economy of seasonal rentals and their easy use have led to a tenfold increase in short-term rentals: the social security contribution rules on the revenue generated by this type of activity largely via a digital platform (*Airbnb*, *HomeAway*, *HouseTrip*, *9Flats*, *Wimdu*, *Abritel*, *SeLoger Vacances*) shows the contradictory intentions of the legislator – which on the one hand tries to encourage private initiative and new forms of earnings through digital platforms and, on the other hand, wants these kind of earnings to contribute to the financing of the social security system. The result is an extraordinarily complex legislation especially because the legislator has chosen to keep the traditional categories and is only trying to adapt them to the "new economy".

1. *Definition(s)*

The situation of people renting furnished accommodation for short periods has always been complex because there are two legal categories that tenants now operating with digital platforms had to fit in: "bed and breakfast" or "guest rooms" (*chambre d'hôtes*) and "furnished tourist accommodation" (*meublé de tourisme*). The rental of bed and breakfast and furnished accommodation is governed by the legislation concerning seasonal rentals, i.e. the Tourism Code. As such, the stay may not exceed 90 consecutive days whatever the form of short-term rental.

a) Bed and Breakfast

"Bed and breakfasts" are furnished rooms located in the home of a host that are rented out for a fee, for one or more nights, accompanied by services[46] and in line with the rules of hygiene and sanitation[47]. The services are a minimum: overnight stay, breakfast and the supply of household

46 Article L.324-3 of the Tourism Code.
47 Article D.324-14 of the Tourism Code.

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linen[48]. Tourists must be received by the host.[49] The number of rooms rented in the same dwelling may not exceed 5 and the number of persons accommodated at the same time may not exceed 15.[50]

b) Furnished Tourist Accommodation

Furnished tourist accommodation means furnished villas, apartments or studios, for the exclusive use of the tenant, offered for rent to a visiting clientele who do not choose to live there and who are staying there for a stay characterised by daily, weekly or monthly rentals (cf. Article L.324-1-1 of the Tourism Code).

2. *Affiliation and Contributions*

a) Bed and Breakfast

The will to promote the development of "non-professional" bed and breakfast activities via a digital platform has led the legislator to introduce a capped exemption of income from bed and breakfast rentals. When the annual revenue (turnover excluding taxes) is less than 13 percent of the annual social security ceiling (EUR 5,348) the lessor is exempt from social security contributions because the rental activity is not of a professional nature.[51] The lessor is therefore not obliged to join the general scheme for neither employees nor for the self-employed. However, when annual revenues are below the above-mentioned threshold, they are subject to social contributions on income from assets – namely, the CSG, the CRDS and the solidarity levy[52] – at the overall rate of 17.2 percent of taxable income.[53] If the income exceeds the cap, the bed and breakfast landlord affiliated to the general regime is subject to the rules of social security for self-employed persons.[54] A bed and breakfast landlord who has set up a Sole

48 Articles D.324-13 and D. 324-14 of the Tourism Code.
49 Article D.324-13 of the Tourism Code.
50 Article D.324-13 of the Tourism Code.
51 Article D.611-1, II of the Social Security Code.
52 Ministry of social security DSS/SD5B/2013-100 of 14 March 2013, § 1-5.
53 Article L.136-8 of the Social Security Code; Ordinance No. 96-50 of 24 January 1996; Article 235 ter of the General Taxation Code.
54 Article L.611-1, 5 of the Social Security Code.

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Proprietorship (SP) or a Sole Proprietorship with Limited Liability (SPL) for his rental activity and who benefits from the micro tax regime in calendar year N is automatically subject to the micro entrepreneur social scheme that same year.[55] Turnover must not exceed EUR 176,200 in calendar year N - 1 or N – 2.[56]

b) Furnished Tourist Accommodation

When the natural person's gross annual income is less than or equal to EUR 23,000, the lessor of furnished accommodation does not carry out a rental activity on a professional basis and is not obliged to join the general regime.[57] Since 1 January 2017, it has been stipulated that rental activity is regarded to be carried out on a professional basis, giving rise to contributions, when the natural person's gross annual income exceeds EUR 23,000. The lessor is obliged to join the general scheme as soon as this threshold is reached.[58] As soon as the annual income exceeds EUR 23,000 but does not exceed EUR 70,000, the income from this self-employed activity is then deemed to be of a professional nature and the person concerned can opt:

- to join the general social security scheme for employees;
- to join the self-employed scheme (*Sécurité sociale des indépendants* SSI);
- to join the micro-entrepreneur system within the SSI.

When the income exceeds EUR 70,000 in annual income, the income from such self-employed activity is then of a professional nature and the person concerned has the choice to join the general social security scheme; if the annual income does not exceed EUR 85,800 the person has to join the self-employed scheme SSI.[59]

55 Official tax administration bulletin (BOFiP)-BIC-DECLA-10-40-10-§ 100-01/06/2018.
56 Article 50-01.2 of the General Tax Code; Article L.613-7, I of the Social Security Code.
57 Article L.611-1, 6 of the Social Security Code.
58 Article 155, IV 2 of the General Tax Code, Article L.611-1 6° of the Social Security Code.
59 Article 293 B, I, 1 of the General Tax Code.

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	Rental of Short-term Furnished Accommodation[60]		
Exemption of social security contributions up to	EUR 23,000		
Social Security System	General System micro-entrepreneur	General System (employee)	General System (self-employed)
Maximum	EUR 70,000	EUR 85,800	EUR 85,800
Basis for contributions	Income	Profit	(Income- 60 percent)

V. *Anti-Fraud Measures: New Forms of Control*

France has also reformed its laws and aims to facilitate the operations of the platform economy. As work on a platform is done or organised via the Internet and could easily escape the traditional regulatory framework, reporting often depends on the individual's awareness and conscientiousness. Sometimes workers do not consider platform work as "work" and are therefore unaware of their obligations.[61] Article 10 of Law No. 2018-898 of 23 October 2018 relating to the fight against fraud modifies Article 242 bis of the General Tax Code on the reporting obligations on platforms with regard to users and the administration. This law simplifies the drafting of the texts, by merging all the obligations of the platforms into a single Article 242 bis of the General Tax Code. The main objective of the Anti-Fraud Act is to require online platform operators to have a robust mechanism (i) to inform their users about their tax and social obligations and (ii) to transmit information to the tax authorities.

The Decree of 27 December 2018[62] issued for the application of Article 242 bis of the General Tax Code is thus a reminder of the fact that the platforms are still required to inform the users, at the time of each transaction, of "information relating to the tax regimes and social regulations applica-

60 *Bocquet, Michel/Bouvard, Michel/Canevet, Maurice/Carcenac, Thierry/Chiron, Jean/Dallier, Pierre/Delahaye, Véronique/Gattolin, Arnaud/Guené, Claude/Lalande Bruno/De Montgolfier Arnaud*, Report made in the name of the finance committee (1) on taxation and the collaborative economy: The Need for a Fair, Simple and Unified System, No. 481, French Senate Ordinary Session 2016-2017, pp. 37-38.

61 European Social Insurance Platform (ESIP), Are Social Security Systems Adapted to New Forms of Work Created by Digital Platforms?, 30 January 2019, https://esip.eu/images/pdf_docs/ESIP_Study_Platform_Work.pdf. Accessed 16 July 2020.

62 Arrêté of 27 December 2018 issued for the application of Article 242 bis of the General Tax Code (NOR: CPAE1825922A).

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ble to these sums, the resulting reporting and payment obligations to the tax authorities and social contribution collection agencies, as well as the penalties incurred in the event of failure to meet these obligations".[63] The decree also clarifies the thresholds above which these new platform reporting obligations are applicable. Pursuant to Article 242 bis of the General Tax Code, platforms have to provide, in particular, the status of the individual (*statut de particulier)* or professional indicated by the platform user and the number and total gross amount of transactions carried out by the user during the previous calendar year. The platforms must:

- provide for each transaction loyal, clear and transparent information on the tax and social obligations of declaration and payment of the lessor who carries out commercial transactions through the platform;[64]
- provide an electronic link to the websites of the administrations allowing for compliance, where appropriate, with these obligations;
- send each year to the lessor an electronic document summarising the sums received during the year through the platform;[65]
- send each year to the tax authorities a document summarising all the information provided to the lessor.[66]

The assets concerned by the absence of a declaration are:

- furniture, household appliances and motor vehicles, with the exception of works of art, antiques or collectibles for which the option provided for in Article 150 VL of the General Tax Code has been exercised;
- furniture, other than precious metals, for which the sale price is less than or equal to EUR 5,000.

However, this reporting exemption is limited to users whose cumulative transactions over the year meet the following thresholds:

- the user has received income of less than EUR 3,000 over the entire year;
- the number of transactions of the same user over the year is limited to 20.

Platforms have to send all this information electronically to the tax authorities by 31 January at the latest for users who have received more than

63 Article 23 L sexies of the General Tax Code.
64 Annex IV Articles 23 L sexies of the General Tax Code.
65 Article 242 bis, 2 of the General Tax Code, Annex IV Articles 23 L septies to 23 L decies of the General Tax Code.
66 Article 242 bis, 3 of the General Tax Code.

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EUR 3,000 or made more than 20 transactions during the previous year. This is the result of the implementation of the recommendation made by a recent Commission expert report on Digital Transformation[67] to set up a "Single Digital Window in Europe" for the payment of taxes and contributions of platform workers that would allow a better fight against social security tax evasion, while being a further step towards a simplification of procedures and a real single market for platform workers in Europe.[68] This annual reporting obligation by platforms has started to apply in January 2020 on the income received by users in 2019. In addition, it is now stipulated that it is up to the tax authorities to send this information to the social security bodies (Article L.114-19-1 of the Social Security Code).

VI. Conclusion

What can we learn from the French legislation on social security contributions facing the development of the "gig economy"? First of all, digital platforms have, through their networking activities, not only changed consumption habits but also the supply of certain services, creating new markets and, at times, distortions of competition. These upheavals have generated a legislation of social protection to the sometimes protective ambitions of the beneficiaries, sometimes only as an incentive for the development of the activity in question, or its restructuring. But the traditional categories still remain, and the legislator did not wish or was not able to create *sui generis* rules. The legislator has preferred to marginally modify the already existing rules and create particular sub-categories of self-employment, to partially call into question already existing rules. The question of financing social protection in a "new economy" has only been tackled on the margins, under pressure from different groups with sometimes conflicting interests, which is reflected in a multitude of detailed rules that do not respond to any overall logic but to situations that are sometimes urgent but always high-profile. As a result, the Labour Code, for example, which is in principle dedicated to employees, now contains

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67 European Commission, Final Report of the High-Level Expert Group on the Impact of the Digital Transformation on EU Labour Markets, April 2019, Luxembourg: Publications Office of the European Union 2019, p. 42, https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-impact-digital-transformation-eu-labour-markets. Accessed 16 July 2020.

68 *Viossat, Laurent-Charles,* Les enjeux clés de la protection sociale des travailleurs de plateforme, in: Regards, 55 (2019) 1, p. 85.

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rules for the self-employed and organises *private* insurance contracts with reference to the rules on industrial injuries in the Social Security Code – mysterious and complex ways indeed.

It must be noticed that an unprecedented collaboration between the tax and social security authorities has been not only initiated but written down in the law. Only specific issues related to specific social crises (e.g. catastrophic social situation of self-employed service providers related to a platform and anarchic development of rentals by private individuals) were dealt with. It is to be feared that the foreseeable abysmal deficits in the social security health insurance for 2020, following the sanitary crisis linked to COVID-19, will relegate the difficult issue of work via digital platforms to the background from which it had only sporadically emerged.

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