

New forms of labour and structures of enterprises-challenges for trade unions

In the last decade, labour law has often been said to be less efficient and more and more irrelevant for it has been undermined by 2 factors: emerging new forms of work on the one hand and new structures of undertakings on the other hand.

1. The recent surge of new forms of work, such as for example platform workers, led CFDT unions to look for including those workers, and more generally self-employed workers, in their strategies.

The decision to tackle this issue was taken during CFDT's last Convention in June 2018. Nevertheless, this is not a simple issue for several reasons.

- **First of all regarding the true nature of the contract. The CFDT Congress does not contemplate setting up a new status for this kind of workers**, i.e. a status in between employees' position and real self-employed workers' situation.

The CFDT Congress rather considers that those workers who are experiencing in practice a subordinate relationship with their co-contractor should therefore be entitled to benefit full employment status. By the way, on November 28 last year, the French Court of cassation decided for the first time that platform workers are under/in a subordinate relationship with their co-contractor. More specifically, the decision concerned a bike delivery person who was geo-located and could be denied access to shifts as a result for insufficient or bad performance in the past. Regarding French standards of reclassification, the decision is quite classical: it is based on usual criterias to recognize a subordinate relationship: power to give orders, to control on the worker's activity and power to penalize them¹.

Otherwise, should a third "in between" status be recognized, employers might be tempted to divert this new status in the workers' detriment, in other words to bypass labour law.

However, some of those "in between" workers do not wish to see their own relationships with their co-contractors be reclassified as a labour contract, and they should be heard too.

For these reasons, the CFDT Congress advocates that all workers, regardless of their status, should be granted some basic rights, in particular social security benefits, employment and work accidents insurance, professional training...

In this respect, the CFDT Congress took part in discussions over 2016 labour law Act of Parliament ('loi Travail') and urged the government to introduce some new articles in French labour Code, whereby platform workers are entitled to new rights.

According to these articles, when a certain revenue threshold is reached, the platform has to pay a portion of workers' insurance against the risk of work accidents and a portion of workers' professional training².

The CFDT Congress considers this a first step towards recognition of basic rights common to all workers.

- **Secondly regarding collective rights.** In the CFDT Congress' point of view, the rights to take collective actions and to organize and create unions are fundamental rights, which should as such be ensured to those so-called self-employed workers.

¹Cass.soc.28.11.18, n°17-20079.

² From a 2014 status onwards, and even more since september 2018 status, all workers, whether subordinate or not, should benefit a personal vocational training account/credit.

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In these matters as well, the 2016 act of Parliament enacted some new articles in French labour Code.

According to those articles, self-employed platform workers are granted the right to create and join Trade Unions in order to defend their interests³.

Moreover, the right to take collective actions is now recognized to platform workers. Therefore, now on, platform workers' contracts must not be terminated anytime they take part in a collective action. Besides, workers shall not be held liable for refusing to work.

Yet, and even if the ESRC decision⁴ on self-employed right to bargain is good news, in the CFDT's point of view, there is, more generally speaking, a major obstacle to acknowledge self-employed workers' organizations the right of collective bargaining: in France, collective bargaining is only granted to 'representative' organizations.

More specifically, conditions to be recognized "representative" differ from trade Unions to employers' organizations. Since most of self-employed workers are neither employees nor employers there is no proper set of rules to determine their organization's representativeness. Furthermore, as long as they are not recognized as an employees' organization, those 'in between' workers' organizations can't join the CFDT Congress without undermining its representativeness as a national employees' trade union.

Thus, for the time being, the CFDT Congress is in favor of granting specific rules of representativeness for those workers' associations so that they can take a part in national discussions, or even bargain, particularly on social welfare issues.

Besides, another issue to tackle is to determine the discussion partner for those workers. In this respect, it is quite easy to identify platform workers bargaining partner (the platform can play the part of the employer in collective bargaining) but, on the contrary, it is hardly possible to identify such a partner for self-employed workers more generally speaking.

Above all, if such bargaining takes place, it's outcome can't have an *erga omnes* effect (it cannot be generally enforced) like collective agreements do in France for employees...

In a nutshell, regarding French collective bargaining rules as they are for now, it is quite a complex issue. So, in the CFDT Congress' point of view, if there is to be such collective agreements they should not be on the same pattern as the one we have known up to now in the French labor code.

2. The rise of new structures of enterprises/undertakings.

Today working activities are more and more planned on an international level, which is an issue that the CFDT congress aims to tackle.

Moreover at the national level, new structures such as franchise networks have multiplied, notably in certain sectors such as shops, hotels etc. This tendency has a negative effect on employees' rights, particularly on their right to representation.

Indeed, this type of organization of work tends to divide collective labor in between the different companies in the network representing an obstacle for employees' right to representation. Employees are divided in so little groups that they can't claim their representative bodies to be set up in their place of work.

³ That is to say platform workers who have been reclassified as employee are not concerned by these articles: they benefit whole employee status.

⁴ Irish Congress of Trade unions / Ireland.

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- **In this respect, the CFDT Congress' claims to recognize/acknowledge a right for all employees' representation at the central level in franchise networks.**

As a matter of facts, workforce size thresholds are often too low to have a staff representation body in each company and, even though there is not a group of companies, working conditions are in practice similar.

In 2016, while the Act of Parliament was under discussions, the CFDT Congress' proposal eventually passed an article dealing with workers' representation in franchise networks. Thereby, all employers in a franchise network of more than 300 employees have to undertake a collective bargaining to set up a representative body anytime a Trade Union asks for it.

Unfortunately, in 2018, last Act of Parliament repealed this article... Therefore, CFDT Trade Unions try to settle some kind of representation bodies in networks through bargaining at the undertaking level. Up to now/so far, we have signed only one collective agreement in this respect.

- **Regarding multinational companies.**

In that respect, the CFDT Congress has supported the 2017 duty of vigilance act of Parliament.

Following the Rana Plaza disaster, the CFDT Congress has been working with many NGOs for a piece of legislation to be enacted in order to tackle and prevent such calamity. Eventually in march 2017, an act of Parliament was passed.

In the CFDT Congress's point view, this piece of legislation is very interesting because it relies on the prevention of risks and enshrines legal duties all over the subcontracting chain, and even over part of the supply chain.