Contingent Worker Misclassification Risk Map & Comparison Tool - France

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# Contingent worker misclassification risk information

## Is there any specific legislation that determines that contingent workers should be treated as employees for (a) employment, (b) tax/social security or (c) pension purposes?

(a) No
(b) No
(c) No

## Is there a safe harbor for contingent workers for (a) employment, (b) tax/social security or (c) pension purposes? Safe harbor means being expressly excluded from the legislation or a particular category/classification under the legislation if certain conditions are met.

(a) No
(b) No
(c) No

## How clear is the law on classifying contingent workers from an employment perspective, based on a rating of 1-5, with 1 being clear and 5 being unclear?

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## How clear is the law on classifying contingent workers from a tax / social security perspective, based on a rating of 1-5, with 1 being clear and 5 being unclear?

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## Are there any new developments coming up in relation to contingent workers? If so, please briefly describe along with the timing.

On 20 January 2023, 139 drivers were reclassified as employees of a platform company by the Labor Court of Lyon ("*conseil de prud'hommes de Lyon*") and have been awarded a total amount of about EUR 17 million. The decision refers to a period from 2017 to 2019 and the company announced its intention to appeal this decision.

On 25 January 2023, the Supreme Court overruled the decision of the Lyon Court of Appeal and reclassified the relationship of a driver with the same platform company into one of employment (the period in scope is from 2015 to 2016).

Lastly, on 15 March 2023, the Supreme Court reclassified the contract of a driver (from another platform) into an employment contract for the following reasons:

The driver was not free to constitute his own personal clientele.

The driver had no freedom to organize his trips.

The platform could sanction the driver and terminate his contract at its own discretion.

Since May 2022, representative bodies for drivers and riders have been implemented, and a minimum salary for these platform workers, effective from 1 February 2023, has been negotiated.

On 12 June 2023, the Council of the European Union (EU) agreed on the proposal for a directive that aims to better protect platform workers. This opens the door to negotiations between the Council and the European Parliament on the final directive. The directive aims to ensure that platform workers have or can obtain the appropriate employment status through the introduction of a legal presumption. In addition, the directive provides for rules regarding the transparency of the use of algorithms within the platform economy.  For more information, please see our client alert [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/europe-the-european-platform-deal).

Further, the member states of the European Union (EU) have developed a new framework agreement in the field of social security to address the reality of regular cross-border remote working. The framework agreement on the application of Article 16 (1) of Regulation (EC) No. 883/2004 in cases of habitual cross-border remote working aims to promote the free movement of people within the EU while preserving their right to social security. The framework agreement came into effect on 1 July 2023. Please see our client alerts [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/netherlands-the-signing-of-a-new-framework-agreement-regarding-the-social-security-rules-within-the-european-union) and [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/luxembourg-remote-working-a-more-flexible-social-security-regime) for more details.

## Outline the maximum penalties from an employment perspective.

A finding that an individual is an employee would give them employment law rights. An employee has the full set of employment rights, including the right not to be unfairly dismissed, right to statutory redundancy pay, holiday, working time and minimum wage rights, etc.

Concealment of employment can result in criminal liability. In case of misclassification, penalties may be levied on the company's legal representative, i.e., a maximum fine of EUR 45,000 and three years' maximum imprisonment (even if the latter is highly unlikely for a first offense) and penalties for the company of a maximum fine of EUR 225,000.

## Outline the maximum penalties from a tax perspective.

Penalties for non-withholding of income tax if a worker is reclassified as an employee could be from 5% to 40% if with voluntary mistreatment + 0.4% interest.

Penalties can be increased up to 40% if "intentional" or up to 80% in case of "fraud" or "abuse of law." Ultimately, criminal liability may attach with a maximum fine of EUR 3,000,000 and seven years maximum imprisonment.

## Outline the maximum penalties from a social security perspective.

100% of amount due plus 5% late penalty and 0.2% monthly interest.

If this is qualified as concealment of work, an additional penalty of 25%-40% may apply.

## Outline the maximum penalties from a pensions perspective.

100% of amount due plus 5% late penalty and 0.2% monthly interest.

If this is qualified as concealment of work, an additional penalty of 25%-40% may apply.

## Are there any wider tax compliance risks, e.g., senior accounting officer or corporate criminal offense of facilitating tax evasion?

Yes, if employees are seen to be facilitating the tax evasion of contingent workers, the company could be liable for a corporate criminal offense.

## What is the risk of criminal sanctions applying?

Medium.

## What are the main employment law risks that may arise for contingent workers?

The main employment law risk is misclassification as it is the current trend with attached consequences (notably, criminal sanctions based on recent case law).

Immigration issues might also have to be considered.

## What are the main tax risks that may arise for contingent workers?

Risk of requalification of the contingent worker income as employment income for tax purposes, which is subject to income tax withholding obligation for the employing company. This may also, under certain circumstances, trigger VAT issues and potentially undisclosed activity for the platforms hiring the contingent workers.

## What are the main social security risks that may arise for contingent workers?

Social security reassessment by which the amounts paid to the contingent worker should be considered salary items and, as such, subject to the employer (approx. 45%) and employee (approx. 23%) social charges.

If workers are misclassified and social security becomes due, companies would need to consider the EU's new social security rules for cross-border employees (effective on 1 July 2023), if the individuals are EU-based and work in more than one EU jurisdiction. Please see our client alerts [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/netherlands-the-signing-of-a-new-framework-agreement-regarding-the-social-security-rules-within-the-european-union) and [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/luxembourg-remote-working-a-more-flexible-social-security-regime) for more information.

## What are the main risks from a pensions (or other regulator) perspective?

Social security reassessment by which the amounts paid to the contingent worker should be considered salary items and, as such, subject to the employer (approx. 45%) and employee (approx. 23%) social charges.

## Risk commentary - Employment

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The main employment law risk is misclassification as it is the current trend and recent case law shows an increase in criminal risks.

## Risk commentary - Pension

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Social security reassessment by which the amounts paid to the contingent worker should be considered as salary items and, as such, subject to employer (up to 45%) and employee (up to 23%) social charges.

## Risk commentary - Social Security

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Social security reassessment by which the amounts paid to the contingent worker should be considered as salary items and, as such, subject to employer (up to 45%) and employee (up to 23%) social charges.

If workers are misclassified and social security becomes due, companies would need to consider the EU's new social security rules for cross-border employees (effective on 1 July 2023), if the individuals are EU-based and work in more than one EU jurisdiction. Please see our client alerts [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/netherlands-the-signing-of-a-new-framework-agreement-regarding-the-social-security-rules-within-the-european-union) and [here](https://insightplus.bakermckenzie.com/bm/employment-compensation/luxembourg-remote-working-a-more-flexible-social-security-regime) for more information.

## Risk commentary - Tax

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Risk of requalification of the contingent worker income as employment income for tax purposes, which is subject to an income tax withholding obligation for the employing company. Reclassification may also trigger indirect and direct tax consequences for the platforms hiring contingent workers.

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