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Current Issues of EU Collective Labour Law

What role for the social partners in the light of the challenges posed by the Recovery Plan and the digitalisation of work?

Edited by

Alberto Pizzoferrato and Matteo Turrin

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CURRENT ISSUES OF EUROPEAN AND NATIONAL COLLECTIVE LABOUR LAW: THE DIGITALISATION OF WORK AND THE EU RECOVERY PLAN

Alberto Pizzoferrato [*]

Abstract

The contribution focuses on the several challenges posed to social partners by, on the one hand, the digitalisation of work and, on the other hand, the implementation of the National Recovery and Resilience Plan, challenges that require national and European institutions to adopt instruments and policies to strengthen industrial relations and collective bargaining.

Keywords: Social partners; Digitalisation; Collective bargaining; National Resilience and Recovery Plan; Tripartite consultation.

1. *Brief introduction*

Today, industrial relations and collective bargaining are facing a range of significant challenges that vary by country, branch of industry, and organizational context. Anyway, some of the most significant common challenges can be identified in the issues arising, on the one hand, from the digitalisation of work and, on the other, from the implementation of National Recovery and Resilience Plans.

However, the economic consequences of recent international conflicts should not be forgotten: in fact, although apparently unrelated to the world of work, these tensions affect the daily lives of workers and the resilience of companies. Economic downturns, inflation and recessions, together with the globalization of markets, can lead to increased competition

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and strain labour and industrial relations, as organisations may need to make difficult decisions related, for instance, to layoffs or wage freezes.

Industrial relations and collective bargaining at the European level face some unique challenges in addition to the general ones mentioned earlier. These challenges are mainly shaped by the complex nature of the European Union and the differences between its Member States. It is well known, in fact, that European countries have different historical and cultural labour traditions, making it challenging to harmonize labour practices and policies across the Union. This is particularly true also for European and transnational collective bargaining, which must consider different socio-economic situations, including income disparities and social inequalities, and different regulations. In addition, balancing the interests of the several national stakeholders involved may be critical for collective bargaining, affecting its results. [1]

However, as stated by the European Pillar of Social Rights, [2] cooperation between social partners is crucial to overcome the challenges affecting the world of work and maintaining effective industrial relations and collective bargaining in Europe, thus reinforcing the integration and harmonisation of rules and practices between Member States. It is for these reasons that the contents and the collaborative approach of the European Framework Agreement on Digitalisation signed on 22 June 2020 are to be particularly appreciated, providing valuable guidelines for national stakeholders. [3] Unfortunately, the implementation of the Agreement at the national level is not always equally appreciable, suffering from gaps and delays. [4]

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[1] On the obstacles to the development of industrial relations and collective bargaining at the European Union level see at least F. DORSSEMONT, *EU Collective Labour Law, what's in a name*, in this book.

[2] On which see M. CORTI (ed.), *Il pilastro europeo dei diritti sociali e il rilancio della politica sociale dell'UE*, Milano, Vita e Pensiero, 2021. On the link between the European Pillar of Social Rights and the digitalisation of work compare B. CARUSO, *I lavoratori digitali nella prospettiva del Pilastro sociale europeo: tutele rimediali, legali, giurisprudenziali e contrattuali*, in *Diritto delle Relazioni Industriali*, 4, 2019, 1005 ff.

[3] On the Agreement see I. SENATORI, *The European Framework Agreement on Digitalisation: a Whiter Shade of Pale?*, in *Italian Labour Law e-Journal*, 2, 2020, 159 ff. and L. BATTISTA, *The European Framework Agreement on Digitalisation: a tough coexistence within the EU mosaic of actions*, in *Italian Labour Law e-Journal*, 1, 2021, 105 ff.

[4] Compare L. BATTISTA, *The European Framework Agreement on Digitalisation: challenges and priorities during its implementation*, in this book.

2. *The digitalisation of work and the role of industrial relations and collective bargaining*

The digitalisation of work has had a profound impact on industrial relations and collective bargaining. These impacts, driven by technological advancements and changes in work, affect the priorities, strategies and ways of acting of labour relations actors.

About the priorities of labour relations and collective bargaining, a hot topic is that of the labour market.[5] While automation, artificial intelligence and other technologies are changing the nature of work, potentially leading to job displacement and the need for upskilling of workers, the rise of the gig economy and non-standard work arrangements has blurred traditional employment relationships, making it difficult to establish when a worker has to be considered an employee or a self-employed person and provide labour protections.[6]

Digitalization has created a demand for new skills and continuous training to keep up with technological changes.[7] Indeed, unions and employers' organisations are already negotiating upskilling, retraining and lifelong learning policies for workers to avoid or minimize unemployment and, at the same time, to maximize the benefits deriving from the adoption of digital technologies requiring workers to have new and updated skills.[8]

Collective bargaining can provide valuable solutions to all these problems, allowing current regulations to be adapted to the new trends in the labour market. Nevertheless, in many countries the influence and membership of trade unions has declined,[9] making it challenging to negotiate fair wages

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[5] See, among others, A. PIZZOFERRATO, *Digitalisation of work: new challenges to labour law*, in *Argomenti di Diritto del Lavoro*, 6, 2021, 1329 ff. and C. ALESSI, M. BARBERA, L. GUAGLIANONE (eds.), *Impresa, lavoro e non lavoro nell'economia digitale*, Bari, Cacucci, 2019.

[6] See A. LO FARO (ed.), *New Technology and Labour Law. Selected topics*, Torino, Giappichelli, 2023.

[7] Compare, at least, C. VALENTI, *The individual right to continuous training of workers: an analysis of best practices in the international framework*, in *Labour & Law Issues*, 1, 2021, 57 ff.

[8] See C. VALENTI, *ibid.* as well as F. LUNARDON, *Trade unions and digital technologies in Italy* and C. GARBUIO, *The impact of digitalization on labour market dynamics: what role for collective bargaining facing skill challenge and flexible work organization?*, both in this book.

[9] Compare B. CARUSO, *La rappresentanza delle organizzazioni di interessi tra disintermediazione e re-intermediazione*, in *Argomenti di Diritto del Lavoro*, 3, 2017, 555 ff. and M.

and working conditions, while traditional collective bargaining models have proved not to be suitable for emerging industries and gig-economy workers, necessitating new approaches to representation and negotiation. [10]

For instance, digital platforms, including social media, provide new ways for workers to organise themselves. Workers can use these platforms to mobilize, share information and advocate for their rights, thus affecting unions' efforts. [11] More generally, the digitalisation of work exacerbates the problem of representation and collective rights of self-employed workers, [12] while the sense of solidarity among workers, which has always been the basis of collective action, is missing due to increasing individualisation and the dematerialisation of work. [13] This can lead to new forms of trade union representation, intermediation and action that escape traditional channels and which conventional organisations are unable to grasp. [14]

Fortunately, some regulatory action has been taken: through an initiative parallel to the proposal for a Directive on improving working conditions in platform work, [15] the European Union aims to provide Guidelines on applying EU competition law to collective agreements regarding the working conditions of solo self-employed persons. [16] These two initiatives

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CARRIERI, *La forza dei sindacati: se è vero che cala e come si misura*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 2, 2021, 325 ff.

[10] See, among others, M. FORLIVESI, *Alla ricerca di tutele collettive per i lavoratori digitali: organizzazione, rappresentanza, contrattazione*, in *Labour & Law Issues*, 1, 2018, 35 ff. and E. MENEGATTI, *Collective Rights for Platform Workers. The Role Played by the Italian Workers' Statute in a Comparative Perspective*, in this book.

[11] Compare, at least, M. MARAZZA, *Social, relazioni industriali e (nuovi percorsi di) formazione della volontà collettiva*, in *Rivista Italiana di Diritto del Lavoro*, 1, 2019, 57 ff.

[12] See, for instance, N. COUNTOURIS, V. DE STEFANO, *New trade union strategies for new forms of employment*, ETUC, 2019, 37 ff. and O. RAZZOLINI, *Organizzazione e azione collettiva nei lavori autonomi*, in *Politiche Sociali*, 1, 2021, 49 ff.

[13] Compare M. FORLIVESI, *La rappresentanza e la sfida del contropotere nei luoghi di lavoro*, in *Lavoro e Diritto*, 4, 2020, 673 ff.

[14] Compare again M. FORLIVESI, *ibid*.

[15] On the proposal see at least V. DE STEFANO, *The EU Commission's proposal for a Directive on Platform Work: an overview*, in *Italian Labour Law e-Journal*, 1, 2022, 1 ff. and F. LUNARDON, nt. (8).

[16] On this topic see, for instance, G. PIGLIALARMI, *Lavoro autonomo, pattuizioni collettive e normativa antitrust: dopo il caso FNV Kunsten, quale futuro?*, in *Lavoro Diritti Europa*, 4, 2021, 1 ff. and E. VILLA, *Lavoro autonomo, accordi collettivi e diritto della concorrenza dell'Unione europea: prove di dialogo*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 4, 2021, 288 ff.

demonstrate the awareness of the European institutions on the issue of (collective) rights of those workers who are not employees, opening new spaces for collective bargaining.

However, the labour market is not the only dimension that has been affected by the digitalisation of work. The dimension of the employment relationship and that of the performance of work are also particularly affected.[17] New technologies give rise to new needs of protection, while many of the existing protective needs take on a new shape.

One thinks, for example, of the discrimination caused using algorithms in the management of the employment relationship, from recruitment to termination.[18] Not to mention, then, the risks to workers' health and safety caused by the massive use of digital technologies, which – as amply demonstrated – are a source of several risks of a psycho-social nature to workers' well-being and mental health.[19]

Both labour law regulations and collective agreements are constantly changing to adapt to the shifting landscape, but they struggle to keep up with technological advances. An example may be job classification.[20] Another one is the relationship between technology and data privacy. Managing employee data and ensuring data privacy and cybersecurity are critical issues nowadays, especially with the increasing reliance on technology for work and communication. At the same time, from the massive use of digital tools in the work performance and the enhanced technological control power of the employer may arise several problems. In fact, digital technologies enable employers to monitor and track employee performance and behaviour more closely. This can raise concerns about worker privacy and autonomy, leading to negotiations over data usage and surveillance policies.[21]

Indeed, it is likely that work organisation and the use of digital tech-

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[17] See A. PIZZOFERRATO, (nt. 5).

[18] See, for example, M. BARBERA, *Discriminazioni algoritmiche e forme di discriminazione*, in *Labour & Law Issues*, 1, 2021, 1 ff.

[19] See EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK, *Key trends and drivers of change in information and communication technologies and work location*, Publications Office of the European Union, 2017.

[20] See M. BARBIERI, *Innovazioni tecnologiche-organizzative e inquadramenti nei rinnovi dei CCNL delle imprese private*, in *Labour & Law Issues*, 1, 2023, 1 ff. and D. TARDIVO, *National collective bargaining and Digitalization: first empirical evidence*, in this book.

[21] See P. LAMBERTUCCI, *Controlli e contrattazione collettiva*, in *Argomenti di Diritto del Lavoro*, 4, 2020, 773 ff. and M. CORTI, *Potere di controllo e nuove tecnologie. Il ruolo dei partner sociali*, in *Labour & Law Issues*, 1, 2023, 58 ff.

nologies in the workplace, because of their impacts on health, safety, work-life balance, well-being and dignity of workers, will become a crucial subject of collective bargaining. This is well demonstrated by the widespread adoption of remote work during and after the pandemic, which has altered the physical boundaries of the workplace. This shift has led to discussions about issues like remote work policies, flexible working hours and the right to disconnect, which are now subjects of collective bargaining.[22] Another example could be that of algorithmic management: discussions about data rights and algorithmic decision-making in employment settings have already emerged.[23] This includes negotiations around transparency, fairness and accountability in algorithm-based management systems. The negotiation of the algorithm is no longer just a figure of speech.[24]

At the same time, it cannot be denied that digital technologies may represent an opportunity to improve working conditions, helping workers carrying out their activities or minimizing health or safety risks. Anyway, most of the effects of these new technologies, like for example algorithms, will depend on the use that employers and companies will do. Labour law regulations and collective bargaining may help to avoid risks and enjoy opportunities, safeguarding workers' rights while maintaining a high level of productivity and economic development.

Addressing these challenges requires a proactive and adaptive approach to industrial relations, but these challenges also represent a source of conflict between employers' and employees' organisations. So, if on the one hand digitalisation of work may lead the actors of industrial relations to a collaborative approach, on the other hand it cannot be excluded that all these challenges may enhance conflicts arising from the competing interest of the stakeholders involved.[25] There is evidence of both trends.

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[22] On these issues see M. BROLLO, M. DEL CONTE, M. MARTONE, C. SPINELLI, M. TIRABOSCHI (eds.), *Lavoro agile e smart working nella società post-pandemica. Profili giuslavoristici e di relazioni industriali*, ADAPT University Press, 2022.

[23] Compare, among others, A. INGRAO, *Data-Driven management e strategie collettive di coinvolgimento dei lavoratori per la tutela della privacy*, in *Labour & Law Issues*, 2, 2019, 127 ss. and E. KLENGEL, J. WENCKEBACH, *Artificial intelligence, work, power imbalance and democracy – why co-determination is essential*, in *Italian Labour Law e-Journal*, 2, 2021, 157 ff.

[24] Compare V. DE STEFANO, *"Negotiating the algorithm": Automation, artificial intelligence and labour protection*, in *ILO Employment Working Paper*, 246, 2018, 1 ff.

[25] See M. TURRIN, *Industrial relations and new technologies: conflict, participation and concertation in the digital labour era*, in this book.

In simple terms, the impact of digitalisation on industrial relations and collective bargaining is complex and multifaceted. It presents both opportunities for improving working conditions and challenges that need to be addressed. Unions, employers, and governments are required to adapt to this new scenario to ensure that the rights and interests of workers are protected and promoted in the digital age.

3. *The involvement of social partners in National Recovery and Resilience Plans' design and implementation*

National Resilience and Recovery Plans, which have been developed in response to the significant crises and challenges raised from the Covid pandemic emergency, can have significant impacts on collective bargaining and industrial relations at the national level. [26]

Indeed, National Resilience and Recovery Plans, as required by Article 18 of the EU Regulation 2021/241, establishing the Recovery and Resilience Facility, [27] involve social partners, including employers' organisations and trade unions, in the planning and implementation process. [28] This can strengthen social dialogue, as well as collaboration between employers' and workers' organisations, potentially leading to more inclusive and effective collective bargaining.

These Plans are designed to stimulate economic recovery, strengthen national resilience and address various socio-economic challenges like the digital and the green transitions. So, the impacts on collective bargaining and industrial relations may change depending on the specific policies and measures included in the plan adopted by the different countries, but some common impacts on the world of work include: labour market reforms, job creation, training and reskilling policies and support for vulnerable workers. [29]

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[26] See the essays published in the Special Issue of the *Italian Labour Law e-Journal*: *NextGeneration EU in Action: Impact on Social and Labour Policies*, 2022.

[27] On which see M. FORLIVESI, *Next Generation EU: una nuova frontiera dell'integrazione europe*a, in *Lavoro e Diritto*, 2, 2023, 211 ff.

[28] See T. TREU, *Patto per il lavoro, contrattazione collettiva e PNRR*, in *Diritti Lavori Mercati*, 1, 2022, 19 ff. as well as F. LUNARDON, nt. (8) and G. CENTAMORE, *The involvement of social partners in the EU Recovery plan: an appraisal*, in this book.

[29] On these issues see L. CALAFÀ, *Le politiche del mercato del lavoro nel PNRR: una lettu-*

Labour market reforms may aim to increase labour market flexibility, change employment protection legislation, or introduce new types of work contracts. Moreover, Recovery Plans often emphasize measures to create jobs. In response to changing labour market demands, Recovery Plans also include initiatives for workers training and reskilling, as well as provisions to support vulnerable workers, such as those in low-wage or precarious employment.

Industrial relations and collective bargaining may influence the implementation of all these measures, as well as the identification of actions to be taken to reach the targets and priorities established by the National Recovery and Resilience Plan. At the same time, these measures may impact labour and industrial relations by addressing issues like job security, wage levels and working conditions, thus influencing the negotiation process between the social partners.

In few words, the impacts on collective bargaining and industrial relations will depend on the specific content and policies of the National Resilience and Recovery Plan, as well as the cooperation and negotiation between stakeholders. The involvement of trade unions, employers' associations and government representatives in the planning and implementation of these plans can shape how labour market and employment-related issues will be addressed and how the world of work will evolve in the next future.

Unfortunately, available research shows that, in many cases, the involvement of social partners at the national level – information, consultation and direct participation in the planning and implementation process – has been inadequate.[30] Furthermore, while it is mandatory to consult social partners in designing the National Plans, this does not apply to the implementation process, as Article 18 of the EU Regulation 2021/241 does not require it.

4. *Final remarks*

To sum up, it can be said that the digital transition and particularly the digitalisation of work, together with the reform plans outlined in the Na-

ra giuslavoristica, in *Lavoro e Diritto*, 2, 2023, 163 ff. and D. GAROFALO, *Gli interventi sul mercato del lavoro nel prisma del PNRR*, in *Diritto delle Relazioni Industriali*, 1, 2022, 114 ff.

[30] See G. CENTAMORE, nt. (28).

tional Resilience and Recovery Plan, pose multiple levels of challenges to the social partners.

Firstly, workers' and employers' organisations are required to understand and address new needs for representation, acting as agents of partly new and different interests. Secondly, the social partners are called upon to address new protection needs by adapting working conditions to the new reality of the digital age. Thirdly, the actors of industrial relations, to achieve the above purposes, are required to review their strategies of action, changing their model of interaction.

While it is not yet clear which the long-term impacts on the world of work of the digitalisation and the reforms carried out to implement the Recovery Plans will be, what is clear, instead, is that industrial relations and collective bargaining will continue to play a major role in adapting work to the technological revolution.

Consequently, it is necessary to strengthen all those instruments that facilitate collective bargaining and industrial relations. Thus, although the role of the social partners has not been questioned by the current challenges facing them, it seems at least appropriate for national legislators to engage in adopting measures and policies that make industrial relations an effective instrument.

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EU COLLECTIVE LABOUR LAW, WHAT'S IN A NAME

Filip Dorssemont [*]

Abstract

The present contribution seeks to grasp the many meanings of the notion of EU collective labour law. A distinction is being made between EU collective labour law as an academic discipline and EU Collective labour law as an aspect of the EU legal order. For a proper understanding of the linking between the EU legal order and industrial relations, it is relevant to include and distinguish transnational and national industrial relations and to consider both processes of positive and negative integration.

Keywords: Collective labour law; Industrial relations; Positive and negative integration; Private International law.

Introduction

How to define EU Collective Labour Law, this is the mission impossible bestowed upon me within the framework of this seminar, held in Bologna. Moreover such a definition of EU collective labour law could be a stepping stone in order to describe its evolution and to identify some underlying principles.

When I started my academic *percorso*, The Maastricht Treaty [1] (signed in 1992, entered into force in 1993) had just been recently adopted. The Maastricht Treaty was a defining moment in the construction of the European Union for two basic reasons. First, it created a momentum to shape a

[*] Full Professor of Labour Law – Université Catholique de Louvain.

[1] See *inter alia*: J. KENNER, *EU Employment Law. From Rome to Amsterdam and Beyond*, Oxford-Portland, Hart Publishing, 2003, 235-266.

paradigm of labour law which is reminiscent of what Labour Law at national level is about: a set of rules applicable to employment relations which is based upon a reference to human dignity, exemplified by references to both the European Social Charter (1961) and indeed the Community Charter of Fundamental Social Rights of Workers (1989). By chance this evolution coincided with the constitutional recognition of economic, social and cultural rights in my own country (Belgium). The latter was a major *aggiornamento* of Belgium's Basic Act, ever since its adoption in 1831. Secondly, the Maastricht Treaty enshrined an important idea: "If about us, not without us" The European Commission envisaging directives in the field of Social Policy became bound by an obligation to inform and consult management and labour prior to adopting these directives and empowered these actors to produce legal precepts which had to be implemented either by means of an autonomous or a heteronomous avenue. In sum, EU social law moved away from a paradigm of a market rationale to adopt rules towards a paradigm aimed at promoting fundamental social rights of workers in their own right.

The mission to define the principles and the evolution of *EU Collective labour law* is reminiscent of a classical bifurcation and dichotomy of Labour Law at domestic level, which tended to be presented as a diptych, composed of law applicable to the individual employment relation on the one hand as well as law applicable to relations between organized workers and their employer OR between organized workers and employers' associations, depending upon the level of the industrial relations involved. Labour Law cannot be reduced to such a diptych anymore, and other panels have been added. However, collective labour law continues to be an important part of labour law, especially as an academic discipline. Hence, collective labour law at domestic level is the subject of manuals and courses in many universities. It is indeed important to distinguish between collective labour law as a part of the legal order, *id est* as a branch of law and labour law as an *academic discipline*, fit for research and teaching.

The question how to construe EU Collective labour law and how to define the principles and the evolution of EU collective labour law, necessitates *in primis* the question of its definition (see *infra*, nrs. 2 and 4) and of an issue which needs to be distinguished from the definitional issue: the question of the very existence of industrial relations at EU level (nr. 3). Last but not least, I will dwell on the setbacks and the obstacles to the development of EU Labour Law (see nr. 5).

1. *EU Collective Labour Law, an academic discipline?*

The easiest question to answer is whether EU Collective labour law constitutes an academic discipline in its own right. This question needs to be answered in a negative way, at least in my modest opinion. Signs of the academisation of EU Collective labour law might be the institution of such courses in Faculties of Law or indeed of Faculties of Political and Social Sciences. Another important indication might be the publication of specialized manuals. Thus, manuals have been dedicated to parts of EU labour law, especially those fields where a more or less consolidated body of directives has been adopted, such as non discrimination law. Although, the EU has in fact adopted a similar range of directives in the field of worker involvement, no comprehensive manual in English has been written about this very subject. The situation is more complicated for the comprehensive field of EU collective labour law, since there is no such a comprehensive set of directives covering the entire subject matter.

A rare exception which needs to be welcomed, is the recent publication of a volume, entitled *EU Collective Labour Law*, edited by Beryl ter Haar and Attila Kun, to which also Italian scholars have contributed, *inter alia* Edoardo Ales, Jacopo Senatori and Vincenzo Pietrogiovanni.[2] The title might be confusing insofar as the book also dedicates attention to other legal orders and their human rights instruments, in an attempt to understand the interaction between these legal orders and the EU legal order.

The cover of the book representing ants trying to move a giant apple suggests that the development of EU collective labour law is slow and that the challenges are difficult and require some kind of organization at least among the workers of Europe.

Instead of looking for manuals on the issue of EU Collective labour law, one might wonder whether and how EU Collective Labour Law is fleshed out *inside* manuals of EU labour law. Despite the difficulty to recognize the emergence of an academic discipline –, there might be a case to identify the emergence of a sub-discipline. However, such an exercise has also proven to be disappointing. In general, it can be said that the table of index of *some* handbooks does refer to the notion of collective labour law, whereas *others* do not try to rubricate chapters dedicated to issues of col-

[2] B. TER HAAR, A. KUN, *EU Collective Labour Law*, Cheltenham, Edward Elgar Publishing, 2021, 488.

lective labour law under such a common heading or category.[3] There is also a tendency (in those books which do refer to collective labour law) to dissociate a very important part of EU labour law, *id est* worker involvement in case of restructuring from the idea of collective labour law.[4] Furthermore, as is shown by the recent handbook on EU Collective labour law, it is difficult how to construe a chapter on collective bargaining: should it deal with the EU Social Dialogue or should it deal with the impact of EU law on domestic collective bargaining?

All in all, the overall impression is that collective labour law occupies a much more modest place in handbooks of EU labour law as opposed to its place in handbooks about domestic labour law.

2. *Beyond the discipline: the issue of industrial relations*

Let's leave the academic approach and descend to reality. Rather than defining EU Collective labour law as an academic discipline, or as a branch of law, it is important in my view to assess whether there is such a thing as industrial relations at EU level, assuming that this could be one of the objects of EU collective labour law, just as industrial relations within a Member State, could be seen as the object of domestic collective labour law. *In primis*, it is important to stress that the relation between collective labour law and industrial relations is not a *linea recta* relation. The mere fact that phenomena of industrial relations are being outlawed by a legal order will not *per se* amount to their nonexistence. Hence, combinations and strikes have occurred at times when they constituted criminal offences. Furthermore, the mere fact that a framework facilitating some phenomena exists, is no guarantee that these phenomena actually emerge. Hence, it is no secret that the mere possibility to implement agreements by means of a directive has not always amounted to the conclusion of such agreements. If the EU Commission is reluctant to adopt a genuine Social Policy agenda,

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[3] Some: C. BARNARD, *EU Employment Law*, Oxford, OUP, 2012; F. CARINCI, A. PIZZOFERATO, *Diritto del lavoro dell'Unione Europea*, Torino, Giappichelli, 2018 and K. RIESENHUBER, *European Employment Law*, Cambridge-Antwerp-Portland, Intersentia, 2012. Others: B. BERCUSSON, *European Labour Law*, Cambridge, CUP, 2009; S. SCIARRA, B. CARUSO, *Il lavoro subordinato*, Torino, Giappichelli, 2009.

[4] C. BARNARD, nt. (3); F. CARINCI, A. PIZZOFERATO, nt. (3) and K. RIESENHUBER, nt. (3).

there will be no bargaining under the shadow of the law. This shadow is even becoming less threatening, if the impression is given that the Commission will not implement sectoral agreements, resulting from spontaneous or induced bargaining. [5]

Neither will the absence of a regulatory framework constitute an obstacle to the emergence of these phenomena. Thus, agreements instituting European works councils have been concluded prior to the adoption of the EWC Directive in 1994 and despite the absence of a legal framework, the harvest of so-called transnational company agreements is rich.

All in all, it is safe to see that industrial relations have been developed both at the comprehensive level of the EU as well at a less comprehensive transnational level. Thus, industrial relations emerged at the level of multinational group of undertakings, amounting to EWC being informed and consulted and to transnational company agreements being concluded. Furthermore, agreements at sectoral and intersectoral level, hence at EU level, have been concluded within the so called European Social Dialogue. New actors have been added related to these strata of industrial relations which complement the strata within the domestic legal order: special negotiating bodies, European works councils, sectoral and intersectoral "social partners". The only phenomenon which is clearly missing or *rare nans* is the pan-European strike or the pan-European collective action, based upon a solidarity between workers active in a variety of Member States. The boycott in the *Viking* case is an example of such a solidarity, whereas in the *Laval* case, such a pan-European solidarity was missing. In *Laval*, the solidarity strike was not a secondary action.

Hence, one is dealing with an expanding *ordinamento intersindacale*, which is however only partially *rilevante* for (regulated by) the EU legal order. The question indeed arises whether the EU legal order fully regulates these phenomena. The EU legal order has taken an approach towards the development of transnational industrial relations which is partially based upon abstention, partially on promotion and only rarely on repres-

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[5] On the refusal of the implementation of the so-called Hairdressersagreement, see inter alia: F. DORSSEMONT, K. LOERCHER, M. SCHMITT, *On the Duty to Implement European Framework Agreements: Lessons to be Learned from the Hairdressers Case*, in *Industrial Law Journal*, 2019, 571-603. On the refusal of the implementation of the Landmark agreement for informing and consulting civil servants and employees of central government administrations: F. DORSSEMONT, *Shall or not shall be: That is the question*, in *European Labour Law Journal*, 2023, 448-461.

sion. It has recognized the freedom of association, (right to organize), without establishing a legal framework for the transnational exercise of such a freedom. It has developed a framework for the European Social Dialogue, without ever regulating the transnational company agreements. It has formally recognized the right to take collective action as a fundamental right, without regulating its exercise. This has not prevented the Court of Justice of the EU to restrict the exercise of the right to take collective action at transnational level on the basis of a questionable balance exercise, invoking so called fundamental economic freedoms.[6] In the field of worker involvement, the EU legislator has elaborated a framework allowing European Works Councils to be informed and consulted in undertakings and group of undertakings.[7]

3. *A broader approach to EU Collective Labour Law*

But what is EU Collective labour law? In my view, the object cannot be reduced at all to this new stratum of industrial relations. EU Labour law is not just about *transnational employment relations*, it also deals with attempts to *harmonize* national labour law and affects employment relations where no elements external to the domestic legal order can be detected. EU labour law can neither be reduced to a piece of private international law (PIL). After *Laval* some labour lawyers, including myself, have been surprised to learn that the Post of Workers directive apparently constituted a piece of PIL. This was seen as a backdrop, although PIL can also play a more constructive role, e.g. favoring the lex *locus actus* (lex locus *non laboris*) derogating from the *lex locus damni* in the case of disputes relating to the extracontractual liability of workers and trade unions resulting from the right to take collective action.[8]

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[6] CJUE, 11 December 2007, C-438/05, *Viking* and CJUE, 18 December 2007, C-341/05, *Laval un Partneri.*

[7] Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

[8] See Article 9 EC Regulation No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II). F. DORSSEMONT, A. VAN HOEK, *Collective action in labour conflicts under the Rome II Regulation*, in *European Labour Law Journal*, 2011, 48-75 and 101-118 and O. DEI-

Does EU Law also affect industrial relations at a purely domestic level? EU law does affect worker involvement, especially processes of information and consultation at the company level within domestic legal orders. Directives do not just focus on information and consultation in specific dramatic scenarios of restructuring but extend it to all kind of scenario's where managerial decisions are being envisaged affecting workers interests considerably and extending the principle of information and consultation to more recurring procedures which are both retrospective and prospective. The EWC Directive 1994/45 was a pioneering instrument in so far as it instituted a recurring kind of generic information and consultation not related to specific circumstances allowing workers' representatives to assess the past performance of the central management. This model of recurring information was copied in the Framework Directive 2002/14 (Information and consultation). The data which will be the object of the information and consultation procedure under both directives are in my view so generic that they will not allow a EWC or a local body of workers' representatives to check the underlying business strategies of the management. They rather seek to reconstruct the economic and financial situation of the group in a retrospective and prospective manner and the social impact and prospects of that financial and economic situation.

EU Labour law has also restricted the internal autonomy of trade unions preventing them from discriminating workers as members first based upon their nationality (albeit solely in a context of free movement) and outside this hypothesis of free movement on the basis of sex, race, age, sexual orientation, handicap, religion or belief.[9] EU law has also restricted their collective autonomy, rendering null and void discriminatory clauses enshrined in collective agreements.[10] One can only salute these initiatives. There is no scope for a *syndicalisme jaloux*, it should be inclusive, as long as employers are excluded. But the question does arise: whether EU law has sufficiently protected workers affiliated to trade unions against discrimination and trade unions against acts of interference by employers' associations. Until recently, the answer would have been a definitive "No, it

NERT, *International Labour Law under the Rome Conventions*, Baden-Baden, Nomos, 2017, 21-41.

[9] See Article 8 EU Regulation No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union and Directives 2006/54, 2000/43 and 2000/78.

[10] See in this respect Directives 2006/54, 2000/43 and 2000/78.

did not". The recent Directive on adequate minimum wages has provoked a seismic shift. Thus Article 4 urges member States to

> "protect workers and trade union representatives from acts that discriminate against them in respect of their employment on the grounds that they participate or wish to participate in collective bargaining on wage-setting".

Furthermore, it obliges the Member States to

> "take measures, as appropriate, to protect trade unions and employers' organisations participating or wishing to participate in collective bargaining against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration". [11]

EU Collective Labour law, just as EU Labour law, should also deal with a phenomenon of *negative integration*, when EU law, especially EU economic law, is mobilized to downgrade elements of social protection offered by the law of the Member States. The most important institution committing negative integration in this field is the CJEU. Since domestic collective labour is traditionally based upon a triad of fundamental rights, these interventions have proved more shocking than previous ones. The older examples of negative integration were less shocking for two reasons. First, the subject matters were more technical. Secondly, at times it was EU social law, more particularly the principle of equal treatment and not economic law which was being mobilized against domestic Labour law, prohibiting night work by women or subterranean work by women.

The *Viking* and *Laval* judgments have created the risk to alienate the most ardent supporters of Europe from an Integration. One does not have to be a *Bolshevik* to argue this. I was just quoting Professore Monti here. [12] Nowadays, this risk is even more harsh, due to a tendency of the CJUE to use the freedom to conduct a business to outlaw too progressive imple-

[11] Article 4 Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

[12] See A New Strategy for the Single Market at the Service of Europe's Economy and Society: "the revival of this divide has the potential to alienate from the Single Market and the EU a segment of public opinion, workers' movements and trade unions, which has been over time a key supporter of economic integration".

mentations of minimum directives,[13] as it is being used to justify direct discriminations, erroneously qualified as indirect discrimination, thus sacrificing the freedom of religion on the altar of the freedom to conduct a business.[14]

Another object of EU Collective Labour *sui generis* is definitely the issue of the law of industrial relations within the EU institutions, which is rarely studied. When the editors of a volume entitled the *CFREU and the employment relations* were concluding the volume, they had to concede that the right to strike enshrined in Article 28 was only of immediate use to the workers of the EU institutions, whereas it does not give any entitlement to the benefit of workers against their Member States, let alone against their employers.[15] The recent judgment *Aquino and others versus EP of the General Court* (29 January 2020) confirms this conclusion. It constituted good news for interpreters working for the EP, which had been requisitioned by the EP without any legal basis. The General Court considered this an unlawful restriction, hence a violation of their right to strike.[16]

4. *Setbacks and Obstacles to the development of EU Collective Labour Law*

Despite this broad conception of EU Collective labour law, it is abundantly clear this branch of law is episodic, unsystematic and spasmodic to quote Bercusson in a different context.[17] The question might arise why this is in fact the case.

The most obvious reason seems to be an explicit lack of competence of the European Union to engage in positive integration in the field of the freedom of association pay, strike and lock outs (153 § 5 TFEU). This

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[13] CJUE, 18 July 2013, C-426/11, *Alemmo Herron versus Parkwood.*

[14] See CJUE, 14 March 2017, C-157/15, *Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding versus G4S Secure Solutions NV.*

[15] F. DORSSEMONT, K. LOERCHER, S. CLAUWAERT, M. SCHMITT, *Conclusions*, in *The Charter of fundamental rights of the European Union and the Employment Relation*, Oxford, Hart, 2019, 638.

[16] General Court, 29 January 2020, T402/18, *Aquino and others versus EP of the General Court.*

[17] B. BERCUSSON, *The conceptualization of European Labour Law*, in ETUI, *Labour Law and Social Europe*, Brussels, ETUI, 2009, 594.

amounts to a dangerous lack of checks and balances, where the CJEU is free to attack national labour law dealing with these issues, without being hindered whatsoever, by a potential "revanche sur la judiciaire" stemming from the legislator. In a civilized legal order, mindful of Montesquieu, such a situation would have amounted to some form of judicial pudeur, or reluctance. Obviously, this is not a critique on the CJEU, this is just an observation.

Furthermore, one should also take into account that whereas issues of information and consultation can be regulated through qualified majority, unanimity is required in the field of the "representation and collective defence of the interests of workers and employers, including co-determination". This dissociation between collective representation and modes of workers involvement and defence of interests, is conceptually problematic. In practice, this has amounted to an approach of the EU legislature favoring indirect representation, while allowing the Member States to define which actors could be seen as workers' representatives (definition by means of a *renvoi*). The CJUE in an attempt to safeguard *the effet utile* has stressed that information and consultation directives generate an obligation to *ensure* the institution of local workers representatives.[18] Furthermore, the legislature has in fact introduced unprecedented bodies of workers representativeness such as special negotiating bodies and European Works Councils.

Last but not least, it is important to stress that the European Union needs to take into account the *diversity* of national systems of industrial relations, which seems to restrict the degree of harmonization.[19] More importantly than the way in which EU competences are fleshed out, seems to be the political willingness to shape EU Labour law. Thus, in the seventies, the EU delivered despite a paradigm of Market Integration and a condition of unanimity, whereas the *Barroso* administration adopted a cautious approach to legislative intervention. The present Commission is more proactive and uses the Pillar of Social Rights as a justification for such interventions, although not in a systematic way.[20]

Even though the mere recognition of the CFREU does not extend EU

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[18] CJUE, 8 June 1994, C-383/92, *Commission versus UK*.

[19] Article 152 TFEU.

[20] Thus, the Directive on Adequate minimum Wages refers to the European Pillar of Social Rights "right to fair wages".

competences, it is important to stress that the recognition of the three fundamental prerequisites of collective Labour law occurred fairly late! In fact, the mere absence of these foundations has prompted Lo Faro to challenge the idea that the precepts from the European social Dialogue did constitute genuine expressions of collective autonomy. [21]

However, these foundations have now been laid down and should be considered as fundamental principles. Hence, it is in my view extremely problematic that the recent Pillar on Social Rights is mute on the freedom of association and that it codifies to some extent the idea that agreements are being subjected to a test of appropriateness. [22]

In the same vein, it needs to be regretted that some rare information and consultation rights in the draft directive on Platform work do *not* apply when the worker is not considered to be a subordinated worker.

As far as the evolution is concerned of EU Collective Labour law, it is important to stress that it has always taken a lot of time. This is probably due to divergences between systems of industrial relations in the various Nation States, which are always indebted not to culture, but to history and to divergent power relations between the economic actors involved. It also depends upon the political will of the EU Commission, which reflects the political convergences or divergences in the Member States.

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[21] A. LO FARO, *Regulating Social Europe*, Oxford, Hart Publishing, 2000.

[22] Principle 8 of the European Pillar of Social Rights: "*Where appropriate, agreements concluded between the social partners shall be implemented at the level of the Union and its Member States*".

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TRADE UNIONS AND DIGITAL TECHNOLOGIES IN ITALY

Fiorella Lunardon [*]

Abstract

The increasing digitalization of work poses unprecedented challenges to labor law and worker representation. In a scenario of uncertain occupational prospects, the old boundaries between industry and services fade, as well as those between subordination and autonomy in the employment relationship. The cognitive enrichment and the empowerment of particular occupations corresponds to the de-qualification of various others, in terms of roles, rights and social power. Collective bargaining and involvement at work, together with new laws on the legal status of platform workers, represent the main levers through which the unions can exercise close control over working conditions and possibly anticipate the change.

Keywords: Digitalization; Collective bargaining; Union participation.

1. *Preliminary remarks*

The Trade Unions and the business associations are involved in the forefront of the challenge posed by the implementation of the *Recovery Plan* and the transition toward the digitalization of production systems. Given that our Constitution recognizes their direct responsibility in regulating social and labor relations, they are confronting a profound change in the strategies and practices inherited from the last century.

Decree No. 77/2021 (Article 3) instituted a specific tool for this purpose, the *Permanent economic and social partnership table*, where the major

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organizations representing society are present, together with the representatives of local authorities, regions and universities.

With this law, unique on the European scene, Italy wanted "to give stable and institutional recognition to the participation of social organizations in the implementation of the PNRR".[1]

Today the task is even more demanding than that required by the social pacts of the past, stipulated in similar moments of crisis. The goal in fact is more ambitious, because it must build the conditions to create a new model of growth and society.

So, today we have three great problems that affect our system of collective bargaining.

2. *The representativeness of the Trade Unions in the private sector*

The current division and fragmentation, "not only of trade union organizations but now even more of business organizations, have led to an ever growing number of pirate contracts concluded outside the most representative confederations".[2]

The fight against "pirate" bargaining requires first of all an identification of the representative consistency of both stipulating organizations, through the definition of certain criteria of measurement.

As is known, a first step necessary to strengthen the contractual system has been taken, for the trade union side, with the so-called TU (Unique Text) of 2014. But it has not yet been activated the definition of criteria of representativeness of the employers' organisations, despite the attempts made by the Cnel. The effectiveness of these rules can be imposed only in sectors where the organizations of the stipulating parties are sufficiently consolidated to enforce them; but not in areas where those rules are contested by different organizations that take advantage of their specific position to negotiate different terms often detrimentally.

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[1] T. TREU, *Patto per il lavoro, contrattazione collettiva e PNRR*, in *Diritti Lavori Mercati*, 2022, 1, 21.

[2] T. TREU, nt. (1), 35.

3. *The effectiveness of the collective agreements, above all those regarding the minimum wage*

Most European countries have adopted the legislative solution, while other legal systems, including the Italian one, and those of the Nordic countries, have historically preferred to use collective bargaining for this purpose.

The so called *erga omnes* extension of contracts, or at least of basic wage levels, is for some (though not for everyone) the only solution to the problem. In my opinion, the best solution is instead to strengthen collective bargaining by providing legal mechanisms that take as a reference the minimum tables contained in the national collective agreements signed by the representative parties.

In any case, an essential condition for proceeding in the direction indicated is – as I said above – to acquire unambiguous and effective criteria of representativeness of both negotiating parties.

4. *The perimeter of the category*

Still more difficult would be the intervention "in the areas of application of collective bargaining for the category, in order to ensure a closer correlation between the CCNL applied and actual business activity". However, the parties' commitment to "ensure compliance within the perimeters of collective bargaining and its contents" by preventing non-representative subjects from arbitrarily forcing these perimeters, is "an optative statement: it expresses a desire, in this case unreal".[3]

5. *The challenge of digitalization*

As regard digitalization of working conditions, we must remember the *European Social Partners Framework Agreement* stipulated between the major European Trade Unions and business confederations. This framework underlines the need to establish procedures and tools (agreed between the parties) aimed at ensuring that every use of digital technologies

[3] T. TREU, nt. (1), 39.

and artificial intelligence respects the rights of workers and the principle of human control.

In this regard, the *Proposal of the Directive for platform workers* focuses on information and consultation rights, establishing the obligation for platforms to inform and consult workers' trade unions about the algorithmic decision-making mechanisms.

It also requires digital platforms to provide information on working conditions applicable to contractual relationships.

Finally, Article 8 recognizes the right of workers to obtain from the platforms explanations that justify decisions taken by automated systems that significantly affect their working conditions and to request "human" reviews of the decisions.

The purpose of finding adequate tools to direct the use of digital technologies in the name of human control, as required by the European framework agreement, primarily challenges the innovation capacity of the social partners.

The history of our industrial relations confirms that the main innovations present in our legal systems have been the joint result of collective actions, reform interventions and support from national legislators.

In Italy, to address the digital transition, the collective bargaining highlights the importance of guaranteeing continuous training as a subjective right of the worker. In particular, the collective national agreement for metalworkers states that "the parties consider strategic the investment of companies and workers in continuous training, aimed at updating, perfecting or developing professional knowledge and skills starting from a widespread campaign to close the gap on digital skills, in close connection with the technological and organizational innovation of the production process and the work to raise awareness on environmental issues and the circular economy".

The *National Strategy for Digital Skills*, approved by the Ministry for Technological Innovation and Digitalisation on 21 July 2020, dedicates an entire chapter to the strategy for the development of citizens' digital skills because "IT culture and digital skills are essential requirements of citizenship". Although the digitalization of services generally makes it easier to exercise the related rights, in a country with a strong lack of basic digital skills it can represent a barrier to entry that limits access to services. The Skills Agenda for Europe sets the target of reaching 230 million adults by 2025, equal to 70% of the EU adult population, with at least basic digital skills.

6. *The role of Trade Unions' and workers' participation*

The digital transformation of the economy has considerable implications for working conditions and therefore for collective workplace relations. At the same time, industrial relations systems contribute to shaping the deployment of digitalization in the economy and the labour market. Digital strategies such as Industry 4.0 tend to be developed with the involvement of social partners, as experienced, for example, in Austria, Germany, Italy, Sweden and several other EU Member States.

The involvement of Trade Unions can take place through different channels: a) social dialogue and collective agreements capable of covering a wide range of aspects relating to reorganization, such as working hours, new forms of mobile work based on ICT, protection of personal data and right to disconnect, to predict and mitigate possible job losses and disproportionate impacts on women, at all levels; b) assessment of learning and training needs, knowledge sharing and collaboration between training providers and employers; c) creation of platforms for exchanging information and sharing good practices; d) participation in advisory committees on innovation, e-government, data protection and industrial policies, together with the joint design of new ICT and digitalization processes.

Scholars found that digitalization establishes itself as a process of cooperation and shared planning with employers, with the consequent production of data, ideas, feedback. Union participation and cooperation are essential elements, especially when these new agreements affect the working conditions of employees.

The aforementioned European Framework Agreement requires not so much the intervention of bargaining, but rather a participation in the logic with which artificial intelligence and algorithms are built. All applications of artificial intelligence require human control. This implies significant transformations of corporate structures and organizational forms which are destined to impact the decision-making processes of companies with a remodulation of the contents, scope and conditions of participation.

It is no longer just a question, as in the traditional perspective, of resolving distribution conflicts between the parties.

Even less will it be sufficient for workers' representatives to intervene *ex post* on the consequences of company choices. What is required, to intervene effectively on the use of digital technologies, is to bring the automatic functioning mechanisms of these systems back to the control and

orientation capacity of the people who work. Only if we address this critical point is it possible to pursue the fundamental objectives of our discipline, of protecting the fairness and quality of working relationships.

It is a real change of perspective that is imposed on all the negotiation and participatory activities of the social partners, and which also calls into question the quality and effectiveness of regulatory protections. Recent experiences have already shown how the very rapid evolution of work, typical of new economies, has made it difficult to provide adequate protection for changing working conditions. It is a chase destined to become increasingly ineffective if the focus of regulatory and collective intervention is not repositioned, not limiting it to individual forms and conditions of work that gradually emerge, but directing it to control the digital mechanisms that these conditions predetermine.

From a legal point of view, the provision of powers of control over company choices by workers' representatives would find its justification in the constitutional principle (Article 41) according to which private initiative "cannot take place in conflict with social utility and in such a way as to cause damage to security, freedom and human dignity".

The provision of a similar type of collective control in the context of smart factories presents further critical issues, compared to those faced by historical participatory experiences, due to the fact that it is directed at an aspect of managerial prerogatives, such as human resources management, which is central to businesses but becomes elusive when it is delimited by digital machines.

It would be necessary to provide shared procedures aimed at verifying the configuration and application of digital tools. The information and consultation rights of workers established by European and national standards should be strengthened in content and specified in subject matter to adapt them to the control of these tools.

Furthermore, the formula normally used according to which the necessary information from the company must be provided "in good time" to the workers' representatives should be clarified. This formula should refer to the initial configuration of the computer programs that determine the functioning of the tools, therefore prior to their actual use. With the consequence that the parties to collective bargaining, especially within companies, should act "in advance" of individual company choices to exercise these rights of information and control.

In this context, forms of direct worker participation also gain relevance both for the innovation of organizational practices and for the control of

the quality of work, despite the doubts that Italian Unions have so far expressed in this regard.

The European Directive on the qualification of platform workers, regarding the algorithmic management of employment relationships, first establishes the obligation for digital work platforms to inform workers about the characteristics of the automated systems used to monitor, supervise or evaluate the execution of work as well as to make or support decisions that significantly impact the working conditions of workers. It also specifies the form and time in which such information must be provided. Human monitoring and periodic evaluation of the impact of decisions taken or supported by automated systems on working conditions are also envisaged, with particular attention to the risks to the safety and physical and mental health of workers on digital platforms.

Digital platform workers also have the right to obtain an explanation from the platforms regarding decisions made or supported by automated systems that significantly affect their working conditions, such as to limit, suspend or close the worker's account or not to pay for the work done. In particular, digital platform workers must be guaranteed the possibility to contact a person designated by the platform to discuss and clarify the facts, circumstances and reasons for such a decision, with the right, if the explanation is not satisfactory, to request a review (Article 8). The provision concerns one of the most frequent issues, linked to the lack of transparency regarding the exclusion of workers from the use of platforms, which the right to be heard could help resolve.

Coming to collective protection, digital work platforms are required to inform and consult workers' representatives, or, in their absence, the workers themselves, regarding the algorithmic decision-making mechanisms underlying the platforms. Given the complexity of the matter, the workers' representatives or workers of the platforms concerned may be assisted by an expert of their choice (at the expense of the digital work platform if it has more than 500 workers in a Member State) (Article 9). Finally, it is specified that the obligations concerning information, monitoring and human review of significant decisions apply, except for the provisions on health and safety, also to "people who carry out work via digital platforms and who do not have an employment contract or employment relationship" (Article 10).

As seen, the limited openness regarding information and consultation of workers' representatives should be more widely developed by providing for full recognition of Trade Union organizations in relation to the intro-

duction and use of decision-making or monitoring systems. On this point, CNEL recalls among other things the provisions of the 2020 European Framework Agreement on digital work, "there is a lack... of a support perspective for collective bargaining and strategic participation in the matter of digital platforms". At the very least, in our opinion, organizational participation could be enhanced by providing moments of joint examination (company/union representatives), in order to improve the impact of digital technologies on the quality of work and on the competitiveness of companies. [4]

7. *Platform work and global market*

Furthermore, in addressing the issue of regulating platform work it is amply demonstrated that the activities of platforms and the spread of digitalization go well beyond the borders of the Union.

The instruments used for this purpose, such as the social clauses included in trade treaties and transnational collective agreements, have over time enriched and clarified their contents. But they still present limitations in the procedures for enforcing the commitments undertaken between the parties, as a consequence of the essentially contractual nature of these rules.

It also cannot be forgotten that the construction of these supranational rules, like our labor law, concerned exclusively subordinate employment relationships, underestimating (so far) the growing importance and diffusion of the various forms of self-employment. The presence of quite a few self-employed workers among those used by the platforms, even if in an undefined number due to qualification uncertainties, renders it necessary to make them the subject of specific consideration, filling the protection gaps present in almost all European states.

It is no coincidence that the ILO has repeatedly underlined the urgency to establish (at least) transparency standards and reporting obligations for all companies operating in the global market, starting with those included in the supply chains active beyond national borders. Similar transparency standards and obligations are necessary to make possible and effective the application of social rules to platform workers, at least to those who are qualified as employees under national laws.

The territoriality of the jurisdictional competences of individual states

[4] M. LAI, *Il lavoro mediante piattaforme digitali; quali tutele?*, in *Lavoro Diritti Europa*, 2022, 2, 5.

constitutes a further limit to the effectiveness of the protection of workers operating on global markets, those active in supply chains, such as now those organized by transnational digital platforms. This limit cannot be overcome with the rule on the choice by workers of the competent court, which are valid only for companies operating in Europe.

This is one of the most serious challenges posed by the globalization of business and work to the ability of our national systems to guarantee fundamental protections to workers employed by companies present in multiple national territories, both traditional companies and now platform companies. The growing supranational dimension of the activity of platform companies exacerbates problems present in traditional companies and in supply chains operating in different national territories.

Attempts to overcome the limit of the territoriality of legal systems (and therefore of the effectiveness of protection rules) have followed different paths. The French legislation of March 2017 is the first European law that imposed on large multinational companies in that country the obligation to supervise their connected units, modelled according to the UN guidelines on human rights (in terms of due diligence on these activities), and established responsibility for violations of (also) labor protection rules resulting from the activities of their units, including those operating beyond national borders. A useful tool for the same purpose has proven to be the due diligence provided for in the same UN guidelines on business and human rights, which require companies to verify the impact of their actions even beyond borders and to identify the risks posed by economic operators with whom they have commercial relationships.

But the path followed by French legislation to strengthen the effectiveness and transnational applicability of labor standards is not practicable to control the distribution and exchange of work services between companies without legally appreciable connections or links between them. And such exchanges are facilitated by digital technologies even for platform companies without ties to each other. Even this tool (due diligence) presents a similar operational limit because providing a similar obligation for platform companies operating in multiple jurisdictions presupposes an assessment and clarification of their structure and legal configuration which, as we have seen, are still undefined. However, due diligence is a soft tool, the effectiveness of which must be strengthened with other contextual and support interventions, all the more necessary to effectively direct the behavior of companies such as digital platforms, which are so different from those operating in traditional markets.

In this vacuum Trade Unions can be called to play an important role. In the field of collective labor relations the social partners create their own system of rules, tools, procedures, joint institutions, through which they govern industrial relations, providing mechanisms remedies in case of violation of the obligations. These are procedural rules typically included in the so-called obligatory part of the collective agreement, aimed at jointly establishing rules and procedures which the parties will comply with in the negotiation and implementation phase of the transnational agreement.

The difficult challenge of these agreements is played out, above all, in the relationship between the global dimension and the local dimension. Trade Unions are aware of the importance of linking the signature of the transnational agreement to a widespread dissemination of its contents among the company's branches and local workers' representatives and to the promotion of joint training for the various levels.

The main subjects of this kind of agreements are the prevention and management of conflicts at a local level, the quality of production and the improvement of productivity on a global scale. Hence the strategic importance of the local dimension for the initial reporting and handling of complaints and the resolution of conflicts, to then access the national and international level. Hence also the interest in the recognition and involvement of the Union as an interlocutor for local management.

But the traditional aggregation model based on the "synthesis of individual interests seems difficult to reconcile with the supranational dynamics of industry 4.0, which, by promoting forms of individualization and disintermediation, determines a weakening of the attractiveness of the Union itself, because of various critical profiles", as underlined by scholars: a) delocalisation of the work activity (in the absence of physical and geographical references for on-demand workers); b) impossibility of identifying professional categories, given the heterogeneity of work performances; c) difficulty in identifying production sectors relating to the digital economy (given the transversality of digital platforms); d) non-homogeneity of individual interests; e) disintermediation in employment relationships; f) international dimension of the issue".[5]

[5] R. FABOZZI, *Piattaforme digitali e diritto del lavoro*, in *Massimario di Giurisprudenza del Lavoro*, 2019, 3, 548.

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COLLECTIVE RIGHTS FOR PLATFORM WORKERS. THE ROLE PLAYED BY THE ITALIAN WORKERS' STATUTE IN A COMPARATIVE PERSPECTIVE

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Abstract

The interposition of a digital platform between consumers and workers providing services, even of a very traditional nature, has led to the creation of a (relatively) new business model, where there is an attempt to deny providers access to rights and protections typical of labour law; among these, collective rights. My intervention aims to offer a comparison between the Italian legal system, on one hand, and the American and British ones on the other, demonstrating how the former, unlike the latter, thanks to the support provided by the workers' statute to freedom and union activity in workplaces, has managed to provide the necessary tools to effectively address the aforementioned challenges.

Keywords: Platform work; Union rights; Unfair labour practices; Collective bargaining; Right to strike.

1. *Gig-Economy vs. Collective Representation*

The introduction of a digital platform between consumers and workers has given rise to what appears to be new business and work models. In these models, the relationship between the platform and service providers, who are formally considered as independent contractors, seeks to resemble a business-to-business relationship. [1]

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[1] The models of work created by the gig economy and the related issues have been extensively explored in labour law scholarship. Among the early contributions on this topic, see: V DE STEFANO, *The Rise of the "Just-in-Time Workforce": On-Demand Work,*

From the perspective of the workers involved, there is actually nothing genuinely new. Familiar, and sometimes unlawful, practices such as on-call work, piece-rate pay, labour intermediation, and interposition are evident. Similarly, the challenges are not entirely novel: workers operating through platforms are denied access to employment protections and collective rights and representation. This very aspect is the focus of the present paper. The business model fostered by these platforms is, chronologically speaking, the latest attempt to distance employing entities from unions, collective actions, and collective bargaining.

Various are the actions taken by the platforms that produce this distancing.[2] The one which emerged very clearly from the outset of the gig-economy, concerns the classification in terms of autonomy of the workers. A situation that can effectively hinder access to employment protections and a significant portion of social security rights. The collective rights, including the right to collective bargaining, have also often been excluded based on the same premise.[3] Significant are also the effects of the disper-

Crowdwork, and Labor Protection in the "Gig-Economy", in *Comparative Labor Law and Policy Journal*, 2016, 37, 471 ff.; C. CODAGNONE, F. ABADIE, F. BIAGI, *The Future of Work in the 'Sharing Economy'. Market Efficiency and Equitable Opportunities or Unfair Precarisation?*, in *JRC Science for Policy Report*, 2021, 1 ff., www.ec.europa. eu/jrc/en/publication/eur-scien-tific-and-technical-research-reports/future-work-sharing-economy-market-efficiency-and-equitable-opportunities-or-unfair (last accessed 22 September 2022).

[2] Refer to the comprehensive analyses conducted in this regard by J. PRASSL, *Collective voice in the platform economy: challenges, opportunities, solutions*, Bruxelles, 2018, 1 ff.; K. VANDAELE, *Will trade unions survive in the platform economy?*, in *ETUI Working Papers*, 2018, 1 ss.; A. FORSYTH, *The future of Unions and Worker Representation*, Oxford, 2022, 1 ff.

[3] Due to antitrust law, the establishment of mandatory minimum fees through collective agreements is considered an illegal restraint of competition, to the detriment of consumers. In the United States, this is governed by the Sherman Antitrust Act, which allows an exception, introduced by the subsequent Clayton Antitrust Act, for unions that enter into collective agreements aimed at supporting the legitimate interests of employees (the so-called labor exception). However, it was also clarified by the Supreme Court in the case of Columbia River Packers Assn., Inc. v. Hinton, 315 U.S. 143 (1942), that the exception cannot be extended to associations representing self-employed workers. The situation within the European Union is quite similar. Article 101 of the Treaty on the Functioning of the European Union prohibits such collective agreements. However, the European Court of Justice has provided a parallel exception similar to the American one in the Albany case (C-67/96 Albany International BV v Stichting Bedrijfspensioenfonds Textielindustrie, ECLI:EU:C:1999:430) where collective agreements aim to 'improve working and employment conditions' for employees. This does not apply, however, to cover collective agreements aimed at establishing minimum fees for self-employed workers, as clarified in the FNV Kunsten Informatie en Media case (C-413/13, FNV Kunsten Informatie en Media v Staat der

sion of workers in the context of virtual workplaces, where physical gathering spaces are limited and the sense of belonging to a community is hard to build. In such a situation, the sense of solidarity among workers, which has always been the foundation of collective action, is missing. In other words, there is a marked individualization of work relationships and a related trend towards self-representation. All of this is accompanied by hostile strategies towards collectivization carried out by platforms, which, as we will see, channel into well-established techniques to counteract collective representation.

For their part, trade unions are active in trying to counteract this push towards de-unionization in many countries, through collective actions, lobbying, and resorting to justice. Alongside them, various spontaneous movements have emerged, constituted by platform-based workers. As a recent study highlights,[4] ride-hailing drivers and riders organizations, contrary to what the aforementioned marked individualization of work relationships would suggest, have instead shown that they possess a certain bargaining power against the platforms. This is mainly due to the visible and disruptive effects of their protest actions, capable of capturing the attention of public opinion.

The effectiveness of such actions in relation to the strategies of individualizing work relationships pursued by the platforms is, however, highly variable. Much depends on the legal framework for union protection and support present in the national legal system in question. In Italy, thanks to the strong constitutional and statutory recognition of trade union freedom, the right to collective bargaining, and the right to strike, resistance has so far proven to be quite effective. Furthermore, a recent analysis shows that Italy is the country in the European Union that has provided the most substantial response to the phenomenon of platform-based work;[5] not only at the legislative level, but also thanks to collective bargaining and the judiciary. In other legal systems, specifically those where the platform phenome-

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Nederlanden, ECLI:EU:C:2014:2411), even when the workers in question perform activities similar to those of an employee. Unless they are deemed false self-employed workers, identifiable based on the broad concept of 'worker' elaborated by the European Court of Justice. For further reference on this concept, please see E. MENEGATTI, *Taking EU labour law beyond the employment contract: The role played by the European Court of Justice*, in *European Labour Law Journal*, 2020, 11, 26 ff.

[4] K. VANDAELE, nt. (2), 15 ff.

[5] See I. MANDL, *Initiatives to improve conditions for platform workers: Aims, methods, strengths and weaknesses*, Luxembourg, 2021.

non has spread more quickly and extensively than in ours, such as the US and British systems, collective representation struggles more to establish itself, in a context certainly not favorable to unionization.

The aim of this contribution is precisely to compare the aforementioned legal systems with the Italian one, in order to draw, at a time when various legislative measures aimed at protecting working conditions in the so-called gig economy are taking shape, useful insights for this purpose.

The choice of these legal systems is motivated by the opposing backdrop of industrial relations. Both the United States and the United Kingdom have for many decades now shown a system of typically company-based collective bargaining, weak unions without a specific institutional role, strong employer opposition to the spread of unionization, heteronomous regulation of union relations, and in particular of collective bargaining and the right to strike. In contrast, Italy is characterized by strong sector-based collective bargaining, still significant union density, a strong institutional role of the union, low institutional interference in industrial relations, accompanied by strong recognition of freedom and significant rights connected to union activities in companies primarily guaranteed by the workers' statute. As one can easily imagine, this situation is not without tangible consequences: while the United States and the United Kingdom have long embarked on a trend of declining unionization and coverage of collective bargaining; the Italian system has managed to maintain consistent and effective support in favor of collective autonomy".

The choice of these legal systems leads to a non-trivial methodological implication. Great caution is needed when evaluating the experiences of other systems when trying to use them in a, so to speak, predictive manner, that is, from a *de iure condendo* perspective. Meaning, to discard certain solutions a priori that might replicate in a certain system problems already arisen elsewhere, or the adoption of virtuous foreign experiences. Even more so with reference to the topics discussed here. According to the famous teaching of Otto Kahn-Freund,[6] the transplantation of rules within the context of collective labor relations must consider the intertwined relationship with the economic system, the peculiarities of industrial relations systems, union traditions, and business culture. A situation that subjects the transplant to a high risk of rejection.

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[6] O. KHAN FREUND, *On uses and misuses of comparative law*, in *Modern Law Review*, 1974, 37(1), 12.

However, this is not the perspective we aim to adopt in this contribution. Our approach will be the less ambitious one of promoting, through comparison, a better mutual understanding of the legal systems, in their strengths and weaknesses, which can contribute to their reform process. In this sense, the Italian experience can serve as a useful example for the Anglo-Saxon systems that will be considered, given the resilience that the collective relations system is showing in the face of the new challenges of the gig economy. The same exercise can also be beneficial for our system to understand, in light of the findings that will emerge from the comparison, whether and which adjustments might be necessary to optimize the tools available to collective representations.

I will then highlight the factors, including institutional ones, that led to the collapse of collective representation in the United States and the United Kingdom. From here, the evident challenges that platform workers faced in these contexts when they attempted to build a collective defense of their interests (§ 2). I will then move on to the Italian situation, highlighting how the constitutional and statutory defense, especially of trade union freedom, allowed an almost immediate and effective response to the challenges posed by the platforms (§ 3). This will permit some comparative conclusions (§ 4).

2. *The decline of collective representation in UK and US*

The United States arguably has the most cumbersome system for supporting collective representation among Western legal systems, which has inevitably also encompassed the new challenges of the platform economy.

The National Labor Relations Act (NLRA) of 1935 remains the regulatory framework for supporting trade unions and collective bargaining. The federal legislative intervention historically had the task of bringing democracy into workplaces after years of persistent oppression, better known as the Lochner era.[7] The original intent was to eradicate yellow unions, en-

[7] This label refers to the period between 1905 and 1935 when, starting with the Lochner case, the U.S. Supreme Court invalidated more than 150 legislative provisions aimed at protecting working conditions and enabling worker unionization. These laws were deemed unconstitutional because they were seen as infringing on the principle of contractual freedom. For example, federal laws that prevented the dismissal of workers due to union membership and national laws prohibiting collective agreements with convenience unions were

suring the authenticity of company trade union representatives, within a framework that supported exclusively company-level collective bargaining. To this end, there was an attempt to promote the establishment, through the so-called ballot system, of a trade union representation supported by the majority of workers in the bargaining unit (which roughly corresponds to our production unit). [8]

The requirement for a company vote, coupled with the absence of sector-wide collective bargaining, have emerged as the biggest hindrances to the spread of bargaining, which now covers an extremely low percentage, generally estimated at around 11% (below 10% when considering only the private sector). The need to call an election and obtain a majority of votes there has historically allowed employers to interfere with hostile strategies. The list of aggressive employer practices, aimed at preventing the ballot in the first place and discouraging union affiliation, is long. These range from better treatment for those who are not unionized or protest, the ability for employers to spread anti-union messages, to threats of company closure. Defending the union is very challenging. The system to prevent so-called unfair labor practices, while present in the NLRA framework, has in fact never really worked. [9] Thanks to a distinctly pro-employer interpretation by the National Labor Relations Board, the federal agency responsible for administering the NLRA, the widespread practice of employers organizing meetings with staff where anti-union messages are conveyed, without any form of counter-argument, has been legitimized. Unions, on the other hand, do not have access to meetings with workers during working hours. This has been justified on the basis of the constitutional recognition of freedom of speech (on the employer's part) and the protection of private property (specifically, the company), which is intended to prevail over union activity in the workplace. [10] Even where workers have managed to establish collective representation, employers have not failed to further effectively obstruct collective negotiations. Artfully raised disputes about the validity of the elections, negotia-

considered unconstitutional. For more information on this topic, see P. SECUNDA, *Sources of Labor Law in the United States: Contract Supra Omnis*, in T. GYULAVARI, E. MENEGATTI (eds.), *The Sources of Labour Law*, The Hague, 2020, 389 ff.

[8] For a description of the representation system created by the National Labor Relations Act, please refer to A. COX, D. BOK, R. GORMAN, M. FINKIN, *Labor Law*, New York, 2011, 79 ff.

[9] A. COX, D. BOK, R. GORMAN, M. FINKIN, nt. (8), 214 ff.

[10] A. FORSYTH, nt. (2), 20.

tions conducted in bad faith solely to delay, and even outsourcing the work performed in the bargaining unit. [11]

As one can easily predict, the gig-economy, since workers are dispersed and communicate less easily with unions and among themselves, has made it even easier for platforms to hinder unionization. Right from the outset, by leveraging the legal angle of the formally non-subordinate nature of relationships, it was not hard to exclude the right to collective bargaining by referring to competition law. In fact, under the guidance of the Trump administration, the NLRB has expressly ruled out that Uber drivers can fall under the scope of the NRLA. [12]

However, this was not enough to stop the workers' claim for the right to representation and collective bargaining. Taking advantage of the pressure power that, as mentioned, comes from combat initiatives, spontaneous organizations of Uber drivers, with the support of the traditional union, managed to obtain from the City of Seattle an ordinance in 2015, which recognized their ability to establish collective representations and thus negotiate collectively with the platform, even if classified as self-employed workers. However, the ordinance was successfully challenged by the U.S. Chamber of Commerce in a federal court, which recognized the violation of competition law. [13]

Again, employers have shown a remarkable and immediate ability to respond. This response was facilitated by the weak protection granted to strikes by North American law. For example, the practice of replacing striking workers was easily enabled. So much so that platforms can disconnect workers involved in protest actions and simultaneously increase rates to attract workers who only occasionally work. [14]

The counter-strategies of the platforms also go through actions to disrupt autonomous movements, seeking support from the "softer" traditional unions. This happened in California where a union agreed to support Uber in proposing a bill that, on the one hand, recognized rights for drivers, but on the other accepted their status as independent workers; this an-

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[11] S. GREENHOUSE, *Beaten down. Worked up: The past, the present, and the future of American labor*, New York, 2019, 137-139.

[12] L. MISHEL, C. MCNICHOLAS, *Uber drivers are not entrepreneurs*, Economic Policy Institute (20 September 2019).

[13] Ninth Circuit Court of Appeals, *Chamber of Commerce v City of Seattle* 890 F3d 769 (9th Cir 2018).

[14] S. GREENHOUSE, nt. (11), 137-139.

gered a spontaneous organization (Rideshare Drivers United). Something similar happened in the state of New York, where a drivers' association (Independent Drivers Guild) had accepted a similar agreement, always implying the classification in terms of independent work, also raising many suspicions, given a funding received from Uber. [15]

Very similar events have occurred in the United Kingdom. By the early '70s, the era of so-called collective laissez-faire had ended [16] – when the legislature chose to delegate the regulation of labor relations to collective bargaining without interference. From 1971, in order to limit unionization and strikes following the social unrest of the late '60s, the decision was made to regulate the recognition of unions and collective bargaining with procedures similar to the American ballot. [17] Policies to contain union action were further strengthened under the conservative government led by Margaret Thatcher. [18] Even at the end of the two decades of conservative rule, with the electoral victory of Tony Blair's new labour, the situation changed little, despite the electoral promise of restoring rights to unions. [19]

Today, the British legal system still struggles to fully and effectively protect the freedom and activity of trade unions. A significant example is the discrimination based on individual workers' union activism who are not members of a union. The Trade Union and Labour Relations Act of 1992 (TULRCA) protects, under Article 137, union members who are denied employment for that reason. [20] A questionable ruling by the House of Lords proposed a literal interpretation of the text, excluding that the protection could also extend to the analogous employer refusal in the face of mere trade union activism demonstrated by workers (regardless of their affiliation with a union). [21] It took a ruling by the European Court of Human

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[15] S. GREENHOUSE, nt. (11), 83.

[16] O. KAHN-FREUND, *Labour Law*, in M. GINSBERG (ed.), *Law and Opinion in England in the 20th Century*, Stevens and Sons, 1959, 224.

[17] See M. DOHERTY, D. MANGAN, *The sources of labour law*, in T. GYULAVARI, E. MENEGATTI (eds.), nt. (7), 374.

[18] See P. DAVIES, M. FREEDLAND, *Towards a Flexible Labour Market*, Oxford, 2007, 2.

[19] Please see the critical analysis of the actions of the Blair government by A. GIDDENS, *The Third Way: The Renewal of Social Democracy*, Cambridge, 1998, 163.

[20] Cfr. Z. ADAMS, C. BARNARD, S. DEAKIN, S. FRASER BUTLIN, *Deaking and Morris' labour law*, Oxford, 2021, 919 ff.

[21] *Wilson v. Associated Newspaper Ltd* [1995] 2 AC 454.

Rights [22] and a couple of amendments to the 1992 law to achieve protection that still fails to provide full and effective defense against discrimination on trade union grounds. [23]

In the United Kingdom, as in the United States, there are procedures to suppress unfair labour practices related to ballots. [24] The protection, however, is limited only to direct practices, such as attempts to bribe workers or direct threats. Indirect practices, which are quite common, such as facilitating the establishment of a representation or simply a forum of workers "close" to the employer, setting up anti-union campaigns in the workplace, or artfully raising legal disputes about the validity of the ballots, are not considered. The TULRCA still provides for emergency remedies for further specified anti-union initiatives, such as in the case of dismissal for union reasons, for which there is also an order for the reinstatement of the unjustly dismissed worker. However, both the limited scope of the procedure (only the case of dismissal) and the fact that the judge's order can be disregarded by the employer until a regular decision has been made by the court, significantly limits its effectiveness. [25]

It is not surprising, therefore, that the decline in collective bargaining coverage has also been accompanied by a decline in recourse to the arbitration body that oversees anti-union practices. [26] This seems like a union's surrender in the face of overwhelming employer power. Added to this, the right to strike, just as in the United States, has limitations that make it practically unfeasible. Specifically, through a Conservative Government intervention in 1982, a vote by workers was required before legally proclaiming a strike, within a lengthy, costly, and challenging administration procedure. [27]

In terms of the gig-economy, despite the highlighted challenges, some

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[22] *Wilson and Palmer v. United Kingdom* [2002] ECHR 552.

[23] The reference is to the provisions of the Employment Relations Act of 1999 and 2004. For a comprehensive examination of this issue, please refer to H. COLLINS, K.D. EWING, A. MCCOLGAN, *Labour Law*, Cambridge, 2019, 491 ff.

[24] The procedure is described and analyzed in detail by H. COLLINS, K.D. EWING, A. MCCOLGAN, nt. (23), 587 ff.

[25] Regarding this matter, please refer to the commentary on the case of *Thomas v. London Underground Ltd*., Case No. 2358477/2010 e *Lynch v. London Underground Ltd*., Case No. 2330511/2010 by H. COLLINS, K.D. EWING, A. MCCOLGAN, nt. (23), 506.

[26] A. FORSYTH, nt. (2), 215.

[27] The regulation is now contained in the TULRCA 1992, in Section 219. For an analytical description of the procedure, please refer to v. Z. ADAMS, C. BARNARD, S. DEAKIN, S. FRASER BUTLIN, nt. (20), 965 ff.

results have been achieved by unions and spontaneous movements. An example is the case of Hermes, a courier company that uses a platform based on the gig-economy model, which was forced to start collective negotiations.

However, even here, there were employer counter-reactions, very similar to their counterparts overseas. Thus, the establishment of a collective representation for company negotiations was effectively obstructed by invoking the "independent" status of the involved workers. An independent union, Independent Workers Union of Great Britain (IWGB), widespread among the riders, tried to get the Deliveroo platform to recognize a company representation.[28] To this end, they relied on the broad concept of 'worker' present in the British legal system, roughly corresponding to quasi-subordinate workers.[29] For workers, a whole series of rights are in fact recognized, including, precisely, the right to collective bargaining.

However, the central arbitration committee denied such recognition, due to the substitution clauses present in their contracts.[30] A conclusion also shared by the subsequent ruling of the High Court, following the complaint brought by the IWGB,[31] despite in practice such clauses being nothing more than a fiction, since they are never used by the workers; therefore, a ruse designed to artfully deprive workers of their 'workers' status.[32] An interesting aspect of the situation is that, while waiting for the Supreme Court's ruling on the matter in the appeal proposed by the union against the High Court's decision, Deliveroo concluded a collective agreement with another union (GBM), aimed at recognizing some rights for the riders, but combined with the recognition of their status as self-employed workers. This was enough to paralyze the stipulation of the new agreement that IWGB was ready to negotiate with Deliveroo, if the Supreme Court

[28] Please refer to the complete account of the incident on the labor union organization's website at https://iwgb.org.uk/en/post/iwgb-takes-deliveroo-to-supreme-court/ (Last accessed 4 October 2022).

[29] See N. COUNTOURIS, *The Changing Law of the Employment Relationship. Comparative Analyses in the European Context*, Farnham, 2007, 71 ff.

[30] Central Aritration Committee (CAC), *Independent Workers Union of Great Britain v RooFoods Ltd T/A Deliveroo* [2018] IRLR 84.

[31] High Court, *(on the application of The Independent Workers Union of Great Britain) v Central Arbitration Committee and RooFoods Ltd t/a Deliveroo* [2018] EWHC 3342.

[32] See J. ATKINSON, H. DHORAJIWALA, *IWGB v RooFoods: Status, Rights and Substitution*, in *Industrial Law Journal*, 2019, 38(2), 292.

had confirmed the 'workers' status of the couriers. Once again, this reflects an unfair attitude from the platform, which the British system failed to counteract.

From what has just been described, a picture emerges, both in the United States and in the United Kingdom, where laws that, in principle, intended to promote genuine union representation have instead been easily exploited by companies to undermine union action and collective bargaining. An apparent unintended consequence that, perhaps, is not so unintended after all, given that this was probably the desired effect by the governments that promoted such a legislative framework.

3. *The Italian framework supporting freedom and union activity*

It is easy to see how Italy offers a much more encouraging framework for the development of unions and collective bargaining compared to what has just been described. The difference is clearly marked, starting from the constitutional recognition of trade union freedom, unhindered by any authorization (Article 39, paragraph 1) and the right to strike, with limits set by law (Article 40) and in fact not particularly invasive. This recognition is then brought into the company by the Workers' Statute,[33] through a set of rules that has proven effective, even over time.

The statutory framework has shown a good ability to adapt to changes in production systems and work, most recently the fragmentation and dematerialization brought about by platform-based work. This, even though it was conceived with reference to a completely opposite model: a productive context, the factory, which besides being a closed system, where the entire production cycle was completed, represented a physically tangible gathering space, where full-time and permanent workers were employed.

This capability of the Statute clearly emerges when compared to the other legal systems considered here. It has been highlighted above how the main obstacle in the United States and the United Kingdom that stood between unions and access to workplaces, especially fragmented ones, is the formalized ballot system. On the other hand, the same problem did not replicate in our system because of the broad and flexible recognition in fa-

[33] For the role of the Workers' Statute, please see the historical contributions by G. GHEZZI, G.F. MANCINI, L. MONTUSCHI, U. ROMAGNOLI, *Commentario allo Statuto dei lavoratori*, Bologna, 1981; M. GRANDI, *L'attività sindacale nell'impresa*, Milano, 1976.

vor of trade union freedom. This freedom is in fact guaranteed also to organizational forms that do not have an associative character. Both Article 39 of the Constitution and Article 14 of the Workers' Statute refer to the "organization" of a trade union nature without postulating either the presence of a particular organizational structure or the necessarily permanent nature of the workers' coalition; and without even giving importance to the qualification of relationships. [34]

It also finds recognition in the Italian legal system the right of workers to join trade unions at individual workplaces, [35] which is totally missing in the UK and US. And this freedom is protected against discriminations for reason of union affiliation, as per Article 15 of the Workers Statute. It is a broad-spectrum coverage that aims to preserve employees not only from the typical acts specifically indicated by the regulation, such as scenarios involving participation in a strike, refusal of employment, or dismissal due to union affiliation (or non-affiliation); but also against any form of unilateral or bilateral act, including omissive ones. All of this is complemented by the provisions of Article 16, which aims to prohibit employers from granting collective economic treatments of a discriminatory nature based on workers' 'union' behavior. Thus, preferential treatments granted to workers who have not engaged in strikes or participated in assemblies are prohibited. This situation, as we have seen, occurs with some regularity in the United States and has also reemerged during recent platform worker protests.

To tell the truth, due to functional limitations of the provisions in Articles 15 and 16 of the Labor Code, judicial applications of these provisions have been somewhat rare. [36] However, this does not mean there has been a lack of protection against anti-union practices. In fact, these practices have more frequently and effectively been countered through the instrument provided by Article 28 of the Workers' Statute.

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[34] G. GIUGNI, *Diritto sindacale*, Bari, 2014, 263 f.

[35] See F. CARINCI, R. DE LUCA TAMAJO, P. TOSI, T. TREU, *Diritto del lavoro*, vol. 1, *Il diritto sindacale*, Torino, 2018, 157.

[36] For further insights on this matter, please also refer to F. CARINCI, R. DE LUCA TAMAJO, P. TOSI, T. TREU, nt. (35), 159, where they highlight that the primary reason for the lack of success can be attributed to the inadequacy of the traditional nullity penalty, which in practice is reduced to compensation. Moreover, this compensation is entirely ineffective when it comes to omissive discriminatory acts, such as selectively granting benefits. The nullity of the act that grants the benefit does not automatically extend to all workers. Finally, there is the issue of the individual nature attributed to the action, making it unsuitable for addressing typically collective situations like discrimination.

In addition to the simple recognition of trade union freedom, which we can consider as the 'baseline' level of protection, specific legal situations are outlined in the Workers' Statute under its Title III. These provisions impose genuine cooperation obligations on the employer, often to the detriment of the organizational needs of the company, thereby sidestepping the issue of power dynamics within the company. This very circumstance constitutes a significant barrier to workers' representation and collective action in ultra-liberal systems.

Some selectivity, yet nothing comparable to the UK and US legal systems, involves the right of workers to establish company-level union representatives (Article 19). These representatives are empowered to convene assemblies (Article 20), even during working hours, with a corresponding obligation on the part of the employer to cooperate or at the very least refrain from interference, including the participation to the assembly. This is sufficient to outlaw practices in our system that are allowed in the United States, where employers are free to target workers with anti-union messages and restrict unions from organizing meetings during working hours.

The framework is further complemented by the employer's obligation to provide premises for workers' representative bodies (Article 27), the right to post notices (Article 25), the guarantee of conducting proselytizing and collections (Article 26), union leave and detachments (Articles 23 and 24), the ability to organize a referendum among workers (Article 21), and restrictions on the transfer of members of workers' representative bodies (Article 22).

However, what appears to be the greatest strength of the Italian legal system, when compared to the American and British frameworks, is the mentioned safeguard regarding union activities within the company, guaranteed by the provisions related to the repression of anti-union conduct outlined in Article 28 of the Workers' Statute. It is not by chance that this provision is commonly referred to as the 'linchpin' and 'closing' norm of the statutory framework, capable of giving practical effectiveness to the rights recognized therein.[37] The tool placed in the hands of the union by the statutory legislator has proven, thanks to its well-designed structure, which is inherently open and teleologically determined, to cover the entire range of legal interests related to the union (freedom and union activity,

[37] For the significance of the tool provided by Article 28 within the statutory framework of freedom and trade union activity, please see T. TREU, *Condotta antisindacale e atti discriminatori*, Milano, 1974.

the right to strike). It has demonstrated a remarkable ability to encompass all the forms that anti-union employer actions can take.

A clear and recent example comes from a legal case related to digital labour platforms. The reference is to the dispute that arose following the signing of a collective agreement between UGL and Assodelivery under the Legislative Decree of September 3, 2019, No. 101 (converted into Law No. 128 on November 2, 2019). Through this agreement, the platforms attempted to defuse the effects of the regulations concerning riders, particularly those related to the classification of employment relationships and, above all, the workers' compensation system.[38] Although with different lines of argument, both the Bologna court, in a decree dated June 30, 2021,[39] and the Florence court, in a judgment dated November 24, 2011, No. 781[40] (in opposition to the judgment issued by the same court on February 9, 2021),[41] recognized the anti-union nature of Deliveroo's conduct in applying the aforementioned collective agreement to riders and ordered the platform to cease its application.

In a nutshell, the Italian legal system has proven capable of countering all those situations that in the United States and the United Kingdom have led to the almost complete annulment of unionization, even in platform work. Just think of the mentioned practices of direct communica-

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[38] For a comprehensive overview of the situation involving the national collective labour agreement for riders, please refer to the authoritative comments by F. CARINCI, *Il CCNL rider del 15 settembre 2020 alla luce della Nota dell'Ufficio legislativo del Ministero del lavoro spedita a Assodelivery e UGL, firmatari del contratto*, in *Lavoro Diritti Europa*, 2021, 1 e di M. TIRABOSCHI, *Il CCNL Assodelivery-UGL Rider: le ragioni della contesa politico-sindacale e le (distinte) problematiche giuridiche che questo accordo solleva*, in *Bollettino Adapt*, 28 settembre 2020, n. 35, https://www.bollettinoadapt.it/il-ccnl-assodelivery-ugl-rider-le-ragioni-della-contesa-politico-sindacale-e-le-distinte-problematiche-giuridiche-che-questo-accordo-solleva/ (Last accessed 22 September 2023).

[39] https://www.wikilabour.it/wp-content/uploads/2021/07/20210630_Trib-Bologna.pdf (last accessed 22 September 2023). See also the comments to the judgment by G. FAVA, *Tribunale di Bologna e CCNL Riders: un'analisi al di là di apodittiche prese di posizione*, in *Lavoro Diritti Europa*, 2021, 3 e) e E. PUCCETTI, *CCNL Rider: Dalla carenza di "valido potere negoziale" all'antisindacalità della sua applicazione*, in *Lavoro Diritti Europa*, 2021, 3.

[40] https://www.dirittoantidiscriminatorio.it/app/uploads/2021/11/Trib.-Firenze-sent.-7812021.pdf (Last accessed 22 September 2023).

[41] https://www.wikilabour.it/wp-content/uploads/2021/02/20210209_Trib-Firenze.pdf (Last accessed 22 September 2023) and the comment by G. PELLACANI, *Il Tribunale di Firenze, la Cgil, i riders e altre vicende. L'ordinamento "intersindacale" è arrivato al capolinea?*, in *Working Paper Adapt*, 2021, n. 14.

tion between employers and employees aimed at bypassing or openly discrediting union intermediation. Or even the more direct threats of retaliation against those who vote in favor of unions in ballots, or the outsourcing of company activities, replacing striking workers, and raising rates on protest days.

4. *Conclusions: Towards Union Freedom 2.0*

The message that the comparative analysis conveys is that, in the face of the challenges to collective representation posed by the platform economy model, national legal systems must appropriately move towards a widespread and effective recognition of trade union freedom and the right to collective bargaining. These rights can only receive genuine protection if they are safeguarded by an effective procedural tool for repressing both direct and indirect anti-union conduct.

This recognition should take into account the necessary adaptations regarding the transformations affecting collective representation in virtual and dispersed work environments, as well as the new opportunities provided by digitalization in terms of both union activities and hostile employer conduct. Even in cases where, as in Italy, adequate union rights are already recognized, they still presuppose the presence of physical spaces.[42] Just think of the right to assembly, premises for workers' representative bodies, and the right to post notices. Even an evolving interpretation of the Workers' Statute could lead to the legitimization of new forms of exercising these rights. For example, through virtual communication tools between unions and workers, such as email messages, virtual meeting rooms, and so on.[43] In fact, there are already practical experiences where these rights have been recognized in digital form.[44]

What is emerging from practical experience shows that the issue is not so much adapting traditional union rights to new technologies but the fact

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[42] M. MAGNANI, *Nuove tecnologie e diritti sindacali*, in *Labour & Law Issues*, 2019, 5(2), 6.

[43] A. DONINI, *Il luogo per l'esercizio dei diritti sindacali: l'unità produttiva nell'impresa frammentata*, in *Labour & Law Issues*, 2019, 5(2), 98 ss. e R. DI MEO, *I diritti sindacali nell'era del caporalato digitale*, in *Labour & Law Issues*, 2019, 5(2), 71 ss.

[44] An example is the recent company supplementary agreement entered into between Takeaway.com Ex-press Italy and Filt, Fit, and Uil Trasporti, and in particular its article 22. For a commentary on the provisions regarding union rights of the agreement, see R. DI MEO, *Union Rights (Article 22)*, in *Labour & Law Issues*, 2021, 7(1), 205 ff.

that the right to assembly and, more generally, other traditional communication tools between unions and employees are now outdated compared to digital communication tools. In all the legal systems considered, it has been observed that the dispersion of workers is already being countered, even by those who do not have access to traditional union rights, using the same technological means employed by the platform. Thus, with a fair degree of success, spontaneous movements of platform workers have self-organized, especially through social media, for the purpose of undertaking collective actions. [45]

This situation is not surprising. As is well-known, forms of unionism are an adaptation to the surrounding economic environment. Hence, the inevitable transformation. Indeed, if it is true that traditional unions are a product of the economic model of the 20th century, it is easy to foresee that collective representation in the gig economy will largely rely on new forms of organization. [46] This strongly suggests the need for an adaptation of current legislation, even in countries that already support collective action without reservations. An adaptation aimed not only at recognizing, as mentioned earlier, the virtual exercise of union rights but, more importantly, at expanding, where appropriate, the scope of their use. More specifically, beyond wage employment and, in our case, even beyond the scope of workers' representative bodies. [47] Only in this way can their obsolescence be prevented, at least with regard to the new jobs created by platforms.

In this sense, the recent proposal for a directive on platform work also seems to be moving forward. [48] Article 15 of the proposal expressly re-

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[45] M. MAGNANI, nt. (42), 5.

[46] P. TULLINI, *L'economia digitale alla prova dell'interesse collettivo*, in *Labour & Law Issues*, 2018, 4(1), 1 ff.; G.A. RECCHIA, Alone in the crowd*? La rappresentanza e l'azione collettiva ai tempi della sharing economy*, in *Rivista Giuridica del Lavoro*, 2018, I, 144 ff.; A. LASSANDARI, *Problemi di rappresentanza e tutela collettiva dei lavoratori che utilizzano le tecnologie digitali*, in *Quaderni della Rivista Giuridica del Lavoro*, 2017, 59 ff.; L. IMBERTI, *La nuova "cassetta degli attrezzi" del sindacato tra spazi fisici e luoghi digitali: l'esperienza di Toolbox Cgil di Bergamo*, in *Labour & Law Issues*, 2019, 5(2), 115 ff.; S. BINI, *Appunti sulla rappresentanza sindacale dei* contingent workers, in C. ALESSI, M. BARBERA, L. GUAGLIANONE (eds.), *Impresa, lavoro e non lavoro nell'economia digitale*, Bari, 2019, 575 ff.

[47] F. MARTELLONI, *Quali diritti sindacali per le* Unions *dei* riders*?*, in *Labour & Law Issues*, 2021, 7(1), 211 ff.; A. DONINI, nt. (43), 106 ff.

[48] For a comment to the Directive proposal see V. DE STEFANO, *The EU Commission's*

quires Member States to ensure that digital labor platforms enable individuals working through digital platforms, regardless of the classification of their relationship, 'to contact and communicate with each other and to be contacted by representatives of individuals working through digital labor platforms through the digital infrastructure of digital labor platforms or through equally effective means'. The recognition of this right is accompanied by the corresponding obligation for platforms to refrain from accessing or monitoring such communications.

In any case, as highlighted, the primary limitation to collective interest defense in the United States and the United Kingdom is not so much the recognition of union rights as outlined in Title III of the Workers' Statute. Instead, it is the protection of union freedom in its most basic form. What is missing, in contrast to the Italian legal system, is the support for union association in various forms it can take in the workplace, the recognition of the right to undertake collective actions without formalities that make it excessively difficult, even preventing its use. In short, the conditions for the widespread adoption of genuine collective bargaining are not present. Just consider how in Italy, unlike in Anglo-Saxon countries, the right to collective bargaining, despite being controversial in light of EU competition law,[49] does not appear to have been seriously questioned so far, also considering the strong constitutional support.[50] Moreover, it is the legisla-

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proposal for a Directive on Platform Work: an overview, in *Italian Labour Law e-Journal*, 2022, 15(1), 1; A. ALAIMO, *Il pacchetto di misure sul lavoro nelle piattaforme: dalla proposta di Direttiva al progetto di Risoluzione del Parlamento europeo. Verso un incremento delle tutele?*, in *Labour & Law Issues*, 2022, 8(1), 1; M. BARBIERI, *Prime osservazioni sulla proposta di direttiva per il miglioramento delle condizioni di lavoro nel lavoro con piattaforma*, in *Labour & Law Issues*, 2021, 7(2), 1; P. TULLINI, *La Direttiva Piattaforme e i diritti del lavoro digitale*, in *Labour & Law Issues*, 2022, 8(1), 43.

[49] See the well-known judgements CJEU, C-256/01 *Debra Allonby v Accrington & Rossendale College, Education Lecturing Services, trading as Protocol Professional e Secretary of State for Education and Employment*, ECLI:EU:C:2004:18 and CJEU, C-413/13 *FNV Kunsten Informatie en Media v Staat der Nederlanden* ECLI:EU:C:2014:2411. On the latter the comment by P. ICHINO, *Sulla questione del lavoro non subordinato ma sostanzialmente dipendente nel diritto europeo e in quello degli stati membri*, in *Rivista Italiana di Diritto del Lavoro*, 2015, 2, 566 ff.

[50] P. LOI, *Il lavoro autonomo tra diritto del lavoro e diritto della concorrenza*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 2018, 4, 843 ff.; P. TOMASSETTI, *Il lavoro autonomo tra legge e contrattazione collettiva*, in *Variazioni in Tema di Diritto del Lavoro*, 2018, 3, 737; A. PERULLI, *Il lungo viaggio del lavoro autonomo dal diritto dei contratti al diritto del lavoro, e ritorno*, in *Lavoro e Diritto*, 2017, 2, 251 ff.

tor itself that, as mentioned above regarding the collective agreement signed by UGL, has explicitly recognized it in favor of riders in Legislative Decree No. 101/2019 (converted into Law No. 128/2019).

A right that can also be found in other European countries. For example, in France, where the law dedicated to platform workers recognizes the right to collective bargaining for workers who are considered independent. However, this right is primarily supported by international law. The jurisprudence of the European Court of Human Rights is significant in this regard. Starting with the reversal of its stance in the Demir and Baykara v. Turkey judgment,[51] the European Court of Human Rights has placed trade union freedom, the right to collective bargaining, and the right to strike within Article 11 of the European Convention on Human Rights (ECHR), considering them instrumental rights for the protection and guarantee of human rights in a context of weak contractual labor. In the same direction, a well-known opinion of the European Committee of Social Rights has also leaned.[52]

The European Union is also taking significant steps in this direction. Through an initiative parallel to the proposal for a directive on platform work, it aims to provide guidelines on the application of EU competition law to collective agreements determining working conditions for self-employed workers who provide personal services.[53]

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[51] HCHR, 12 novembre 2008, *Demiter e Baykara c. Turchia*, [GC] No. 34503/97.

[52] ECSR, *Irish Congress of Trade Unions (ICTU) v. Ireland*, Complaint No. 123/2016.

[53] European Commission, *Guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons*, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5796 (Last accessed 22 September 2023).

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THE EUROPEAN FRAMEWORK AGREEMENT ON DIGITALISATION: CHALLENGES AND PRIORITIES DURING ITS IMPLEMENTATION

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Abstract

Digital transformation of work is an unstoppable phenomenon, and a "multifaceted topic". Platform and remote work and data manipulation are only aspects of the whole picture, creating new challenges for public stakeholders. The more the world of work changes, the more industrial relations are stimulated to cope with it. With this aim, European social partners have responded to the impact of digitalization on the labour market, with the adoption of the "European framework agreement on digitalization" (EFAD). The essay aims at understanding and analysing the implementation of such act at national level, looking for different patterns of interventions, threats and opportunities.

Keywords: European Social Partners; Social Dialogue; Digitalisation; Artificial Intelligence; Implementation; Skills.

1. *Preliminary remarks*

The relentless progression of technology has the power to generate irreversible changes in various aspects of people's lives. As new technolo-

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gies and devices continue to shape our routines and behaviours, the digitalisation process is increasingly influencing the world of work. The advent of mobile communications, the ability to work remotely and at any time, and the growth of the gig economy have brought about numerous benefits for employers, workers, and jobseekers, particularly in terms of job opportunities.

However, alongside these advantages, the "digital transition" also presents risks and challenges for any player in the world of work.[1] Concerns such as the potential obsolescence of certain job roles, the implications for worker's dignity and privacy arising from the use of technology and artificial intelligence in employment relationships, data manipulation, the impact on work-life balance for remote workers and the unknown challenges coming from the Metaverse[2] are among the worrisome aspects associated with digitalisation and technologies.

As the world of work undergoes continuous change, industrial relations are increasingly stimulated to respond and adapt. In this dynamic context, the involvement of social partners can prove to be beneficial for both workers and employers, providing positive support during the digital transition and facilitating the successful integration of digital technologies while mitigating potential consequences.

To address the challenges arising from this ongoing transformation of work, the European social partners have taken action by adopting the "European Framework Agreement on Digitalisation" (hereinafter referred as EFAD).[3] This agreement tackles an issue that has been on the legislative

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[1] Among the others, please consider the essays published in E. MENEGATTI (eds.), *Law, Technology and Labour*, Bologna, Italian Labour Law e-Studies, 2023, 1-274, https://illej.unibo.it/pages/estudies.

[2] A deep analysis of the Metaverse has been published in a thematic issue of the *Italian Labour Law e-Journal*, https://illej.unibo.it/issue/view/1191. *See* M. BIASI, *Guest Editorial. The Labour Side of the Metaverse*, in *Italian Labour Law e-Journal*, vol. 16, 1, 2023, I-X; D. MANGAN, M. NOGUEIRA GUASTAVINO, *The metaverse matrix of labour law*, in *Italian Labour Law e-Journal*, vol. 16, 1, 2023, 13-27.

[3] For a deep evaluation of the coexistence of the European Framework Agreement on Digitalisation please refer to I. SENATORI, *The European Framework Agreement on Digitalisation: a Whiter Shade of Pale*, in *Italian Labour Law e-Journal*, 2, vol. 13, 2020, 159-175; L. BATTISTA, *The European Framework Agreement on Digitalisation: a tough coexistence within the EU mosaic of actions*, in *Italian Labour Law e-Journal*, 1, vol. 14, 2021, 105-121; A. ROTA, *Sull'Accordo Quadro europeo in tema di digitalizzazione del lavoro*, in *Labour & Law Issues*, 2, vol. 6, C.23-C.48; M. PERUZZI, *Il dialogo sociale europeo di fronte alle sfide della digitalizzazione*, in *Diritto delle Relazioni Industriali*, 4, 2020, 1213-1219.

and political agenda since 2000. The EFAD concluded on the 22 of June 2020 is intended to serve as the foundation for joint activities aimed at adapting to the rapid evolution brought about by digitalisation and automation of work in the context of industrial relations. As will be deeply analysed in the following paragraph, the EFAD is an autonomous cross-industry agreement established under Article 155 of the Treaty on the Functioning of the European Union (TFEU). It does not originate from a legislative initiative by the European Commission or by the European Parliament and does not require any implementation by the Council. Instead, it has the "the purpose of being an agenda to guide national social partners in the field of digital transformation of work".[4]

With this aim, the EFAD should play a dual role. Firstly, it should intercept the challenges driven by the digital transition and transformation of work and, secondly, it should "lift the regulatory floor" by translating these innovations into concrete actions. Both objectives are pursued through the involvement of social partners, regardless of bargaining level, in the design and implementation phases of digital technologies in the workplace.

Since its adoption, the EFAD has been actively recalled by European Social Partners in their political agenda, even if the Covid-19 pandemic has undoubtedly delayed its results during the first two year of the entire process. In fact, the EFAD envisions has a three-year process addressed at the introduction of guidelines for national social partners who should be able to negotiate and introduce measures that can adapt their industrial relations environment to digitalisation-induced innovation. Due to this three-year span the EFAD provides an implementation process, named "Implementation and Follow-up", in which is clearly stated that the agreement "should encourage the adoption of measures that are sustainable and that their effectiveness is valuated by the social partners at the appropriate level". A process that is still pending while the first results can be already reported.

The essay will briefly contextualize the adoption of the EFAD and its objectives devoting a relevant attention to the implementation process. This process will be studied through the reports issued by national trade unions and employers' associations during 2021 and 2022, looking at the actions undertaken in the framework of EFAD and the problems already noticed by these national actors.

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[4] L. BATTISTA, nt. (3), 106.

2. *The European Framework Agreement on Digitalisation: from its adoption to its implementation*

As already anticipated, the European Framework Agreement of Digitalisation, known as EFAD, is an autonomous cross-industry agreement concluded under Article 155 TFEU by the European Trade Union Confederation (ETUC) on behalf of workers and BusinessEurope, CEEP (now SGI Europe) and SMEunited for employers. Due to its autonomous nature, with no institutional intervention or political consultation at any EU level, it could be classified as a Self-Initiated and Self-Implemented Collective Agreement" (Sisica). Such classification, according to Smismans' studies, stems from the design autonomy of the involved parties and the absence of any legislative intervention by the European Union.[5] In fact, the EFAD is a pure social dialogue's output. At the same time, the absence of any EU institutions is relevant with regards to the implementation of the Agreement at national level.

In order to fully understand the impact of the EFAD on the national social partners we should devote attention to the relevant contents and monitoring procedures provided by the agreement.

For what concerns its contents, the primary aim of the agreement is to facilitate a seamless and positive integration of digital technologies into the workplace while also mitigating potential risks for both workers and employers. To achieve these intertwined objectives, the European Social Partners have established a methodological approach that is based on the collaboration between workers and enterprises. This approach involves assessing the effects of digitalisation on various aspects of work organization such as work content skills, working conditions related to the employment contract and work-life balance, work relations and environmental working conditions with a direct reference to health and safety provisions. In order to rationalize the possible effects of digitalisation on the different aspects of work organization, the European Social Partners classified four relevant

[5] The Sisica acronym derives from the Smismans' studies about the different social dialogue's outputs, with or without the institutional intervention. The four possible combinations proposed by Smismans could be classified as follows: Cococa (Commission-initiated and Council-implemented collective agreements), Sicoca (Self-initiated and Council-implemented collective agreements), Cosica (Commission-initiated and Self-implemented collective agreements), Sisica (Self-Initiated and Self-Implemented Collective Agreements). *See* S. SMISMANS, *The European Social Dialogue in the Shadow of Hierarchy*, in *Journal of Public Policy*, 28, 2008, 161.

challenges that are seen as the nucleus of the EFAD and deserve to be rapidly intercepted. The challenges are quite generic and well-known from a labour law perspective due to their disruptive effects [6] that the ongoing phenomenon of digitalisation can have on the world of work. They have been named as such: "Digital skills and securing employment", "Modalities of connecting and disconnecting", "Artificial intelligence (AI) and guaranteeing the human in control principle", "Respect of human dignity and surveillance". The first challenge deals with the impact of digitalisation with reference to the ongoing obsolescence of some traditional jobs, processes or skills, while the second issue refers to the modalities of connecting and disconnecting of workers during their working activity. The third challenge covers the famous and still undiscovered topic of Artificial Intelligence (AI) and the need to guarantee and safeguard the "human in control principle", namely the human supervision and choice on how and whether delegate decisions to an automated system. A challenge that is the most futuristic one and also the one in which the collaboration between management and trade unions is still embryonal. The last challenge highlighted by the EFAD refers to the needed attention devoted to the respect of human dignity and the transparent manipulation of workers' data through automated control mechanisms and technological devices capable of collecting data.

All of these issues and challenges are accompanied by a series of suggested guidelines or measures to be considered by national social partners for the implementation at the appropriate level without being obliged to uniquely adopt them and supporting any proposal directly stemming from them. In fact, a relevant part of the agreement is devoted to the "*Implementation and Follow-up*" of the proposal directly proposed and adopted by the national social partners. In this vein, the approach of the EFAD is meant to encourage the adoption of actions that are sustainable and appropriate, and its implementation should be seen as a "blueprint for negotiation", [7] adapting their industrial relation system and culture to the ongoing challenges brought by digitalisation and guiding national social partners towards this aim rather than setting common rules of general application.

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[6] L. BATTISTA, nt. (3), 110-114. In this essay, the Author analyzed the four challenges in terms of disruptiveness.

[7] ETUC, *Right to disconnect – Joint ETUC/ETUFs Letter to the Members of the European Parliament*, https://www.etuc.org/en/document/right-disconnect-joint-etucetufs-letter-members-european-parliament.

This process of implementation, control and evaluation of measures and actions starts from a necessary joint study of the already mentioned four issues and challenges related to the digitalisation, gathering the data and information deriving from workers' representatives and management. Such joint study will report different results depending on the maturity of industrial relations system in the Country and the willingness of the parties towards a tangible adoption of effective measures. It is clear that any obstructive behaviour by one of the parties involved will reduce the possibility of any effective intervention in this field.

As second step of this process and thanks to this embryonal joint study, the EFAD requests to national social partners a mapping activity of risks/opportunities driven by the transformation of work with the final aim of adopting tailored strategies and measures at the appropriate level: company, local or national level. This step is clearly the most impacting one as it requests a prior steered and controlled test of the adoptable actions, the evaluation of the necessary economic resources to finance such measures and the responsibilities for the possible positive or negative consequences.

Such process is accompanied by a continuous monitoring, from both parties, that could grant a possible intervention to modify some adopted measures, or, as a follow-up to the effectiveness of the actions.

3. *The implementation model: threat and opportunities*

Since its conclusion, the EFAD has been seen as a three-years programme with a circular process in which the worker's representatives could engage the management and, thanks to proper trainings and information, influence the decision-making process related to the digital transition. This process, already anticipated in the previous paragraph, is accompanied by a regular monitoring based on reports provided by the national social partners. Such monitoring has been programmed on the basis of a report per year during the duration of the EFAD sent by the member organizations of the European Social Partners to the Social Dialogue Committee, composed by ETUC, BusinessEurope, SGI Europe and SMEunited.

Every year, the "Social Dialogue Committee will prepare and adopt a yearly table summarizing the ongoing implementation of the agreement" [8]

[8] *European Framework Agreement on Digitalisation*, 2020, 13, https://www.etuc.org/system/

and a final comprehensive report on the implementation actions is expected during the fourth year from the adoption of the EFAD in 2024. In fact, as reported by ETUC in the "Interpretation Guide" for the EFAD, the final deadline for the implementation is on the 22 June 2023 and concretely, "the reporting system entails the provision and adoption of a yearly overview on the implementation process to the Social Dialogue Committee in 2021, 2022 and 2023".[9]

During the first two years of the project, the Social Dialogue Committee published two reports, namely the 1st and 2nd Joint report, while the third report is still pending. As described in the agreement, the report is a quite long chart reporting the EU27 Countries with the description of the results and initiative undertaken by the national social partners.

According to the already mentioned Interpretation Guide, "the implementation of the autonomous agreement is thus binding for all member organizations of the signatory parties",[10] meaning that the national organization associated to the supranational social partners are obliged to report any intervention, action or adopted measure within the framework of the EFAD.

Scrolling both implementation reports, it is visible that this binding provision is disapplied by several Countries and it is clearly a threat to the effective implementation of the EFAD. Among the noncompliant Countries we can observe France, Italy, Slovenia, Slovakia and Lithuania for both reports, while Germany and Sweden deposited only the first one. This absence, all the more so that concerns relevant EU Countries with a long-lasting industrial relations tradition such as France, Italy and Germany, is probably the first failure of the EFAD. It is undeniable that the agreement could have an emulative effect over the different national social partners with the possible adoption of actions and measures who have been effective in another Country. So, the absence of such relevant experiences could deny this aim.

It is still unknown if in the third report the noncompliant Countries will provide their experiences or it will be a matter of the final report, however this is a crucial point that should be assessed and solved at the supranational level by the Social Dialogue Committee.

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files/document/file2020-06/Final%2022%2006%2020_Agreement%20on%20Digitalisation%202020.pdf.

[9] ETUC, *European Social Partners Framework Agreement on Digitalisation Interpretation Guide*, 2022, 29.

[10] *Ibid*.

A partial overview of the actions and measures proposed by noncompliant Countries could be indirectly observed from the reports of other national social partners which are involved in collaboration and partnership with the absent ones. For example, thanks to the Polish report we are aware of the participation of CISL, one of the most important Italian trade unions, in a European based project proposed by NSZZ Solidarnosc for the development of national action plans for the implementation of the right to disconnect, as prescribed as a relevant challenge by the EFAD in its Chapter 2.[11] Similarly, other interconnections among social partners belonging to unreported Countries could be easily assessed by other national reports. Even if this could be a possible solution to understand the development of actions in these Countries, it is undeniable that the absence of such relevant Countries is a symptom/threat that needs to be investigate by European Social Partners.

On the contrary, some positive aspects could be underlined from the first two implementation reports.

Firstly, the 1st report is really interesting for the attention paid by national social partners in the evaluation of the current actions already undertaken by the Legislator or through the collective bargaining in their Countries. This starting point is tremendously useful to assess the measures already in place and the possible gaps to deal with during the three-years process. This is the case of the Austrian report, where the national social partners provided an overview of the recent Home-office legislation and the negotiations between the Austrian social partners and the Government. At the same time, the Czech report stressed the fact that during the first year of implementation the efforts of the involved parties have been focused on the "awareness raising among the employers and trade unions' organization themselves, setting scene for a bipartite cooperation and ensuring complementarity and synergy with the already existing initiatives,

[11] The partnership is led by NSZZ Solidarnosc with the participation of CISL (Italy), Instrat Foundation (Poland), BLOCUL (Romania), Confederation Lewiatan (Poland), ETUC, LPS Solidarumas (Lithuania), KSS (North Macedonia), LDK (Lithuania) and OEM (North Macedonia). The aim of the project funded by the European Commission No. 101051759 is to initiate the debate on the right to disconnect in order to strengthen the social dialogue and to create a training module based on the advantages and disadvantages of remote working among social partners at company level. For more information please visit: https://www.centrostudi.cisl.it/progetti-europei/731-101051759-initiating-of-activities-to-implement-the-european-social-partners-framework-agreement-on-digitalisation-efad.html.

platforms and tools".[12] Such behaviours is totally compliant with the first step of the joint dynamic process provided by the EFAD, in which the national social partners should start from a study and analysis of the issues related to the digitalisation with a view to their internal labour market. Secondly, this mapping activity has been developed in the 2nd report showing the measures put in practice or proposed for the 2022/2023.

Among them we observe the actions proposed on the basis of a collaboration among workers' representatives and employers' associations, those singularly undertaken from one of the participating entities, the tripartite initiative with the Government or the transnational partnership with social partners belonging to other EU Countries.

This way of presenting the adopted measures gives the possibility to design a framework (*infra*) in which the different actions could be classified and divided in four patterns of intervention. This is crucial in understanding the different sensibilities shown in every EU Country, looking at the collaboration within the national industrial relation system and the possible dialogue with public authorities. Alongside with this aim, the framework offers the chance to define the relevant and pivotal topics/challenges intercepted at national level showing the importance of them on top of other issues. In fact, thanks to this classification we can observe that the majority of the initiatives promotes actions on Digital Skills concerning the up-skilling and re-skilling of workers, the right to disconnect and an embryonal attention to the impact of the Artificial Intelligence in the workplace.

4. *Four different patterns of intervention*

The initiatives already reported in the implementation documents can be divided into four different patterns of intervention, as could be seen graphically.

As briefly anticipated in the previous paragraph, they are characterized by the presence of a third party such as the Government or the collaboration between national social partners and, in some cases, with social partners belonging to other European Countries.

Alongside with these initiatives, it is impossible to not mention the actions and projects individually launched by employer's association or trade

[12] Implementation of the ETUC, BusinessEurope, SMEunited and SGI Europe, Framework agreement on Digitalisation. 1st joint report, 2021, 9.

unions aimed at improving the understanding of the phenomenon among the members of their organizations or externally.

One of the relevant points of discussion of this framework of actions regards the fact that it is impossible to assess which initiative, collaboration or set of actions is suitable to achieve the targets posed by the EFAD, neither this is the willingness of the essay. Each of the reported initiatives has its own positive aspects and depends on the industrial relations context or the power of the involved parties. It does not mean that there are actions which are not structured or could be easily replicated in other contexts, but due to the fact that the process is still pending it could be a mistake to rush to granitic conclusions.

Pattern 1 AT, BE, NL, PL, CK, IE, DE, SE, DE, CY , EE, LI, LV, FI, HE	**Pattern 2** DE, NL, AT, BE, NL, PL, CK, EE, LV, LI, IE, LU, PT
Pattern 3 DE, BG, PL, IE, MT, PT	**Pattern 4** IE, RO, IT, PL, BG

4.1. *Partnership at national level among trade unions and employers' associations*

The first pattern of intervention is devoted to the translation, at national level, of the collaboration among European Social Partners. In fact, in line with the spirit that accompanied the adoption of the EFAD, a collaborative environment at national level is needed to deal with the ongoing digitalisation. As stressed by the EFAD itself, "a shared commitment is needed on the part of employers, workers and their representatives to make the most of the opportunities and deal with the challenges in a partnership approach, whilst respecting the different roles of those involved".[13] In fact, the EFAD mainly aims at encouraging "a partnership approach between employers, workers and their representatives"[14] thus it is clear that among the different action undertaken in EU27 there is a high percentage of shared initiatives.

[13] *European Framework Agreement on Digitalisation*, 2020, 3.

[14] *Ivi*, 4.

Among the different initiatives reported in both Implementation Reports, it is possible to find different initiatives and targets, expressing the multifaceted dimension of the digitalisation in the world of work and the different national sensibilities. For example, in Austria there was a relevant initiative devoted to the analysis of the effects of the Artificial Intelligence at the workplace, through the project "AI for good project – Platform Industrie 4.0". In this context, the national social partners published a guideline entitled "AI for good – human focused use of AI". Published in November 2021, the guidelines are based on the thesis that "the consideration of human focused factors makes AI systems more successful". [15] According to such thesis, it is possible to improve user acceptance factors at the workplace and to promote the effectiveness of these innovative machine learning tools and the respect of the manipulation of data and human dignity. [16] Such action is in line with one of the relevant challenges and issues presented in the EFAD, namely the one related to Artificial Intelligence.

Similarly, Danish national social partners have been involved into a sectorial mapping of labour market trends, mainly those related to digitalisation, and the analysis of new digital needs of companies and workers. Such collaboration has been formalized and regulated at company level by Cooperation Agreements establishing Cooperation Committees at the workplace. The duties prescribed to these Committees are "very similar to the processes described in the European Framework Agreement on Digitalisation". [17] This practice is very interesting because it gives a pivotal role to local, territorial and company level representatives.

Dutch social partners, on the other hand, worked directly on the regulation of digitalisation-related issues both at a centralized and decentralized level. They monitored the common responses to digitalisation and innovation while promoting tailored actions through sectorial collective bargaining. Among them, it is interesting to highlight the dialogue promoted by the different parties involved in the metals sector that has been translat-

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[15] Implementation of the ETUC, BusinessEurope, SMEunited and SGI Europe, Framework agreement on Digitalisation. 2nd joint report, 2022, 3.

[16] https://plattformindustrie40.at/wp-content/uploads/2021/11/AI-for-GOOD-Leitfaden_Plattform-Industrie-40.pdf.

[17] Implementation of the ETUC, BusinessEurope, SMEunited and SGI Europe, Framework agreement on Digitalisation. 1st joint report, 2021, 12.

ed into the "Strategic Agenda for the Metalektro 2022-2027". [18] According to this Agenda – namely an annex to the Collective agreement concluded in 2021 – the digitalisation is relevant into the relationship among employers and employees and a sector, such as the metal one, cannot neglect the mutual interest of the parties into its analysis. A collaboration that is highlighted into the already mentioned agenda through the statement that the Dutch social partners should "approach the future in a spirit of partnership rather than confrontation", [19] adapting their collective actions to the ongoing phenomenon and accelerating the digital transition at the workplace.

In fact, the metalworking industry, through the collective agreement, dedicated several funds for trainings programs that focuses specifically on the development of digital skills, [20] even via online platforms or providing a "skills passport" to encourage employees to strengthen their technological competencies. [21]

As seen, the well-known paradigm "different action for different context" is tremendously relevant in this situation. All of the highlighted experiences showed the necessity to promote initiatives directly tailored on the specific industrial relations context and to the domestic labour market. A paradigm that will be transversal to every proposed pattern.

4.2. *Tripartite initiatives with the involvement of public authorities*

Alongside with the initiatives stemming from the collective bargaining, there are other actions that could produce results in the medium/long-run to manage the ongoing digitalisation. These actions derive from the involvement of public authorities in collaboration with the industrial relations players. Due to the participation of the Government or other public entities, these tripartite initiatives have a different relevance in terms of obligations for the involved parties and to the possible achieved results. In fact, the presence of the Government can create a relevant expectation on results and on the translation of the willingness into effective actions.

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[18] https://caometalektro.nl/app/uploads/2022/03/Strategic-Agenda.pdf.

[19] *Ibid*.

[20] Implementation of the ETUC, BusinessEurope, SMEunited and SGI Europe, Framework agreement on Digitalisation. 2nd joint report, 2022, 51.

[21] https://caometalektro.nl/app/uploads/2022/03/Strategic-Agenda.pdf, 14.

This is the case of the Spanish initiatives, namely the Digital Skills Training Plan, adopted by the Spanish Government with the Real Decreto No. 1104/2020. Such plan, based on a 4-years training program, aims at training at least 125.000 workers in digital competencies, independently from the sector. Digital competencies are seen as a tool to grant an impulse to the economic and social growth of the Spanish labour market. An objective in line with another action undertaken by the Spanish Government, namely the Agenda España Digital 2025. A pivotal role is offered to employers' associations and trade unions in order to gather the needs of companies and workforce. Such collaboration is based on fundings granted by the Government to CEOE, CEPYME and UGT as stressed by the Article 1 of the Real Decreto No. 1104/2020 with a minimum target of workers involved in the program. [22]

A similar project can be found in Bulgaria based on training funded by the Government, through national resources or European funds, and offered directly by trade unions and employers' association (CITUB and BIA). The project "Development of digital skills" is a 2-years project promoted by social partners and the Bulgarian Ministry of Labour. Such joint initiative is funded by European Social Funds (ESF). As reported by Bulgarian social partners in their report, "the project aims to develop, test and validate unified profiles of digital skills of the workforce in Bulgaria for key professions" while "identifying the specific levels of digital skills of the workforce on a sectoral level, the concrete deficits and supporting the acquisition of digital skills, required for the implementation of daily work tasks". [23] A project that is totally in line with the actions expected by the EFAD.

The reported initiatives confirm the role played by public authorities in granting a possible result to social partners actions thanks to the possibility to finance such measures or to create a legal framework in which they can be easily achieved. The role of Government, for example, is not undeniable in terms of the creation of a positive legal environment that could strengthen the actions undertaken by social partners or could accompany them with reforms or social contributions/fiscal exemptions for companies involved in digital-mediated actions.

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[22] The involved parties: Confederación Española de Organizaciones Empresariales (CEOE), Confederación Española de la Pequeña y Mediana Empresa (CEPYME) and Unión General de Trabajadores (UGT).

[23] Implementation of the ETUC, BusinessEurope, SMEunited and SGI Europe, Framework agreement on Digitalisation. 2nd joint report, 2022, 17.

4.3. *Individual initiatives*

Alongside with joint initiatives, many social partners dedicated their attention to promote individual actions tailored on the needs of their members. This is the case of employers' associations involved in granting programs and projects dedicated to companies interested in improving their relationships with digitalisation and innovation. On the other side, trade unions were involved in training their representatives to assist employees and TU members in adapting to digitalisation and managing technological processes.

One the initiatives belonging to the first example comes from Malta, that even being a relatively small labour market, it's tremendously involved in catching up with digitalisation. The Malta Chamber of Commerce, Enterprise and Industry, known as TMC, promoted a policy guideline on the right to disconnect, in order to stress the need for employers to adapt internal procedure to better manage remote work and the disconnection issue. An operation clearly driven by the pandemic but interesting in order to create possible scenario and economic context for "south working" experiences.[24] The aim of the TMC regards the importance for the companies and the employers to avoid any misuse of such modality of work. The guidelines outline the responsibilities of employers and workers in the application of remote work while creating more awareness on the topic related to connection and disconnection.[25]

Among other activities, FNV Academy, a Dutch trade union, devoted attention to the digitalisation through an e-learning module offered to its trade union officials. This is in line with the Digital Skills issue launched by EFAD and with the cascading effects over trade unions members through the training offered to their representative. Such training scheme is one of the most effective in highly unionized context, where the number of members to train it so high that it is easier to improve competencies of representatives and waiting for the dissemination of their knowledge.[26]

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[24] For an overview of the phenomenon please refer to A. ALOISI, L. CORAZZA, *'South working': the future of remote work*, in *Social Europe*, 2nd May 2022, https://www.socialeurope.eu/south-working-the-future-of-remote-work.

[25] https://www.maltachamber.org.mt/social-partners-discuss-the-right-to-disconnect-based-on-a-collaborative-working-culture/. For other information related to the role of social partners in the context of remote work in Malta please refer to L.A. FIORINI, S. RIZZO, *Industrial relations and social dialogue. Malta: Working life in the COVID-19 pandemic 2021*, Eurofound, 2022.

[26] Implementation of the ETUC, BusinessEurope, SMEunited and SGI Europe, Framework agreement on Digitalisation. 2nd joint report, 2022, 51.

Another kind of initiative, not addressed to the members of the association, can be found in Ireland where the Irish Confederation Trade Union (ICTU) decided to issue recommendations to Irish Government for Ireland's National Reform Program 2022 within the NRP 2022 framework. The recommendations identified the digital transition as one of the major challenges that need to be addressed in the National Resilience Plan. According to ICTU, Ireland has "historically low levels of revenue and public expenditure compared to most other high-income European countries, increasing digitalisation, AI and automation at work, and a growing and ageing population". [27] Looking at the effective proposal, ICTU asked for the introduction of ambitious training strategy linked to the NRP 2022 funds.

The different experiences here reported show a mixture of intervention, from the creation of ad hoc trainings for members to a dialogue opened up with public authorities on the needs of the labour market. Every choice/action/measure should be seen into the context in which it is adopted or related to the initiatives already undertaken by national social partners individually.

4.4. *Joint projects with trade unions or employers' association from other EU Countries*

Lastly, the adoption of the EFAD relaunched a European collaboration among national social partners on the transversal topics that are threatening their labour market. By exploiting EU funds or their economic resources, many international projects have been promoted with the participation of many social partners from different EU Countries regardless from the involvement of the European social partners. The relevance of such projects can be found in the possible exchange of competencies among the involved parties and a positive emulation effect for those who are less advanced in managing the phenomenon of digitalisation.

Among them, there are two important projects aimed at intercepting the technological innovation and at translating it into positive opportunities for workers, employers and the entire labour market. One refers to the

[27] ICTU, The European Semester process and the development of Ireland's National Reform Programme 2022, February 2022, point 6, 2. For more information please refer to: https://ictu.ie/sites/default/files/publications/2022/The%20European%20Semester%202022%20and%20the%20National%20Reform%20Programme%20Feb%202022.pdf.

TransFormWork project, also known as "Social partners together for digital transformation of the world of work. New dimensions of social dialogue deriving from the Autonomous Framework Agreement on Digitalisation".[28] The project promoted by Malta Business Bureau, Confederation of Independent Trade Unions in Bulgaria, Bulgarian Industrial Association (BIA), Estonian Employers' Confederation (ETKL), Malta Chamber TMC, Cyprus Workers' Confederation (SEK) and Cyprus Employers & Industrialists Federation (OEB) has been funded by the European Commission and aims at adopting measures in the framework of the EFAD. In fact, the first action related to the project is to "study the national context, existing strategies and methodologies related to the implementation of the European Social Partners' Framework Agreement on Digitalisation, the challenges faced by social dialogue deriving from the digital transformation of the world of work, the new opportunities presented by digitalisation".[29] Secondly, the involved parties should exchange their experiences and good practice, cataloguing them and raising "awareness of the European autonomous social dialogue outcomes and improve understanding of employers, workers and their representatives of the opportunities and challenges in the world of work resulting from the digital transformation".[30] The project already presented several products and a final report has been recently published in which the parties shared the thesis that "with the right strategies, digitalisation can lead to employment growth and job preservation",[31] limiting in a certain sense the old paradigm that sees the innovation as the reason for job losses. One of the most important results regards the creation of ad hoc recommendations for each participating Country based on the relevant actions already in place in their industrial context and related to the possible measures at supranational level.[32]

Similarly, another project with the same aim has been launched by NSZZ Solidarność, a polish Trade Union, with the participation of social partners from Lithuania, North Macedonia, Romania and Italy (CISL). The project "Initiating Activities to Implement the European Social Partners Frame-

[28] TransFormWork VS/2021/0014, https://transformwork.eu/.

[29] *Ibid.*

[30] *Ibid.* A similar view can be found in https://transformwork.eu/wp-content/uploads/2023/02/en-vs01.pdf.

[31] *Ibid.*, 4.

[32] *Ibid.*, 77-79.

work Agreement on Digitalisation" [33] aims at increasing the synergy of actions of the different partners involved with the implementation of measures related to each challenge of the EFAD. Among the different target, the right to disconnect is probably the one on which there is the highest degree of attention with the launch of a public debate and the expected creation of national action plans for the implementation of ad hoc initiatives. In the project we can observe the already mention cascading effect expected from the training of at least 100 representatives from the social partners organizations. [34]

As visible in both reported projects, the presence of Eastern European Countries describes their constant involvement in translating the requests raised by the EFAD into concrete actions to improve their labour market. Probably such involvement is linked to the low level of digitalisation of their labour market and to the possibility to improve their industrial relations systems while collaborating with more unionized Countries.

5. *Final remarks*

Despite its adoption in 2020, the EFAD's implementation is still in progress. Various issues persist, whether related to the agreement's nature (as in the case of Sisica) or to the European Social Partners' intention to provide merely guidelines for national stakeholders. Both of these characteristics could be perceived as potential risks. However, on the flip side, the agreement's autonomous nature and the latitude afforded to national social partners offer greater flexibility for tailoring actions to the unique industrial and economic context of each respective country.

This is evident from the implementation reports and the diverse initiatives already undertaken at the national level, often involving public authorities or focusing on matters of collective bargaining. Looking at the interventions mentioned in both implementation reports and to the framework created to analyze them, it is possible to observe that some challenges highlighted by the EFAD are probably more visible than others. Thus, the

[33] The project receives economic support from the budget line of the European Commission SOCPL-2021-SOC-DIALOG, sub-measure "Support for Social Dialogue".

[34] https://www.centrostudi.cisl.it/progetti-europei/731-101051759-initiating-of-activities-to-implement-the-european-social-partners-framework-agreement-on-digitalisation-efad.html.

involved players devoted more attention to them instead to others. This is, for the example the case of Digital skills. The majority of the experiences reported in the framework of intervention, as well as those not reported here, are devoted to stress the importance of competencies, mainly digital and technological ones, to intercept the future challenges raised by the world of work. In fact, the topic of upskilling and reskilling workers is a recurrent theme This constitutes a direct allusion to the initial challenge outlined in the EFAD, labeled as "Digital Skills and Employment Assurance". Enhancing the workforce's competencies stands as a potential solution for effectively navigating the realms of artificial intelligence, automation, and fostering a comprehension of the prospects brought forth by digitization among employees. The enhancement of digital proficiencies and the prevention of worker obsolescence might offer a strategy for addressing additional challenges that are presently less conspicuous than others. This is the case of the already mentioned Artificial Intelligence and its application within the work environment. Similarly, the creation of a working environment capable of understanding the importance of technologies and innovations can be a way to anticipate future challenges such as the impact of Metaverse or the restructuring of economic sectors that are currently profitable but that could be substituted by emerging alternatives in the future, such as the green energy sector.

Similarly, another problem can be observed from the EFAD reports, namely the dualism between disconnection and connection of workers. The right to disconnect seems to be a pervasive issue affecting nearly every Country and it has been highlighted by several national social partners as a future challenge to address. As revealed in the reports, there is an imbalanced normative intervention concerning the right to disconnect across European countries, where some national partners have chosen to regulate it through collective bargaining, while others have called for legislative intervention.

As a result, it is evident that a supranational intervention, in the form of a Directive, is still necessary to harmonize the diverse regulations on the disconnection of workers and to safeguard them from potential abuses and the misuse of such working arrangements. This aim, which revolves around the protection of workers from the adverse effects of uncontrolled digitalization, has been a central focus of EFAD since its inception. While the EFAD primarily aims to promote an industrial relations-based intervention, it's evident that a secondary objective involves identifying potential areas for legislative intervention for both national legislators and supranational bodies.

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THE INVOLVEMENT OF SOCIAL PARTNERS IN THE EU RECOVERY PLAN: AN APPRAISAL

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Abstract

The contribution focuses on the involvement of social partners in the design and implementation of the National Recovery and Resilience Plans (NRRPs), in the scenario of the historic stimulus package NextGenerationEU (NGEU). Article 18 of the EU Regulation establishing the Recovery and Resilience Facility (RRF) stipulates that the NRRPs must include a summary of the consultation process, for the preparation and, where available, for the implementation of the RRP, conducted in accordance with the national legal framework, of local and regional authorities, social partners, civil society organisations, youth organisations and other relevant stakeholders, and how the input of the stakeholders is reflected in the RRP. This goes beyond what is requested under the European Semester's rules with regard to the involvement of social partners. Therefore, article 18 can be considered a step in the right direction, when it comes to strengthening the EU social dialogue. However, available research indicates that, in most national cases, the involvement of social partners at the national level has been inadequate in practice and there is no strong evidence that the Commission is trying to reverse this trend.

Keywords: Social partners; Tripartite social dialogue; Recovery plan; Next Generation EU; EU socioeconomic governance.

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1. *NextGenerationEU and the frontiers of the EU's economic governance*

The EU Regulation 2021/241, establishing the Recovery and Resilience Facility (RRF), came into effect on 12 February 2021, in the midst of the Covid-19 pandemic. The RRF is the main building block of the historic [1] stimulus package NextGenerationEU (NGEU), aimed to support the EU Member States (MS), as well as the EU itself, to deal with the economic and social crisis caused by the pandemic on a global scale, and, at the same time, advance the twin (green and digital) transition of the continent. [2]

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[1] The EU Institutions have responded very differently to the social and economic crisis caused by the pandemic than they did, ten years before, to the financial crisis and the sovereign debts crisis, according to the European Economic and Social Committee (see the *Resolution* on *Involvement of Organised Civil Society in the National Recovery and Resilience Plans – What works and what does not?*, EESC-2021-00693-00-00-RES-TRA (EN)). The financial resources mobilised by NGEU in 2021 were five times higher than the ordinary annual budget of the EU at the time (B. DE WITTE, *The European Union's Covid-19 recovery plan: the legal engineering of an economic policy shift*, in *Common market law review*, 2021, 58, 636). But what is indeed remarkable, regarding NGEU, is that for the first time in its history the EU took on a common European debt, issuing bonds on behalf of the EU, to address a shared threat: and this «represents a first-ever political achievement toward a greater European integration» (ETUC, Position on the assessment of the Regulation establishing the Recovery and Resilience Facility. A first step toward a People's Recovery (adopted)). It is discussed, however, whether this meant also an advancement «for the purposes of redistributive solidarity»: in this sense V.A. SCHMIDT, *Economic Crisis Management in the EU: from past Eurozone mistakes to future promise beyond Covid-19 pandemic*, in C. KREUDER-SONNEN, V.A. SCHMIDT, A. SÉVILLE, A. WETTER RYDE, J. WHITE (eds.), *Eu Crisis Management*, Stockholm, SIEPS, 2022, 19 ff. J. JORDAN, V. MACCARRONE, R. ERNE, *Towards a Socialization of the EU's new Economic Governance Regime? EU Labor policy intervention in Germany, Ireland, Italy and Romania (2009-2019)*, in *BJIS*, 2021, 59, 1, 191 ff., are more cautious when it comes to a supposed socialization of the Economic governance of the EU. See also M. FORLIVESI, *Next Generation EU: una nuova frontiera dell'integrazione europea*, in *LD*, 2023, 2, 211 ff.; P. PECINOVSKY, *EU economic governance: a tool to promote or threaten social rights? The example of the right to collective bargaining*, in A.-C. HARTZÉN, A. IOSSA, E. KARAGEORGIOU (eds.), *Law, Solidarity and the Limits of Social Europe*, Cheltenham, Edgar Elgar Publishing, 2022, 62 ff.; S. RAINONE, Ph. POCHET, *The EU recovery strategy, A blueprint for a more Social Europe or a house of cards*, in *ETUI Working Paper*, 2022, 18; M. ROCCA, *Introduction: the EU new economic governance, labour law and labour lawyers*, in *ELLJ*, 2022, 13, 2, 141 ff.

[2] However, after the Russian invasion of Ukraine, in 2022, the RRF Regulation was amended in order to integrate the new RePowerEU Plan into the governance mechanisms of NGEU. The move aimed to refocus, in part, the financial efforts of the national recovery plans towards the energy crisis and the cost-of-living crisis.

As per Articles 17 and 18 of the Regulation, MS wishing to receive financial support under the RRF, in the form of grants and loans,[3] are requested to prepare and submit to the Commission a National Recovery and Resilience Plan (NRRP). The NRRPs are supposed to set out a comprehensive and coherent package of reforms and investment projects, whose time limit for the fulfilment is 31 August 2026 – what, among other things, makes the RRF a financial instrument of temporary nature, and, hence, more acceptable, in principle, to those MS that are critical towards the idea of a common European debt.[4] The Commission may make observations and request additional information about the NRRPs; more generally, it assesses the national plans, touching on the issues of relevance, effectiveness, efficiency, and coherence (Article 19). In case of positive assessment, the Commission makes a proposal for a Council implementing decision of the NRRP (Article 20). Currently, all NRRPs have been implemented by a Council decision and their financing is under way. (Though, the cases of Poland[5] and Hungary[6] were more problematic, vis-à-vis respecting the rule-of-law).

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[3] Total available RRF funds amount to 723.8Bn € (in current prices), of which up to 338Bn € in grants, while 385.8Bn € consist of repayable loans. It is worth noting that, while all 27 EU Member states have requested such grants under the recovery facility, 13 Member states have requested loan support, too, either in the original national recovery plan (Greece, Italy, Cyprus, Poland, Portugal, Romania, and Slovenia) or as part of the revisions of the national recovery plan (Greece, Poland, Portugal, Slovenia, and, for the first time, Belgium, Czechia, Spain, Croatia, Lithuania, and Hungary). See EU Commission, *Final overview of Member states' loan requests under the RRF*, Note to the Council and European Parliament, 1 September 2023. More data available at https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en.

[4] V.A. SCHMIDT, nt. (1), 29-31, B. DE WITTE, nt. (1), 638-644, S. RAINONE, Ph. POCHET, nt. (1), 14-16, take a deeper look at the negotiations between the Commission and the coalitions of MS (to put it simply, the frugal coalition and the solidarity coalition), and how they eventually reached an agreement after intense rounds of talks; in this respect, a Franco-German joint proposal in May 2020, which was largely in line with that of the Commission, played an important role (https://www.reuters.com/article/health-coronavirus-recovery-commission-idINL8N2D04ZU).

[5] A. ATANASOVA, Z. RASNAČA, *The rule of law crisis and social policy: the EU response in the cases of Hungary and Poland*, in B. VANHERCKE, S. SABATO, S. SPASOVA (eds.), *Social policy in the European Union: state of play 2022. Policymaking in a permacrisis*, Brussels, ETUI, 2023, 111 ff.; see also W. SADURSKI, *The European Commission cedes its crucial leverage vis-à-vis the rule-of-law in Poland*, https://verfassungsblog.de/the-european-commission-cedes-its-crucial-leverage-vis-a-vis-the-rule-of-law-in-poland/.

[6] A. ATANASOVA, Z. RASNAČA, *The rule of law crisis and social policy: the EU response*

The RRF is essentially a performance based financial instrument. In practice, the disbursement of EU funds is contingent upon the timely achievement by the MS of a series of concrete milestones and targets, which have been identified, in agreement with the Commission, in view of attaining the NRRP. «Money buys power and create a need for accountability», as Bokhorst puts it.[7] This trait of the RRF governance, in other words, gives the Commission and the Council more leeway, than they already had in the context of the European Semester,[8] to influence economic and social policies at the national level – although «so far there is little evidence that» the Institutions are adopting «a more intrusive governance style».[9] However, there are good reasons to think that, in the future, the EU socioeconomic governance will continue to resort to this kind of performance based mechanisms, whose efficacy exceeds the adoption of mere coordinating measures.[10]

in the cases of Hungary and Poland, nt. (5); see also K.L. SCHEPPELE, *Will the Commission throw the rule-of-law away in Hungary?*, https://verfassungsblog.de/will-the-commission-throw-the-rule-of-law-away-in-hungary/.

[7] D. BOKHORST, *Steering national social reforms through the EU's recovery plan*, in B. VANHERCKE, S. SABATO, S. SPASOVA (eds.), *Social policy in the European Union: state of play 2022*, nt. (5), 36.

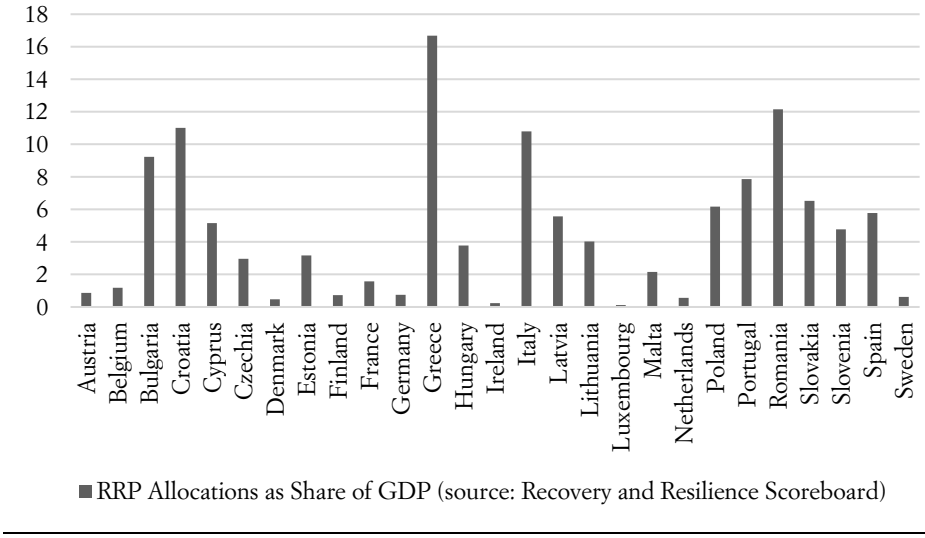
[8] S. BEKKER, *The EU's Recovery and Resilience Facility: a Next Phase in EU Socioeconomic Governance*, in *Politics and Governance*, 2021, 9, 3, 175 ff.

[9] D. BOKHORST, nt. (7), 37.

[10] On 26 April 2023, the Commission's presented a legislative proposal (COM(2023) 240 final) for a Regulation on the effective coordination of economic policies and multilateral budgetary surveillance and repealing EC Council Regulation No. 1466/97. The key points of the proposal for a comprehensive reform of the EU's economic governance are illustrated at https://economy-finance.ec.europa.eu/economic-and-fiscal-governance/economic-governance-review_en; the ETUC took a critical stance towards the Commission's proposal, while at the same time conceding that it does reflect some of the long-standing demands of the European trade union (https://www.etuc.org/en/document/etuc-position-reform-economic-governance-toward-eu-pact-employment-and-investments#:~:text=The%20proposal%20of%20the%20EC,%25%20debt%2FGDP%20ratio%2C%20the). On the subject, see P. LEINO-SANDBERG, P. LINDSETH, *How Cohesion Became the EU's Vehicle for Economic Policy*, https://verfassungsblog.de/how-cohesion-became-the-eus-vehicle-for-economic-policy/.

2. *Involving the social partners in the Recovery plan*

The impact of the EU's recovery plan on its 27 MS varies substantially, considering the financial allocations as a share of national GDP (see graph 1). In MS such as Luxembourg, Denmark, or Finland, to name but a few, the NRRP is not expected to have a huge impact on the economy. Therefore, social partners, civil society organisations and other stakeholders may have different top political priorities than monitoring the project or contributing to its design and implementation. [11] However, in Countries such as Croatia, Greece, Italy, Portugal, Romania, Spain, and others, the potential impact of NGEU on national economies is remarkable. Political and social actors, thus, may be considering the plan as a unique opportunity to strengthen the economic system and the labour market at exceptionally good financial conditions, without, for the moment, strong macroeconomic conditionalities.



No wonder that, at the European level, the ETUC has been particularly sensitive, from the outset, to the issue of involving the social partners in the national RRPs. The European confederation adapted to the new re-

[11] See Eurofound, *Involvement of social partners in the implementation of national recovery and resilience plans*, Luxembourg, Publication office of the European Union, 2023, 4.

covery mechanisms the structure that was already in place to take part in the European Semester,[12] and urged its affiliate organizations to insist on effective consultation processes when it comes to the drafting and implementation of the national plans.[13]

At the MS level, social partners show interest in the NRRP. In the scenario of the snap election of July 2023, for example, the two major Spanish trade unions (CCOO and UGT) focused on the use of NGEU funds in two political documents.[14] In Italy the Recovery plan has been constantly covered by the media and the three Governments that, up to now, have overseen its implementation,[15] have been under regular scrutiny regarding the issue. The public appears to be attentive to the subject,[16] and the plan is very high on the agenda of the social partners, too.[17] The main Italian trade union (CGIL) publishes a bulletin aimed to provide a constant update on the design and implementation of the recovery plan, with links, articles, and own elaborations.[18] The three main Italian trade unions (CGIL, CISL, and UIL) have launched, recently, a joint phase of mobilization centered on *a new era of labour and rights*. This may be good news per se, since they are not always on the same page, and it is worth noting that, in one of the main points of the platform, they request the Government to take «the actions necessary to carry out the investment and reforms envis-

[12] S. SABATO, B. VANHERCKE, S. SPASOVA, *Listened to, but not heard? Social partners' multilevel involvement in the European Semester*, in *OSE Research Paper*, 2017, n. 35.

[13] B. VANHERCKE, A. VERDUN, A. ATANASOVA, S. SPASOVA, M. THOMSON, *From the European Semester to the Recovery and Resilience Facility. Some social actors are (not) resurfacing*, in *ETUI Working Paper*, 2022, 13, 27.

[14] UGT, CCOO, *Manifiesto de apoyo a un Gobierno progresista in Espana*; UGT, CCOO, *Propuestas de CCOO y UGT para les elecciones generales del 23 de julio de 2023*.

[15] A. TASSINARI, *Labour market policy in Italy's recovery and resilience plan, Same old or a new departure?*, in *Contemporary Italian Politics*, 2022, 14, 4, 441 ff., investigates the strategies of the first two of such Italian Governments: the Conte II cabinet (5 September 2019 – 13 February 2021) and the Draghi cabinet (13 February 2021 – 22 October 2022).

[16] At least, according to google trends data of the last five years: https://trends.google.com/trends/explore?date=today%205-y&geo=IT&q=PNRR&hl=en-GB.

[17] See L. CALAFÀ, *Le politiche del mercato del lavoro nel PNRR: una lettura giuslavoristica*, in *LD*, 2023, 2, 174-177; T. TREU, *PNRR, politiche pubbliche e partecipazione sociale*, in *Lavoro Diritti Europa*, 2023, 1.

[18] The first newsletter was released on 21 October 2021 (https://www.cgil.it/la-cgil/aree-politiche/economia-e-sviluppo/2021/10/22/news/newsletter_notiziario_pnrr_-_primo_numero-1583822/) and the last one by this time (No. 10) was published on 28 March 2023 (https://www.cgil.it/tag/notiziario-pnrr/).

aged in the National Recovery and Resilience Plan (NRRP), strengthening a participatory governance model that sees the joint action of the government, regions, local authorities and social partners, to implement the projects and to encourage the actual and effective spending of the resources envisaged».

3. *The consultation process under Article 18 of the Regulation*

Article 18 (4) (q) of the Regulation establishing the RRF stipulates that the NRRPs must include:

> a summary of the consultation process, for the preparation and, where available, for the implementation of the recovery and resilience plan, conducted in accordance with the national legal framework, of local and regional authorities, social partners, civil society organisations, youth organisations and other relevant stakeholders, and how the input of the stakeholders is reflected in the recovery and resilience plan, [with that summary to be complemented, where a REPowerEU chapter has been included, by setting out the stakeholders consulted, by a description of the outcome of the consultation process as regards that chapter, and by an outline as to how the input received was reflected therein].

The norm requires MS wishing to receive NGEU funds to carry out a consultation process with a variety of stakeholders. Social partners are among those actors, as well as local and regional authorities,[19] civil society organisations,[20] and youth organizations, so as to increase and diversify the *ownership* of the recovery plan at the national level.[21] The consultation

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[19] See EUROPEAN COMMITTEE OF THE REGIONS, LOCAL & REGIONAL EUROPE, *The involvement of municipalities, cities and regions in the preparation of the national Recovery and Resilience Plans: Results of the Cor.CEMR targeted consultation*, 20 January 2021.

[20] See CIVIL SOCIETY EUROPE, EUROPEAN CENTER FOR NOT-FOR-PROFIT LAW, *Participation of civil society organisations in the preparation of the EU National Recovery and Resilience Plans*, ICNL, December 2020. However, it seems that civil society stakeholders were less structured and, so to speak, less ready, than social partners in order to be effectively involved in the drafting and the implementation of the recovery plans.

[21] The recovery plan is expected to impact the life of millions of Europeans and is financed through a common European debt: hence, a basic principle of justice suggests trying to increase its legitimation by reinforcing and diversifying its ownership at the national

process is mandatory regarding the drafting, or the preparation, of the national plans, while this would not be the case when it comes to the implementation of the plan, since the summary of the consultation process is to be included in the NRRP *where available*.

The summary of the consultation process has to indicate *how the input of the stakeholders is reflected in the plan*. This part of the norm can have different interpretations. Apparently, it would entail an *effective* involvement of the stakeholders in the drafting of the NRRPs. In other words, MS would be required to prepare the plans *with* a variety of stakeholders, whose views and proposals would be incapsulated in the final document submitted to the Commission. According to a less rigorous interpretation, the *how* may instead be considered an *if*. MS would remain free, after the consultation process, to decide whether to include or not in the recovery plan the stakeholders' contributions, either because there was no input or because the inputs were not considered valuable enough. This, en passant, was the case in practice.

However, between these two opposite interpretations of the text, there is a third possibility, which would offer a comprehensive meaning of the Article 18 of the Regulation. MS would primarily have an obligation to carry out a fair, meaningful, and timely consultation of the stakeholders, including the social partners: this would imply organising regular meetings with sufficient advance notice, sharing appropriate information and data among the parties,

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level. And this might be particularly important since the RRP is meant to deal with some of the biggest crisis of our time, such as the pandemic crisis, the ecological crisis, the energy crisis, the cost-of-living crisis, and so on. In this kind of scenario, governments and lawmakers may seek a stronger support from social actors, than they usually need (on the concept of crisis corporatism, see G. MEARDI, A. TASSINARI, *Crisis corporatism 2.0.? The role of social dialogue in the pandemic crisis in Europe*, in *Transfer*, 2022, 28, 1, 83 ff.) However, "Civil society participation is in no way intended to replace or call into question the primacy of parliamentary democratic institutions, only to complement them by collaborating with them" (European Economic and Social Committee, *Resolution on Involvement of Organised Civil Society in the National Recovery and Resilience Plans – What works and what does not?*, nt. (1)). From the point of view of legal theory, involving a variety of social actors in the legislative procedure may be considered an efficient complication of the process. If taken seriously, the consultation of all relevant stakeholders does slow down things. The institutions will have to prepare and send one or more drafts, discuss them with the stakeholders, set up one or more meeting, receive comments and critics and so on. However, at the end of the day, they are supposed to come up with better ideas, better solutions, better projects, as the social partners may provide the lawmakers with the specific knowledge they need to intervene in some sectors of the economy or of the labour market.

giving systematic feedbacks to the stakeholders, and so on.[22] If taken seriously, the consultation process would allow the stakeholders to truly contribute to the design (and even the implementation) of the national plan, which seems to be key to the fulfilment of the EU recovery project.[23] Secondly, MS would have an obligation to be transparent, when reporting to the Commission, on how the plan was drafted, especially with regard to the participation and the inputs that were given (or not) by the stakeholders.

The stakeholders' consultation is to be conducted in accord to national legal framework. This means that, in each national context, the process may result in a great variety of settings, regarding essential features such as criteria to select the actors, timing of the consultations, online or in person meetings, possibility to receive and submit written contributions with sufficient advance notice, and so on. This choice of the EU legislator is prima facie respectful of the autonomy of the national industrial relations systems and of the MS' themselves. Nevertheless, without a clear, well-defined procedure, the whole consultation process may result in rather different outcomes, considering the effectiveness or, in other words, the quality of the stakeholders'

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[22] This interpretation of the Article 18 of the RRF Regulation would be consistent with the *Employment Guideline* No. 7 (Council Decision (EU) 2022/2296 of 21 November 2022 on guidelines for the employment policies of the Member States (Article 2), according to which "Member States should ensure the timely and meaningful involvement of the social partners in the design and implementation of employment, social and, where relevant, economic reforms and policies, including by supporting increased capacity of the social partners. Furthermore, the Commission itself indicates that the summary "should cover the scope, type, and timing of consultation activities, as well as how the views of the stakeholders are reflected in the plan" (Commission staff working document, *Guidance to member states recovery and resilience plans*, SWD(2021) 12 final – part 2/2), thus implying the consultation has to be *timely*. The Annual Sustainable Growth Survey 2023, 17, states that, throughout all the stages of the European Semester and the RRF implementation process, "The Commission calls on all Member States to engage actively with social partners, local and regional authorities and other stakeholders, in particular representatives of civil society organisations, through regular exchanges. They should draw on the successful application of the partnership principle in cohesion policy programming and implementation. This helps to jointly identify challenges, improve policy solutions, and ensures broader ownership of the economic and social policy agenda".

[23] In its *Report to the European Parliament and the Council, Review report on the implementation of the Recovery and Resilience Facility*, 4 [*RRF implementation under way*]: The Commission clarifies that the "success of the RRF also depends on the close involvement of social partners, civil society organizations, local and regional authorities, NGOs and other stakeholders, who have contributed to the design of the plans and are now playing a key role in their implementation".

involvement. Research based on interviews confirm that this has been the case and that timely and meaningful consultation processes were put in place in a relatively few national cases.[24] Similarly, in its Priorities for the 2023 Annual Sustainable Growth Survey, the ETUC pointed out the "lack, or inappropriate, involvement of social partners in the implementation of the RRF".[25] And, from the point of view of the Country Specific Recommendations (CSRs), there is no strong evidence that the Commission and the Council are trying to reverse this trends and push MS to actively and meaningfully engage in social dialogue regarding their recovery plans.

However, the consultation process framed by the Article 18 of the EU Regulation 2021/241 represents a step forward,[26] compared with the corresponding provision of the Regulation No. 1175/2011, on the involvement of social partners in the European Semester.[27]

It is worth noting, in conclusion, that the 2023 Commission's Proposal for a comprehensive reform of the EU's economic governance reproduces, when it comes to the involvement of social partners and other stakeholders, the rules of the Semester cycle, instead of those of the Recovery plan, thus weakening the future importance of the consultation processes.[28]

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[24] Eurofound, *Involvement of social partners in the national recovery and resilience plans*, Luxembourg, Publication office of the European Union, 2022; Eurofound, *Involvement of social partners in the implementation of national recovery and resilience plans*, nt. (10); B. VANHERCKE, A. VERDUN, A. ATANASOVA, S. SPASOVA, M. THOMSON, nt. (12). See also EESC, *Resolution* on *Involvement of Organised Civil Society in the National Recovery and Resilience Plans – What works and what does not?*, nt. (1); European Parliament, *Resolution of 1 June 2023 on strengthening social dialogue (2023/2536(RSP))*.

[25] ETUC, *ETUC for Sustainable Growth and Social Progress*, *Resolution adopted at the Executive Committee Meeting of 27-28 October 2022*, https://commission.europa.eu/publications/2023-european-semester-etuc-priorities-annual-sustainable-growth-survey_en.

[26] B. VANHERCKE, A. VERDUN, A. ATANASOVA, S. SPASOVA, M. THOMSON, nt. (12), 26.

[27] According to EU Regulation No. 1175/2011 of 16 November 2011 amending Council EC Regulation No. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, "Relevant stakeholders, in particular the social partners, shall be involved within the framework of the European Semester, on the main policy issues where appropriate, in accordance with the provisions of the TFEU and national legal and political arrangements".

[28] See the Article 26 of the Commission's Proposal COM(2023) 240 final for a Regulation on the effective coordination of economic policies and multilateral budgetary surveillance and repealing EC Council Regulation No. 1466/97.

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THE IMPACT OF DIGITALIZATION ON LABOUR MARKET DYNAMICS: WHAT ROLE FOR COLLECTIVE BARGAINING FACING SKILL CHALLENGE AND FLEXIBLE WORK ORGANIZATION?

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Abstract

The contribution questions the impact of digitalization on the labour market, both on the supply side and on the demand side, aiming to investigate what the role of collective bargaining should be, at various levels, in order to exploit the potential and minimize the risks of digitalization.

Keywords: Labour market; Skills; Collective bargaining; Remote work; Digitalization.

1. *Preliminary remarks*

Digital revolution has impacted the way companies think, design and produce, [1] requiring a different way of working and organizing work. It has led to a veritable paradigm shift, challenging traditional milestones of labour law that seemed immovable.

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[1] On digital revolution and labour relations, *see* T. GYULAVÁRI, M. MENEGATTI (eds.), *Decent Work in the Digital Age. Eurpean and Comparative Perspectives*, Bloomsbury Publishing, London, 2022; A. PERULLI, T. TREU (eds.), *The Future of Work. Labour Law and Labour Market Regulation in the Digital Era*, Wolters Kluwer, The Netherlands, 2020; A. SUPIOT, *Labour is not a commodity: The content and meaning of work in the twenty-first century*, in *International Labour Review*, vol. 160 (2021), n. 1; S.P. VALLAS, A. KOVALAINEN (eds.), *Work and Labour in the Digital Age*, Emerald Publishing, Bingley, 2019.

The workplace, as a delimited physical space, has begun to lose its material boundaries, as the time, which has undergone a progressive fragmentation due to technologies allowing people to work not only from anywhere, but also at any time. The flexibility afforded by digital working tools thus leaves more room for self-determination of the employee, who can more freely schedule the time devoted to private and professional life.

These innovations bear risks and criticalities too. The porousness of time lead to continually confusing life and work time, physical distance makes relationships and hierarchical dynamics between team members complicated, and technological innovations require vocational training and constantly updated skills. On the other hand, since the exponential and compulsory growth due to the pandemic, remote work has become a method of execution of performance increasingly required by workers: they choose, the opportunities that allow them flexible organization of time and place of work, thus pushing companies to employ them.[2]

With reference the labour market dynamics, the impact of new technologies initially polarized the debate between those who predicted the end of human labour and those who see in it an enormous opportunity for job and professional creation.[3] Then, it focused on the number of jobs that will be lost and those that will be needed to ride the digital wave. At present, the question is rather *how* (present and future) workers can be supported in the digital transition, as the main concern is that the skills required by the new technologies will exacerbate certain distortions and gaps already present in the market.

In this paper, we are going to highlight the impact of digitalization on the labour market, in particular by outlining some specific consequences impacting on labour supply (2.1.) and demand (2.2.). Then, the research aim to investigate what the role of collective bargaining could (or rather should) be in managing these consequences, in relation to the new skills

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[2] N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE (eds.), *The future of remote work*, ETUI, 2023; E. VAYRE (ed.), *Digitalization of Work: New Spaces and New Working Times*, Wiley, Hoboken, 2022; E. ALES, Y. CURZI, T. FABBRI, O. RYMKEVICH, I. SENATORI, G. SOLINAS (eds.), *Working in Digital and Smart Organizations*, Palgrave Macmillan, Cham, 2018; I. SENATORI, C. SPINELLI, *(Re-)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian experience*, in *ILLe-J*, vol. 14, n. 1, 2021.

[3] A. ALOISI, V. DE STEFANO, *Your boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour*, Bloomsbury Publishing, London, 2022; C. LEVESQUE, P. FAIRBROTHER, N. ROBY, *Digitalization and Regulation of Work and Employment*, in *Relations Industrielles*, vol. 75, n. 4, 2020, 647 ff.

required of workers (3.1.) and the new ways of performing work that digital technologies make possible (3.2.).

Promoted and supported by the Union as a fundamental pillar of the post-pandemic recovery, digital transformation is an unstoppable process that changes production and organizational structures at a breakneck speed, often ungovernable by the legislator. These changes are inexorably reflected in the labour market, requiring a careful handling of the transition: collective bargaining offers the tools to take advantage of the potential and stem the risks of digitalization, by balancing the interests at stake.

2. *Digitalization and labour market*

Technological innovation has had a powerful impact on the labour market at unexpected and uncontrollable times and ways. If platforms have impacted on the space of intermediation between labour supply and demand – very often confusing the figure of the worker with that of the consumer of goods and services [4] –, the rapid digital transformation entails new needs and adjustments both among those who offer work and those who demand it.

The rapid automation process requires workers to have new and updated skills in order to master algorithms and robots (and not be replaced by them): skills that employers often struggle to find in the workforce. At the same time, the introduction of highly digitalized tools in the workplace can result in flexible management of tasks and schedules by employees. However, this requires – upstream – a willingness on the part of the employer to invest in technology and to train its staff in order to maximize the benefits.

The study of the relationship between technological innovation and labour is certainly not a recent subject of investigation, going back to the dawn of the first Industrial Revolution. [5] Similarly, the impact of machines on employment levels and on the dynamics of the labour market has for

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[4] S.P. VALLAS, *Platform Capitalism: What's at Stake for Workers?*, in *New Labor Forum*, 28(1), 2019, 48 ff.

[5] Adam SMITH, *The Wealth of Nations*, 1776; David RICARDO, *On the Principles of Political Economy and Taxation*, 1817; Karl MARX, *The Capital*, 1867. *See* M. PIVA, M. VIVARELLI, *Technological Change and Employment: Were Ricardo and Marx Right?*, IZA Institute, Discussion Paper Series DP No. 10471, January 2017.

decades engaged sociologists and economists,[6] sometimes driven to endorse nihilistic scenarios picturing the end of human labour.[7] Moreover, such scholars have repeatedly claimed that innovation, by requiring new professional skills, can only increase the total number of employees.[8]

From the perspective of the labour law, however, the dialogue between the digital revolution and the labour market cannot be limited to a count of jobs lost versus jobs gained, because it is not only affecting the volume of employment, but is transforming the way work is conceived and the way work is perceived and performed.[9]

2.1. *The impact of digitalization on labour supply*

Digitalization is a very broad concept dealing with production processes and, consequently, very different professional activities. No matter whether we focus on the unstoppable refinement of artificial intelligence, the refinement of robotics or the continuous improvement of virtual reality,[10] the recurring criticality[11] is the unpreparedness of the workforce for

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[6] J. SCHUMPETER, *Capitalism, socialism and democracy*, New York, Harper, 1976, (1st ed. 1942); E. BRYNJOLFSSON, A. MCAFEE., *The second machine age: work, progress, and prosperity in a time of brilliant technologies*, New York, W.W. Norton & Company, 2014.

[7] F. CALVINO, M.E. VIRGILLITO, *The innovation-employment nexus: a critical survey of theory and empirics*, in *Journal of Economy Surveys*, vol. 32, 2018, 83 ff.

[8] D. AUTOR, *Why are there still so many jobs? The history and future of workplace automation*, in *The Journal of Economic Perspectives*, n. 3, 2015, 3 ff.; *see also* M. SERVOZ, *The future of work? Work of the future!, On how artificial intelligence, robotics and automation are transforming jobs and the economy in Europe*, European Commission AI Report, Publications Office, 2019, 41.

[9] A research conduct by the World Economic Forum (WEF) revealed that, by 2025, 85 million "human" jobs may disappear by a shift in the division of labour between humans and machines, but 97 million new jobs that are more adapted to the new division of labour between humans, machines and algorithms may emerge. So, the principal effect of digitalization will be felt through changes in the nature and content of work within a transformed work environment (see *The Future of Jobs Report 2020*, October 2020, World Economic Forum, https://www3.weforum.org/docs/WEF_Future_of_Jobs_2020.pdf).

[10] On the meanings of the broad concept of digitalization, I. MANDL, EUROFOUND, *The digital age: Implications of automation, digitisation and platforms for work and employment*, Eurofound, 2021.

[11] M. KOLDING, M. SOUNDBLAS, J. ALEXA, M. STONE, E. ARAVOPOULOU, G. EVANS, *Information management – a skill gap?*, in *The Bottom Line*, vol. 31, n. 3-4, 2018; J.A. JACKMAN, D.A. GENTILE, NJ. CHO *et al.*, *Addressing the digital skills gap for future education*,

the challenges posed by technological progress. The gap between jobs that will soon be obsolete and those that will be created is not the only challenge facing the labour market. [12]

The greatest loss of jobs has so far been concentrated in the manufacturing sector and in some specific areas of services, where the latest digital innovations have replaced mechanical activities.[13] Studies estimate that not only the so-called routine tasks are at risk, but all those, now performed by a worker, which may soon be performed by robots guided by software. [14] Through the evolution of machine learning and big data, in fact, even those complex activities involving elaborate or creative decision-making processes cannot be considered to be free from the risk of obliteration. [15]

Assuming that most jobs and tasks will be concretely affected by technological innovations, the key to ensuring workers' survival in the labour market is to provide them with the adequate skills to cope with and govern the digital challenge. But this has not been fully achieved so far.. Studies report that more than 70 per cent of workers in the European Union lack the most basic digital skills to meet the demand for labour and that 30 per cent of them may completely lack the skills sought in today's market.[16] As a matter of fact, the European Commission has also detected that more than 70 per cent of the companies active in the European Union say that the fact that not being able to find staff with adequate digital skills is a

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in *Nat Hum Behav*, 5, 2021, 542 ff.; O.O. ADEPOJU, C.O. AIGBAVBOA, *Assessing knowledge and skills gap for construction 4.0 in a developing economy*, in *Journal of Public Affairs*, vol. 21, 3, 2021; T. BERGER, C.B. FREY, *Digitalization, Jobs, and Convergence in Europe: Strategies for Closing the Skills Gap*, Report prepared for EASME, Oxford Martin School, January 2016.

[12] E. ERNST, R. MEROLA, D. SAMAAN, *The Economics of Artificial Intelligence: Implications for the Future of Work*, in *ILO Future of Work Research Paper*, n. 5, ILO, Geneva, 2018; C.B. FREY, M. OSBORNE, *Technology at work: The future of innovation and employment*, Oxford-New York, University of Oxford and CitiGroup, 2015.

[13] ILO, *Changing demand for skills in digital economies and societies. Literature review and case studies from low- and middle-income countries*, Geneva, 2021, 23; *see also* SERVOZ, nt. (8).

[14] ILO, *The impact of technology on the quality and quantity of jobs*, in *Global Commission on the Future of Work Issue Brief*, n. 6, Geneva, 2018; OECD, *Measuring the Digital Transformation: A Roadmap for the Future*, Paris, 2019.

[15] M. SERVOZ, nt. (8); ILO, nt. (13).

[16] CEDEFOP, *2018 European skills index*, Publications Office of the European Union, Luxembourg, 2019.

constraint on business and investment,[17] while a third of the total number of companies recognize that around a 10 per cent of their employees are underqualified.[18]

Although there are differences in the different sectors[19] and according to company size,[20] the low level of technical expertise on the labour supply is slowing down the digital transition of economic actors and thus limiting its benefits, including a sustainable shift in production methods and the resulting growth in employment. Technological innovation will encompass – not even so slowly – every sphere of production, and digital skills, traditionally confined to specific professions, are increasingly required as a prerequisite in most job vacancies.

This is about updating and implementing the skills of workers whose tasks will be partially or totally changed. On the other hand, it will be necessary to *ex novo* build up a professional background suitable for the new jobs, intercepting and training not only young people, but also those whose current activities are becoming obsolete and will disappear. They will have to be trained to exercise a new profession too.

In actuality, the current labour market shows forms of *skill mismatch* and *skill gap*. The first phenomenon refers to the discrepancy between the skills required by companies and those related to workers. The second refers to a more general absence, among the workforce, of the skills employers are looking for: in other words, it identifies the lack of potential applicants with the skills required by employers to fill certain positions,

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[17] European Commission, *Shaping Europe's digital future*, https://digital-strategy.ec.europa.eu/en/policies/digital-skills-and-jobs.

[18] A. PISIOTIS, J. RIEFF, S. ROSINI, *Better together: managing the crisis and embracing structural change-the role of social dialogue, Commission staff Working Document*, Brussels 16 July 2021, 17.

[19] A research conducted by the European Centre for the Development of Vocational Training (CEDEFOP) on the skills demand composition of online job advertisements posted in 2020 has revealed that digital skills are one of the most demanded skills areas with a huge growth compared to 2019, and the pandemic is pushing this trend in many occupations, in particular non-ICT jobs in labour markets of the EU Member States (CEDEFOP, *Coronavirus and the European Job Market: How the Pandemic is Reshaping Skills Demand*, 2021).

[20] A. PISIOTIS, J. RIEFF, S. ROSINI, nt. (18), 17, underlined that "there are marked variations across companies of different sizes. Only 11% of big companies report no underskilled workers, with exactly half of them reporting a share between 1 and 10%, and one third a share between 10 and 30%".

which, therefore, remain vacant.[21] This leads to an inevitable delay in finding qualified human resources, which often results in a loss of competitiveness for the company. Should this be true, more than 50 per cent of the workforce will necessarily have to do so in order not to risk losing their jobs by 2025.[22] In fact, the lack of digital skills affects not only potential workers, but also those who are already part of a relationship: it turns out, in fact, that only 63 per cent of workers (employees and self-employed) have a minimum smattering of basic digital skills.[23]

With reference to the so-called *skill mismatch* phenomenon, we need to observe that 40 per cent of European workers feel that their skills are underused in the workplace and one third of graduates feel overqualified for the job they do. At the same time, about 40 per cent of workers would need at least six months of training to adapt their skills to the tasks they are asked to do at work.[24]

As for the Italian case, a study published in 2022[25] found that, in the period 2023-2027, 34.3 per cent of job providers will need to have a tertiary education (degree or Diploma form Higher Technical Institutes). The statistics indicate, however, that there will be a shortage of around 9,000 workers with tertiary education in that five-year period, particularly in the fields of economics-statistics (specialists in digital marketing and e-commerce) and computer and engineering sciences. On the other hand, there could be an oversupply among graduates in the humanities, philosophy, history and art, psychology and linguistics.[26]

Indeed, compared to the European average, Italy still has few young graduates in so-called STEM (science, technology, engineering and mathe-

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[21] The European Centre for the Development of Vocational training (CEDEFOP) in 2020 estimated that in next years, due to the skill gap, there would be 135,000 vacancies in the ICT sector in Italy, rising to 750,000 across Europe. The Italian National Institute of Statistics (ISTAT) data, collected in 2021, in the same sector, reveals that 2.2% of available positions will remain unoccupied.

[22] Excelsior, Anpal-Unioncamere, Survey conducted in 2023; *see also The Future of Jobs Report 2020*, nt. (9).

[23] European Commission, Digital Economy and Society Index (DESI), 2022, 23-24.

[24] A survey found that, worldwide, at least 1.3 billion people are over- or under-qualified. For OECD countries, that is one in three workers, *see* L. HOTEIT, S.S. PERAPECHKA, M. EL HACHEM, A. STEPANENKO, *Alleviating the Heavy Toll of the Global Skills Mismatch*, Boston Consultin Group, 2020.

[25] Information System Excelsior, Anpal-Unioncamere.

[26] Information System Excelsior, Anpal-Unioncamere, 60.

matics)[27] subjects, of which only 1.3 per cent choose ICT subjects, which are instead those most sought for by companies. Moreover, scientific disciplines are still led by men, accounting for only 30 per cent of women graduates in 2019 (despite the fact that, out of the total number of graduates, women are the majority).[28] This gap, in a labour market oriented towards an increasingly massive search for figures with scientific and technological skills, risks widening exponentially, excluding women from the most stable and well-paid careers.[29]

In relation to secondary education, on the other hand, the same study estimated that in the five-year period 2023-27, the number of graduates from high schools who will immediately enter the labour market will exceed the number needed to fill the demand for work; in the same period, graduates with a technical-professional secondary education will only be able to meet 60 per cent of the demand for work, leaving in particular the transport and logistics, mechanics, energy and mechatronics sectors uncovered.[30]

Especially in the aftermath of the pandemic, digital skills have become an indispensable pre-requisite, unfortunately difficult to find, among potential applicants. However, the situation is not any brighter if we focus on the so-called *soft skills*, that is to say, those transversal, non-technical skills, which delineate the worker's aptitude rather than his or her degree of specialization.[31] Soft skills – such as the ability to work in a team, empathy, problem solving, flexibility – are increasingly sought after when selecting

[27] Italy is 21st for graduates in STEM subjects and 17th for digital skills (Digital Economy and Society Index (DESI).

[28] Openpolis Data, 2021.

[29] Cultural and social legacies play a role in this respect, if it is true that, in Italy as in other OECD countries, of female students with excellent results in mathematics, only 12.5% envisage a professional future in STEM disciplines (source: Openpolis – OECD-Pisa, 2019).

[30] Information System Excelsior, Anpal-Unioncamere, 61.

[31] There is also the distinction between digital skills and skills for digital economy, where the former can be seen as a constituent subset of the latter. Skills for the digital economy would cover a huge range of skills, including digital skills specifically, but also those that anticipate the use of digital skills (i.e. the fundamental skills needed to use any technology, such as literacy); and those that complete digital skills and increase their effect, such as certain higher-order skills that are not necessarily technology-specific: analytical thinking, research skills, synthesis and abstraction of the most important information, creativity, communication, problem solving and others (*see* ILO, nt. (13), 44).

applicants. While technical skills could nowadays be easily replicated by a robot, self-management skills, resilience, critical thinking or active learning are still the exclusive preserve of actual persons. Moreover, while the 'hard' knowledge – i.e. what the individual knows how to do – may soon become obsolete and require frequent updates, the 'soft' knowledge – which instead concerns how the individual does something – demonstrates the ability to adapt to the work environment, to integrate with colleagues, to acquire a 'digital mindset' that, at least so far, the AI is not yet able to master. [32]

Although soft skills are a valuable asset for workers, so much so that they are very often considered more important than hard skills by employers, staff selection processes fail precisely because applicants do not possess the transversal skills necessary to integrate and live in that company context. [33] As a result, companies waste time and energy looking for someone who may then turn out not to be suitable for the position they have been hired for.

2.2. *The impact of digitalization on labour demand*

Technological innovation has long been changing the way goods and services are produced and work is organized in companies. As a result of the pandemic, however, certain aspects of digitalisation have revealed themselves in all their beneficial potential, so much so that they have become unavoidable demands on the side of applicants and, consequently, necessary investments on the side of employers.

In particular, the restrictions imposed by the two-year pandemic contributed to the massive spread of remote working and, once the emergency passed, the obligatory working from home gave way to more flexible hybrid forms: [34] on the one hand, companies rationalize costs for the operat-

[32] A recent survey reveals that, compared to the pre-pandemic period, many companies have undertaken employee training in social and emotional skills and advanced cognitive skills (McKinsey Global Surveys, 2021: *A year in review*, December 2021).

[33] The 89% of recruiters state reveal that selections are unsuccessful due to a lack of matching between the candidate's or applicant's soft skills and the corporate culture of the new workplace (2019 Global Talent Trends).

[34] In 2019, only 5.4% of European workers between the ages of 15 and 64 worked from home with a clear prevalence among the self-employed among whom smart working has been most widely used. During the pandemic, smart working has spread exponentially,

ing and maintenance of work spaces, with a positive impact on the environment. On the other hand, workers have grown used to a different balance between personal and professional life time, avoiding daily commuting to and from work in rush hours and more easily managing family commitments, without having to give up their job. [35]

While the value of face-to-face work – with its human relations and immediate professional interaction – remains indisputable, the focus on ecological issues and the promotion of inclusive and sustainable work have shown the full potential of mixed (or hybrid) forms of remote work, which allow the merits of the former (work in presence) and the latter (remote work) to be merged.

Remote working has thus become the 'new norm', [36] a ductile tool implemented by companies, but above all required by the workforce, who has prompted even the most reluctant employers to include it as a manner of execution of the working activity. In fact, the 80 per cent of companies plan to digitize their processes to enable at least 44 per cent of their employees to work remotely; [37] some 66 per cent of employers worldwide are redesigning their workspaces and workplaces to adapt them to hybrid work modes.

The inclination to the functional use of digital tools also emerges from job advertisements, increasing throughout Europe the number of those in which remote work is also included. [38] In fact, due to the pandemic, the way companies view technological investment has also changed, i.e. not only as a cost factor, but as a strategic investment to diversify their business and to attract and retain talents, indispensable for long-term success. [39] Indeed, the research among potential applicants – especially those with medium-high skills, therefore highly sought after by companies – of hybrid job opportunities have forced companies to consider this possibility, so as not to risk losing valuable human resources. [40]

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with around 40% of employees working exclusively from home (L. CHARLES, S. XIA, A.P. COUTTS, *Digitalization and Employment*, *A Review*, ILO, Geneva, 2022, 20.).

[35] ILO, *Greening Enterprises. Transforming processes and workplaces*, Geneva, 2022.

[36] L. CHARLES, S. XIA, A.P. COUTTS, nt. (34), 20.

[37] World Economic Forum, WEF, *The Future of Jobs Report 2020*, 2020.

[38] Eurofound, *Living, Working and COVID-19*, 2020.

[39] Mckinsey global survey, 2021, 42-43.

[40] In the light of the annual reports of the Excelsior Italian Information System, drawn up by Unioncamere in cooperation with Anpal, the number of job vacancies that remain

Phenomena such as the Great Resignations and the Job hopping have focused on the reasons why workers leave or remain in the workplace, forcing companies to reflect and take countermeasures.[41] Compared to the pre-pandemic period, both in the US and European labour markets, the number of workers voluntarily have been leaving their jobs has increased significantly.[42] Whether the reasons for the two phenomena are to be rooted simply in the dynamism of a thriving labour market or in the legacies of an emergency period that has profoundly marked every sphere of our lives, it is objective that the pandemic has changed the very way work is perceived, conceived and experienced.

The research for work-life balance remains central, as does the flexibility now internalized after the experience of the pandemic remote working: a survey promoted in 2022 among 35,000 workers aged between 18 and 67 in 34 different countries reveals that about two-fifths of the respondents said they would not accept a job if it did not allow flexible working hours (45%) or remote or hybrid working arrangements (40%). More than a quarter of respondents (27%) said they had given up a job precisely because it did not allow such flexibility.[43] The same survey revealed that workers, especially younger ones, are no longer willing to present themselves at the workplace every day, but are looking for hourly and spatial flexibility, aware that new technologies can grant it.[44]

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unfilled for a long time due to unsuitable workers or a lack of candidates has risen from 21% in 2017 to 45 6%; The vacancy rate is at an all-time high in the Eurozone: according to Eurostat data, 3.1% of paid jobs were unfilled in the third quarter of 2022, compared to 2.6% in the third quarter of 2021 and 2.2% in the same period of 2019, before the health crisis (European data journalism network, 2022).

[41] Great Resignations phenomenon, which peaked in the US in December 2021 and then peaked in Europe in the first quarter of 2022, have been motivated by the need to a better work-life balance in a more relaxed and flexible way (many women, in fact, have given up their permanent jobs to benefit from the flexibility of freelancing). Job hopping phenomenon, on the other hand, describes those numerous millennials who 'jump' from one job to another, staying in the same place for no more than two years. Having broken the myth of the same fixed job for their entire career, young people are constantly looking for a workplace that possibly reflects their personal values, stimulating and rewarding. In particular, young workers consider very important that the employer organizes individual training, re-skilling and upskilling plans, among them of course digital skills.

[42] In Italy, for example, from January to September 2022, resignations reached 1.6 million.

[43] Survey Ranstad 2023, 24.

[44] Survey Ranstad 2023, 26.

The implementation of remote working is a strategic choice for attracting and retaining employees for another set of reasons: for more than two-thirds of employees, values and objectives of the company they work for, such as sustainability, respect for diversity and transparency, are decisively important and more than two-fifths would not accept to work for an employer who is not committed to promoting sustainability in his/her organization. [45] In this sense, potential candidates view the structured use of digital tools for remote and hybrid work performance positively because they see in it an environmental and social commitment by the company, in other words, aimed at sustainability.

The digitization of business processes [46] and the use of technologically advanced tools increase the well-being and productivity of employees, who can live in a more ecological way (less commuting, less cars, less emissions), and at the same time redesign the physical and human profile of the company: not only spaces and energy consumption are more efficient, but fragile and disadvantaged categories of workers, who would otherwise face obstacles to full inclusion in the workforce, can easily be integrated.

After all, the fight against climate change and the promotion of an open and inclusive society are among the values mostly pursued by the Generation Z, and companies will have to promote them if they want to be attractive to young workers. [47]

3. *Digitalization and labour market: what role for collective bargaining?*

As observed in the preceding paragraphs, digitalization has a significant impact on the labour market, both on the supply and demand sides, requiring employees and candidates to constantly update their skills – hard and soft – in order not to fail in the face of technological progress; it has also been forcing companies to implement flexible and sustainable

[45] Survey Ranstad 2023, 47.

[46] The "digitization" is a component of digitalization that refers to "process that transform elements of the physical word into bytes" (EUROFOUND, *Digitisation, European Industrial Relations Dictionary*, Dublin, 2019), like Internet of Things (IoT), 3D printers and virtual and augmented reality.

[47] *See* the Italian survey "Generazione Z. Un nuovo approccio al lavoro" by Osservatorio Giovani dell'istituto Toniolo, with the cooperation of "Valore D" and "Umana SPA".

organizational models in order to attract and retain talent, especially young talent.

These challenges can only require a synergic effort to be effectively addressed, and collective bargaining is the ideal instrument capable of taking into due account the demands of the actors involved, maximizing the potential of digitalization and minimizing the critical issues it entails. The shared commitment of the actors involved, in fact, is at the basis of the Framework Agreement on Digitalization signed by the European Social Partners in June 2020, at a time when the first phase of the pandemic emergency had made evident, despite its dramatic nature, the enormous potential of technologies, but also the need to regulate them, supporting workers in the digital transition, [48] both at the national and company level of bargaining.

3.1. *Collective bargaining and skills challenge*

The European 2020 Social Partners' agreement, while dealing with the impact of digitalization on work to broad spectrum, devotes huge attention to the issue of digital skills. In fact, a survey conducted in 2019 shows that re-skilling and up-skilling in order to cope with the digital transition and the need to provide Vocational and Educational Training (VET) paths to concretize them are the major concerns of workers and trade unions in facing the ongoing digital challenge. [49]

Technological progress will massively reduce the number of low-skilled or unskilled jobs in the short term, at the same time it may simultaneously increase the productivity of companies and the welfare of workers. Therefore, the effort required of collective bargaining is to monitor and forecast the skills that will be needed in the future, to establish instruments to up-

[48] *European Social Partners Framework Agreement on Digitalisation*, June 2020, that statues that a shared commitment is needed on the part of employers, workers and their representatives to make the most of the opportunities and deal with the challenges in a partnership approach, whilst respecting the different roles of those involved". *See also* IndustriALL, *Digitalisation in the post-COVID world: what role for industrial trade unions?*, May 2021; C. DEGRYSE, *Digitalisation of the economy and its impact on labour markets*, in *ETUI Working Paper*, 2016, 2.

[49] According to the survey conducted by IndustriAll Europe and Syndex in 11 countries, the 81% of workers and trade unions are concerned about the need to adapt skills to new technologies, while the 70% are concerned about the need for continuous training and updating (Syndex and Industriall, 2021).

date the workforce, and support the re-skilling and re-training of workers who will presumably have to change the tasks they currently perform.

This approach also seems to be encouraged by the numerous initiatives of the European institutions aimed at skills development which, on the background of the European Skill Agenda launched in July 2020, have chosen 2023 as the European Year of Skills, in order to finance awareness-raising, refreshing and qualification courses with the involvement of the social partners. The Agenda constitutes the frame of reference in which to set up the different actions aimed at providing people with the tools to face professional and personal challenges.[50] Among the different initiatives promoted, the Pact for Skills aims to support public and private organizations in the green and digital transition through skills development and re-training paths. Recognizing that digital innovation will spread across all economic sectors and that skills are the key to decent jobs, social justice and competitiveness, the Pact invites a wide range of stakeholders, in particular social partners and enterprises, to engage in concrete actions.[51] The document is based on four key principles: the first calls for the promotion of lifelong learning for all, through economic and non-economic incentives, in order to emphasize the value of skills among employers and employees, including those from disadvantaged groups. Second, the Pact focuses on building partnerships between actors cooperating at European, national and local levels, in order to support transitions, share good practices and develop innovative solutions. The third principle relates to monitoring and anticipating skills, in order to prepare workers and their possible transitions in good time. Finally, the Pact looks at skills as a tool to overcome discrimination and promote gender equality and equal opportunities for all, enabling everyone to have access to quality training.

Social dialogue and collective bargaining can play a crucial role in the diffusion of the principles established by the Pact through joint and concrete actions. Bargaining can be a very useful tool to increase – among employers and employees – the awareness of the importance of constant updating and the development of not only technical but also soft skills,

[50] The European Skills Agenda includes 12 actions organized around four building blocks (a call to join forces in a collective action; actions to ensure people have the right skills for jobs; tools and initiatives to support people in their lifelong learning pathways; a framework to unlock investment in skills).

[51] The Pact tries to put together individual companies or other private or public organizations, regional or local partnerships, industrial ecosystem or cross-sectoral partnerships.

covering categories of workers who would otherwise not have access to training.[52]

In Italy, the collective agreement at national level for metalworkers, renewed in 2021,[53] bears in it an article about VET,[54] considering it as a strategic investment for the updating and development of professional skills, in particular digital skills, linked to the technological and organizational innovation of production and work processes. The contract seems to have adopted the path promoted by the EU, by offering training courses not only employees with an open-ended contract but also to those who have a fixed-term contract of not less than nine months. On the other hand, it promotes a subjective right of the employee to training that contributes to the construction of a 'digital identity' of the worker.[55] Agreed upon by the parties involved to meet the needs of the company and the employees, training becomes a shared value that requires a periodic analysis of needs (i.e. monitoring). Thanks to the skills assessment tool, the training path will take into account the skills already acquired by the worker and those that need to be developed to increase both the company's competitiveness and the employee's professionalism. There is also a focus not only on so-called hard skills, but also on soft ones, as well as an openness to all forms of learning that can guarantee the worker-citizen basic digital skills.

The Italian collective agreement for the chemical-pharmaceutical sector at national level, renewed in June 2022, also focuses on strengthening the sectoral participatory approach of the National Observatory by adding a section dedicated to Digital Transformation.[56] In particular, the agreement

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[52] According to ILO Social Dialogue Report 2022, about two-thirds of the collective agreements examined contain provisions for skills development, including yearly some hours dedicated to training, financial support for professional development, reskilling when new technologies are introduced as an integral part of the digital transition (see at the sectoral level, CBA France); other research shows that training to accompany the digital transition is not yet implemented everywhere, especially is lacking at the company bargaining level (IndustriALL, nt. (48), 37-38).

[53] Italian metalworkers' collective agreement, renewed in 2021.

[54] Article 7 of the Italian metalworkers' collective agreement, Section 6, "Absences, leave, protections".

[55] Training as a right had already been included in the category's collective agreement for metalwork in the renewal of 2018, constituting a real novelty in the Italian collective bargaining landscape.

[56] National collective agreement for the chemical-pharmaceutical sector, renewed in June

assigns to the Observatory the verification of skills, new profiles and training needs, also in the light of the labour transformations caused by digital transition. It devotes considerable attention to the issue of skills and training connected to the new professional figures, stressing that digitalization requires profiles with soft skills (basic digital skills, time management, analytical thinking, working by objectives) and social-interpersonal skills that need to be reinforced. The agreement also provides for the activation of a mechanism for the collection of specific skills – appropriately certified – that facilitates the matching of supply and demand with respect to the needs of the sector covered by the agreement, as well as a monitoring of the effectiveness of the training programmes adopted in companies.

The strategic activities of monitoring and verification of needs included in the analyzed collective agreements are linked to a further function that bargaining can exercise, namely the construction of solid 'digital' bridges between school and work.[57] Designing educational paths that take into account the future needs of the labour market means facilitating the access of young people to the labour market, while at the same time focusing on the competitiveness of the production system and avoiding mismatching between supply and demand. The collective agreement for the chemical-pharmaceutical sector promotes the relationship with training institutions, such as universities and ITS, by providing educational paths, including e-learning, that promote career guidance (through alternating school-work and apprenticeships) and the implementation of soft skills.

With the same intent of profitably linking educational paths with the world of work, in addition to supporting internships during school time, the collective agreement for metalworkers devotes attention to regulating the apprenticeship contract, first of all by providing specific soft skills training plans for apprentices in soft skills.[58] Employers' associations and trade unions have reached an agreement that, in light of the principles set out in the European Pillar of Social Rights, aims to make the right to training effective for all workers, including apprentices. Training paths may

2022 (https://www.filctemcgil.it/images/download/CONTRATTI/chimico_farmaceutico/220613_CHIMICO-FARMACEUTICO_RINNOVO%20CCNL_%201-7-2022____30-6-2025.pdf).

[57] Social partners are involved in the definition of education systems in many legal systems, for an overview see A. PISIOTIS, J. RIEFF, S. ROSINI, nt. (18), 21.

[58] Article 7 of the Italian metalworkers' collective agreement, Section 6, "Absences, leave, protections".

change on the basis of renewed technological needs, ranging from Industry 4.0 to language skills, from conflict negotiation to decision making.

Attributing strategic value to training also means taking into account the current distortions experienced by the labour market and helping to eradicate them: the national collective agreement for the chemical-pharmaceutical sector, for example, aims to seek solutions to overcome professional divisions between jobs which have so far traditionally been carried out by either men or women, also through specific training activities. Training paths are going to promote experience coaching and generational interchange with initiatives aimed at facilitating the transfer of both technical and behavioral know-how and on-the-job mentoring and training. It is interesting to note that the transfer of skills is not unidirectional, but the agreement itself provides that the training in the field of technology of senior employees by younger ones should be encouraged.

3.2. *Collective bargaining and flexible work organization*

It could be observed that remote working is a key variable within labour market dynamics. As a result, its structural introduction into the business environment requires that this process be guided and supported. Only with a bargaining process, as a result of confrontation between the parties involved in the change, it could be possible to establish common objectives that foster the process of digital transformation, helping the transition by seizing new opportunities.

Thanks to its adaptability, the hybrid modality of work represents an inclusive working tool for the most fragile categories and for women's employment; it contributes to maintaining high employment levels, guaranteeing a better work-life balance. It increases the level of workers' well-being, as well as retention in the company. Achieving these objectives implies on the one hand the broad commitment to go through the digital transition with responsibility and vision, and on the other hand the effort to take into account the different interests at stake and to prepare concrete and shared measures. In fact, the European Social Partners' Framework Agreement on Digitalization encourages the social partners at different levels to introduce, in a partnership approach, strategies for the digital transformation of companies that lead to job creation, where employers are required to commit to introducing technology in a way that benefits productivity while ensuring better working conditions for workers.

Workers, even after the pandemic period, are looking for jobs that al-

lows them hourly and organizational flexibility. Consequently, companies are taking actions in order to introduce or boost this possibility, which requires considerable effort in organizational terms: for companies, implementing hybrid working modes does not only mean investing in advanced hardware and software, but disseminating a digital organizational culture among staff at all levels.

Collective bargaining can play a decisive role in the dissemination of a digital organizational approach in the workplace,[59] with the definition of clear rules on hybrid and remote work and with a constant support for its proper implementation. We are not going to delve into the risks arising from the pervasive control of the worker through new technologies, but the studies conducted during the pandemic period reveal a certain ambiguity concerning the wellbeing of remote workers, who very often found themselves having to work in inadequate spaces, beyond their usual hours and without paid overtime, with a growing state of stress due to the overlapping of work and family time. However, the data has shown that where remote working is regulated by clear rules, then the positive effects prevail.[60]

The European social partners' framework agreement on digitalization, in fact, emphasizes that, in order to define working time, collective bargaining must achieve as much clarity as possible in relation to the legitimate expectations placed on employees working remotely.[61] Without precise limits, the risk is that dysfunctions will have negative effects on the health and safety of employees and the general functioning of the enterprise. It is therefore necessary for employers and employees to build a participative system of rights and responsibilities on a level playing field. Employees at all levels must be aware of and trained in the use of technological tools, their software, and how to use them. However, as the Framework Agreement itself points out, in addition to training and awareness-raising, an 'organization of work and workload' is necessary to avoid hyperconnection, providing alert and support procedures and periodic exchanges between managers and workers (or their representatives) on workload and work processes. Digital training must be combined with training to improve transversal skills, which for senior figures must go along with specific managerial training to manage hybrid or remote resources and

[59] A. PISIOTIS, J. RIEFF, S. ROSINI, nt. (18), 20.

[60] A. PISIOTIS, J. RIEFF, S. ROSINI, nt. (18), 24.

[61] *European* SOCIAL *Partners Framework Agreement on Digitalisation*, 10.

teams. The greatest challenge, after all, is to update the way of working, that is to grant and manage greater autonomy – and therefore responsibility – in work groups in which a flat and not distinctly hierarchical organization prevails. This implies careful preparation of staff, but above all of those who coordinate work teams.

The national collective agreement for the chemical-pharmaceutical sector renewed in 2022, setting out the guidelines on the impact of the digital transformation, points out that the parties, at company level, are committed to supporting innovation through a managerial and work culture oriented towards involvement, active participation and competitiveness, while respecting the roles and responsibilities of the company and employees. The guidelines adopted with the agreement aim to facilitate company awareness, discussion and development of the digital culture through joint training sessions with the involvement of managers and trade union representatives, promoting continuous dialogue and the sharing of actions to support change. With specific reference to work organization, the guidelines promote flexible space-time arrangements taking into account the company's and workers' production needs and, in introducing innovative organizational methods, facilitate tools to support result-oriented performance and the enhancement of professional contribution, defining objectives and assessing results.

This collective agreement is an example of a virtuous implementation of the guidelines drafted by the European social partners, as it aims to accompany employers and employees through the cultural change that digitalization is bringing about in companies. If the new hybrid organizational modes represent a fundamental strategic lever for retaining and attracting valuable human resources, then collective bargaining – especially at company level – becomes a necessary tool for defining clear rules for the effective exercise of remote work, guaranteeing workers' wellbeing and company productivity, in a forward-looking and sustainable perspective.

4. *Final remarks*

Digitalization has had an impact on work, on working time and workplaces, on the way the meaning and value of work are perceived. These changes will not stop, but rather lead to the need for adjustments, constantly influencing the dynamics of the labour market. On the one hand,

the market distortions are the result of latent criticalities, such as the difficulty of establishing a dialogue between the education system and the entrepreneurial system, but also of enhancing the presence of women in scientific and computer science disciplines; on the other hand, the distortions derive from difficulties that digitalization itself has exacerbated, such as the difficulty of providing workers not only with technical skills, but also with transversal skills, today essential.

The pandemic, which has helped to bring out the pros and cons of digitalization, has in some ways disrupted traditional work dynamics, changing the priorities of workers who aspire to greater flexibility and work-life balance. The aspirations and needs of workers, influenced by cultural and social as well as economic issues, must be taken into account by companies who want to attract and retain talent. In this sense, the implementation of a digital culture in the workplace also responds to the ecological and inclusive sensitivity of workers.

Collective bargaining, in the light of European initiatives and guidelines, is both useful and necessary for successfully influencing labour market dynamics and planning shared and long-sighted options, mediating between the different interests and forecasting the future needs of employees and enterprises. The recent examples coming from collective bargaining are therefore to be welcomed. They highlight a focus both on a positive dialogue between educational pathways and need of enterprises and on the dissemination of a digital working method within companies, which requires vocational training at all levels to acquire not only new technical but also managerial and organizational skills.

Finally, bargaining can (and must) promote a new digital work culture in order to put forward a synergetic and non-conflictual approach to overcoming the challenges that this transition involves.

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NATIONAL COLLECTIVE BARGAINING AND DIGITALIZATION: FIRST EMPIRICAL EVIDENCE

Davide Tardivo [*]

Abstract

The essay analyzes how national collective bargaining addresses the challenge of workplace digitalization. The overview outlines three macro-trends: the first, in which the challenge of digitalization has been fully accepted by national collective bargaining (as evidenced by contractual provisions on job classification and the right to lifelong education and training); the second, where national collective bargaining has introduced only some initial measures, but still lacks comprehensive regulation (as in the case of the areas of health and safety in remote work, the right to disconnect, and union rights in the digital workplace); the last, in which national collective bargaining, as it is currently structured, will unlikely play a role in regulating the transformations taking place in the immediate future (as in the case of algorithmic management).

Keywords: Digitalization; National collective bargaining; Job classification; Health and safety; Disconnection; Algorithmic management.

1. *Digitalization: the modern demiurge of the world of work*

To investigate a phenomenon, the first step required by the scientific method is to observe its empirical manifestations and only then formulate theoretical hypotheses concerning its nature and functioning.

This is all the more true when it comes to the most characteristic and multifaceted trend of our era: digitalization. [1] Despite the extreme famili-

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[1] See L. FLORIDI, *La quarta rivoluzione. Come l'infosfera sta trasformando il mondo*, Mi-

arity that every individual has developed about its different expressions, the task of identifying their common characteristic is far from simple. This is because digitalization affects almost every field of our daily life and in each of them, it assumes different forms.

Although this intricacy, a *fil rouge* can be traced between the various manifestations of digitalization. It is the capacity to "dematerialize" part of the empirical reality and then make it available in the digital dimension.

There is an image that well represents this attitude: the invisible "demiurge" described by Plato as the crafter of the Universe, who shapes and orders it, by transforming the formless matter that pre-exists him. Similarly, the invisible power of digitalization transforms our reality exercising two complementary forces: the first *destructive*, and the second *poietic*.

The *destructive* force dissolves the material dimension of the objects it affects. In other terms, the *pars destruens* of digitalization turns the physical immanence of an object into a product of the digital space.

On the other hand, the *poietic force* gives rise to a new dimension of reality – the digital one – where the objects' essence affected by the destructive force can manifest itself independently of its material support, but to be perceived it requires the necessary intermediation of a device that gives access to the digital dimension itself. [2]

Indeed, the digital dimension generated by poetic force is not accessible to humans except through the use of digital devices.

Considering that in the early stages of digitalization, these devices were particularly cumbersome and rarely used in daily life, digital and analogic dimensions were sharply separated from each other, just as the earthly dimension and the Platonic "hyperuranion", the world of ideas which is "colorless, formless, and intangible" to human senses. [3]

However, the increasing proliferation of ICT and its growing prominence in many aspects of daily life [4] has blurred the line between the "*an-*

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lano, Raffaello Cortina Editore, 2017; M. BONAZZI, *La digitalizzazione della vita quotidiana*, Milano, Franco Angeli, 2014.

[2] Examples include money, books, and media for listening to audio or watching videos, but also registers for signing popular referendums through certified digital identity systems.

[3] See PLATO, *Phaedrus* (247 c-e).

[4] Digital tools have become widely used in everyday activities such as the purchase of consumer goods, including primary goods (through online shopping platforms), in social interaction processes (e.g., through social media or messaging applications), in learning and study (through remote connections), and even in the ways of participation in democracy (e.g. electronic voting, collection of signatures for referendums or bills).

alogic, carbon-based, offline dimension" and the "*digital, silicon-based, online dimension*",[5] leading the latter to gradually overflow into the former. The result is the establishment of a spurious reality, where the intertwining of analogic and digital becomes more pronounced and no longer reversible.

Of course, this transformation also affects the world of work, as evidenced by the discussion on the "fourth industrial revolution",[6] and even earlier by the researchers who since the 80s investigated the first effects of the technological revolution over the workplace.[7]

In particular, the impact of the two forces of digitalization – destructive and poietic – affects not only the individual workers' tasks (transforming their content and the way they are to be performed) but first and foremost the very premise of working activity: the productive organization, which sees its rules and functioning transfigured.

Concerning the profile related to individual workers' performance, part of the economic literature[8] pointed out that the destructive force of digi-

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[5] L. FLORIDI, nt. (1), 47.

[6] See K. SCHWAB, *La quarta rivoluzione industriale*, Milano, Franco Angeli, 2016. Other scholars referred to «*the second age machine*» (E. BRYNJOLFSSON, A. MCAFEE, *The second Machine Age: Work, Progress an Prosperity in a Time of Brilliant Technologies*, New York, W.W. Norton & Company, 2014); others – from the philosophical perspective – talk about "infosphere", see L. FLORIDI, nt. (1), 45.

[7] Among the firsts on this topic F. CARINCI, *Rivoluzione tecnologica e diritto del lavoro: il rapporto individuale*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 1985, 203 ss.; see also the papers collected in the volume "*Rivoluzione tecnologica e diritto del lavoro*", Atti dell'VIII Congresso nazionale di Diritto del Lavoro Napoli 12-14 aprile 1985, Milano, 1986; U. ROMAGNOLI, *Noi e loro. Diritto del lavoro e nuove tecnologie*, in *Rivista Trimestrale di Diritto e Procedura Civile*, 1986, 377; B. VENEZIANI, *Nuove tecnologie e contratto di lavoro: profili di diritto comparato*, in *Diritto del Lavoro e delle Reazioni Industriali*, 1987, 54; P. ICHINO, *Il contratto di lavoro*, vol. III, in A. CICU, F. MESSINEO, *Trattato di Diritto Civile e Commerciale*, Milano, Giuffré, 2003, 233. More recently M. WEISS, *Digitalizzazione: sfide e prospettive per il diritto del lavoro*, in *Diritto delle Relazioni Industriali*, 2016, 3, 659; P. ICHINO, *Le conseguenze dell'innovazione tecnologica sul diritto del lavoro*, in *Rivista Italiana di Diritto del Lavoro*, 2017, IV, 525; S. DEAKIN, C. MARKOU, *The Law-Technology cicle and the future of work*, in *Giornale di Diritto del Lavoro e delle Relazioni Industriali*, 2018, II, 445.

[8] There is a vast body of literature investigating the phenomenon of the so-called «*labour replacing potential*» of new technologies, as defined by the International Labour Organization, in the *Report of the Director-General*, International Labour Conference, 104 Session, *The Future of Work Centenary Initiative*, 2015, www.ilo.org/ilc. Others refer to «*disruptive technologies*» (see M. CLAYTON CHRISTENSEN, E. MICHAEL RAYNOR, R.

talization targets the worker's tasks liable to be automated. However, given the current stage of digitalization progress, not only tasks that can be automated come into consideration. In some organizations, which currently represent a minority in the economy, the massive digitalization of the productive processes has affected also "non-automatable" tasks, transforming the human component servant to the mechanical-digital components, which become the real core of the organization. [9]

Of course, alongside the many new risks, digitalization can also imply several positive effects, especially in terms of workers' health and safety. For instance, the automation of elementary and repetitive tasks can contribute to the implementation of one of the major principles in health and safety discipline: to adapt work to man (not the reverse), avoiding reducing the worker to a mere gear without any discretion. [10] The same could be affirmed about "smart" protective equipment, that helps reduce worker error or carelessness. [11]

As said, the forces of digitalization also affect the organization as a

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MCDONALD, *What is Disruptive Innovation?*, in *Harvard Business Review*, December 2015). In recent years alongside the idea – rather radical – of the "end of work" (see J. RIFKIN, *The end of work: The Decline of the Global Force and the Dawn of the Post-Market Era*, New York, G.P. Putnam's Sons, 1995; see also M. FORD, *The rise of the robots: Technology and the threat of a jobless future*, New York, Basic books, 2015), or otherwise of massive mechanization of labour (E. BRYNJOLFSSON, A. MCAFEE, nt. (6)), scholars have come up with a different one, one that emphasizes how some types of work, because of the creativity required or the intense social interactions they require, elude digitalization (and their full replacement by machines) and may at most undergo a change in the way they are performed (see H.D. AUTOR, M.J. HANDEL, *Putting tasks to the test: Human capital, job tasks, and wages*, in *Journal of Labor Economists*, 2013, III, S59; C.B. FREY, M.A. OSBORNE, *The future of employment: how susceptible are jobs to computerization?*, in *Working Paper* 7, Oxford Martin School, University of Oxford, 2013). Other authors then note the advent of technology will induce the emergence of new jobs (M. VIVARELLI, *Innovation and Employment: A Survey*, in *IZA Discussion Paper*, n. 2621, Institute for the Study of Labor, Bonn), or a growth of "old" jobs related mainly to the sphere of personal services (E. MORETTI, *La nuova geografia del lavoro*, Milano, Mondadori, 2014).

[9] This is the case, for example, with some Amazon warehouses; see A. DELFANTI, B. FREY, *Humanly Extended Automation or the Future of Work Seen through Amazon Patents*, in *Science, Technology, & Human Values*, 46, 3, 655-682.

[10] See Directive 391/89/EC, Article 6, par. 2, lett. d); see also Legislative Decree No. 81/2008, Article 15, par. 1, lett. d).

[11] See European Agency for Safety and Health at Work, *Smart personal protective equipment: intelligent protection for the future* (discussion paper), 12 June 2020, www.osha.europa.eu.

whole. The clearest evidence is the transfiguration of the symbol of the twentieth-century work organization: the "workplace".

Before the advent of digitalization, this essentially was conceived as the "factory" (or the "plant", or the "office") not as a physical space per se, but as the physical place where was necessary to concentrate all productive factors (including workers). Without this concentration, the organization couldn't achieve its productive goals.

Nowadays, this need is radically superseded, for instance, by the spread of remote working, as an effect of digitalization and reinforced, of course, by the Covid-19 pandemic.

This allows us to appreciate at the same time both the destructive and poietic forces of digitalization.

The first has the effect of dissolving – in some cases almost completely – the traditional workplace and deconstructing the organization into its fundamental "atoms" (the worker and his digital device): this is the case of those companies that adopt "integral" remote working for all their employees, or those that are organized through digital platforms, in which the physical location of the firm is completely irrelevant to the achievement of the productive goals. [12]

The "poietic" force, on the other hand, allows the creation of new digital links between the "atoms" into which this new form of organization is reduced. In this kind of enterprise, therefore, the organization is rearticu-

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[12] On platform work the literature is boundless; see A. ALAIMO, *Lavoro e piattaforme tra subordinazione e autonomia: la modulazione delle tutele nella proposta della Commissione europea*, in *Diritto delle Relazioni Industriali*, 2022, 2, 639; B. CARUSO, *Il lavoro digitale e tramite piattaforma: profili giuridici e di relazioni industriali I lavoratori digitali nella prospettiva del Pilastro sociale europeo: tutele rimediali legali, giurisprudenziali e contrattuali*, in *Diritto delle Relazioni Industriali*, 2019, 4, 1005; M. BARBERA, *Impresa, lavoro e non lavoro nell'economia digitale: fra differenziazione e universalismo delle tutele*, in *Diritto del Lavoro e delle Relazioni Industriali*, 2018, 403 ss.; P. TULLINI, *La qualificazione giuridica dei rapporti di lavoro dei gig-workers: nuove pronunce e vecchi approcci metodologici*, in *Lavoro Diritti Europa*, 2018, 1; A. ADAMS, J. FREEDMAN, J. PRASSL, *Rethinking legal taxonomies for the gig economy*, in *Oxford Review of Economic Policy*, 2018, 34, 3, 475-494; R. VOZA, *Il lavoro e le piattaforme digitali: the same old story?*, in *Working Paper CSDLE "Massimo D'Antona".IT*, 2017, n. 336; V. DE STEFANO, *The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork, and Labor Protection in the Gig-Economy*, in *Comparative Labour Law & Policy Journal*, 2016, 37(3), 471-503; A. ALOISI, *Il lavoro "a chiamata" e le piattaforme online della collaborative economy: nozioni e tipi legali in cerca di tutele*, in *Labour & Law Issues*, 2016, 2, 16 ss.; E. DAGNINO, *Uber law: prospettive giuslavoristiche sulla sharing/on-demand economy*, in *Diritto delle Relazioni Industriali*, 2016, 1, 137 ss.

lated into a "diffused" workplace, which regains its unity in the digital dimension thanks to digital devices and internet connections.

2. *Regulate digitalization's effect through national collective bargaining: the state of the art*

This radical transformation of productive organizations and workers' tasks also affects the protective needs of employees as well as trade unions.

About employees, the digitized workplace gives rise to unknown needs compared to the past, such as the right to "disconnect" from digital devices, and the right not to be discriminated against by the use of algorithms. [13] In addition, many of the existing protective needs take on a new shape, like in the case of professional training and skills, [14] the right to privacy, [15] and the right to health and safety. [16]

Digitalization challenges also how trade unions traditionally carry out their activities. The right of assembly, proselytizing, and leafleting, for example, were conceived in the 20th-century workplace, where all workers had to be concentrated at the same time to fulfill their performance and where trade unions could act "in person". So, traditional ways of exercising these rights are ill-suited, for example, to digital platforms or produc-

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[13] See M. BARBERA, *Discriminazioni algoritmiche e forme di discriminazione*, in *Labour & Law Issues*, 2021, 7, 1, 1 ss.; M. PERUZZI, *Il diritto antidiscriminatorio al test dell'intelligenza artificiale*, in *Labour & Law Issues*, 2021, 7, 1, 48 ss.; G. GAUDIO, *Algorithmic management, poteri datoriali e oneri della prova: alla ricerca della verità materiale che si cela dietro l'algoritmo*, in *Labour & Law Issues*, 2020, 6, 2, 21 ss.

[14] See par. 3.

[15] See the papers collected in C. PISANI, G. PROIA, A. TOPO (eds.), *Privacy e lavoro. La circolazione dei dati personali e i controlli nel rapporto di lavoro*, Milano, Giuffrè, 2022; see also P. TULLINI, *Il controllo a distanza attraverso gli strumenti per rendere la prestazione lavorativa. Tecnologie di controllo e tecnologie di lavoro: una distinzione possibile?*, in P. TULLINI (ed.), *Controlli a distanza e tutela dei dati personali del lavoratore*, Torino, Giappichelli, 2017, 120.

[16] Especially regarding the use of AI or remote working. On the latter see the joint Report Eurofound-ILO, *Working Anytime, Anywhere: The Effects on the World of Work*, 2017, www.eurofound.europa.eu; see also R. KRAUSE, *"Always-on". The Collapse of the Work-Life Separation in Recent Developments, Deficits and Counter-Strategies*, in E. ALES *et al.* (eds.), *Working in Digital and Smart Organizations. Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*, Cham, Palgrave Macmillan, 2018, 223 ss.

tive organizations, where remote work is the rule or at least is widely used among workers. [17]

Concerning the many transformations resulting from digitalization, and given the exponential pace at which such changes occur, the question arises as to what is the most effective regulatory tool to govern them.

The answer seems to point to collective bargaining, not only because in our system it is the main regulatory source of the employment contract, [18] but also because it proves to be faster than the law in governing changing phenomena. [19] Not surprisingly, the involvement of social partners is playing an increasing role in addressing the several effects of digital transformation at both the macroeconomic and microeconomic levels. [20]

The first relates to discussions on industrial policies, employment, and labour market reforms, new professional skills policies, social protection, pensions, and tax reforms. In these fields, the preferred pattern for the involvement of trade unions is the tripartite social dialogue both at the EU and national level.

On the contrary, the microeconomic level concerns workplace reorganization, the impact of digitalization on employment and working conditions, and the social and economic costs of adapting the enterprise's organization. The tool used in this second field is collective bargaining, and, within the collective bargaining system, a crucial role should be played by national collective agreements (at both inter-confederal and sectoral levels).

The reason for the advocated prominence of national collective agreements over company agreements is linked to the current stage of advance-

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[17] See D. DELLA PORTA, R. CHESTA, L. CINI, *Labour Conflicts in the Digital Age: A Comparative Perspective*, Bristol, Bristol University Press, 2022; F. HADWIGER, *Realizing the opportunities of the platform economy through freedom of association and collective bargaining*, in *ILO Working Paper*, n. 80, 30 September 2022; N. COUNTOURIS, V. DE STEFANO, *New trade union strategies for new forms of employment*, Brussels, ETUC, 2019; A. ALOISI, E. GRAMANO, *Workers without Workplaces and Unions without Unity: Non-Standard Forms of Employment, Platform Work and Collective Bargaining*, in *Bulletin of Comparative Labour Relations*, 2022, 107.

[18] G. GIUGNI, *Introduzione allo studio della autonomia collettiva*, Milano, Giuffrè, 1960; L. MARIUCCI, *La contrattazione collettiva*, Bologna, Il Mulino, 1985, 11.

[19] In general, see M. TIRABOSCHI, *Sulla funzione (e sull'avvenire) del contratto collettivo di lavoro*, in *Diritto delle Relazioni Industriali*, 2022, 3, 789-840.

[20] See R.R. CONTRERAS, *Impact of digitalisation on social dialogue and collective bargaining*, Eurofound Digest, 15 December 2021, www.eurofound.europa.eu.

ment of the collective bargaining system, which still is in its relatively early stages. The analysis of the main collective agreements shows that in many cases the core of the new rights has not yet been clearly defined, but because they relate to fundamental human values, they must be established with uniform terms for all workers in all productive sectors.

For example, the right to disconnect: there are still no clear rules, in the law, nor in the collective agreements, whether it means the right not to receive communications after working time, or just not to reply (even though it is allowed to receive them). The same could also be said for other fundamental rights, such as the right to not be discriminated against through the use of an algorithm, the right to preserve professional skills, health and safety, etc.

In this perspective, corporate collective bargaining, which often played the role of pathfinder, as happened with remote working,[21] should play a secondary role in this first stage. Granting corporate bargaining an excessive prominence would risk balkanizing protections, or even guaranteeing none at all in those economies – such as Italy – where corporate bargaining operates only in an absolute minority of companies.

Given the pivotal role that national collective bargaining is expected to play, how far is it in addressing the challenges raised by digitalization and its effects on the world of work?

While at the supranational level, trade unions have steadily put this issue on their agenda,[22] at the national level, the response is not so clear.[23]

First of all, the analysis of the main national agreements signed until today shows that collective bargaining has proved to be most responsive in those sectors where digitalization has the greatest impact, such as metal-

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[21] M. TIRABOSCHI, *Smart working e digitalizzazione del lavoro (I) Il lavoro agile tra legge e contrattazione collettiva: la tortuosa via italiana verso la modernizzazione del diritto del lavoro*, in *Diritto delle Relazioni Industriali*, 2017, 4, 921 ss.; M.L. PICUNIO, *La questione relativa agli accordi sullo "smart working" sottoscritti prima dello statuto del lavoro agile*, in G. ZILIO GRANDI, M. BIASI (eds.), *Commentario breve allo Statuto del lavoro autonomo e del lavoro agile*, Padova, Cedam, 2018, 515 ss.

[22] See the *European Social Partners Framework Agreement on Digitalisation*, signed by BusinessEurope, SMEunited, SGI Europe (former CEEP) and the ETUC; on which see the paper of L. BATTISTA, in this Volume; see also I. SENATORI, *The European Framework Agreement on Digitalisation: a Whiter Shade of Pale?*, in *Italian Labour Law e-Journal*, 2020, 13, 2, 159 ss.

[23] For an overview, see M. BARBIERI, *Innovazioni tecnologico-organizzative e inquadramenti nei rinnovi dei CCNL delle imprese private*, in *Labour & Law Issue*, 2023, 1.

working or the service sector. On the contrary, in many other sectors, where even digitalization will deploy substantial effects (as in the case of agriculture,[24] construction,[25] etc.), provisions dedicated to the new challenges are very limited, if not absent.

Secondly, even in the most responsive sectors (such as the metalworking sector or service sector), the parties' attention is confined to only a few specific issues, while many others remain unaddressed.[26]

To summarize, depending on the specific matter considered, national collective bargaining is at three different stages of regulating digitalization: *i*) matters in which collective bargaining has introduced structured regulation; *ii*) matters in which collective bargaining has arranged only some rules, that need to be further strengthened and specified; *iii*) matters in which collective bargaining has not arranged any rules, leaving room for action of lawmakers or, at most, of bargaining at company level.

3. *Challenge accepted: job classification and the right to lifelong education and training*

The fields in which collective bargaining – particularly in the metalworking and service sectors – has displayed the greatest effort to regulate the effects of digitalization are job classification and professional education and training.[27]

As said, the job description is the one most directly affected by the destructive and poietic forces of digitalization. The second, relating to professional education and training, becomes crucial in equipping the work-

[24] R. ABBASI, P. MARTINEZ, R. AHMAD, *The digitization of agricultural industry – a systematic literature review on agriculture 4.0*, in *Smart Agricultural Technology*, 2022, 2.

[25] See R. AGARWAL, S. CHANDRASEKARAN, M. SRIDHAR, *Imagining construction's digital future*, 24 June 2016, www.mckinsey.com.

[26] M. TIRABOSCHI, *Tra due crisi: tendenze di un decennio di contrattazione*, in *Diritto delle Relazioni Industriali*, 2021, 1, 143. ss. identifies other unanswered issues also different from those analyzed in this paper, including apprenticeship and interprofessional funds for training.

[27] See for the metalworking sector V. BAVARO, F. FOCARETA, A. LASSANDARI, F. SCARPELLI (eds.), *Commentario al contratto collettivo dei metalmeccanici*, Roma, Futura, 2023; T. TREU (ed.), *Commentario al contratto collettivo dei metalmeccanici*, Torino, Giappichelli, 2022; G. ZILIO GRANDI (ed.), *Commetario al CCNL Metalmeccanici 5 febbraio 2021*, Torino, Giappichelli, 2021.

force to perform the new tasks required by digitalization.[28] It is therefore not surprising that the examined national collective agreements have shown the highest interest in these two issues.

Considering the job classification, one of the most interesting examples is embodied in the 2021 Metalworkers' National Collective Agreement, which took important steps to overcome the original approach dating back to 1973.[29] First, this CCNL removed from the job classification the 1st level (i.e., the lowest level in terms of quality/complexity of tasks required of workers).[30] Even though in practice such an "entry-level" job was already scarcely used, this removal is nonetheless significant. It certifies that in modern productive organizations, merely executive tasks which do not require any worker's expertise or discretion are marginalized if not vanished.

The growing importance of specific professional skills then led the collective parties to also radically reform the entire system of workers' job descriptions.[31] The new classification is now based on the concept of "role",

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[28] On this topic, T. TOMASSETTI, *Competenze e formazione nei sistemi d'inquadramento di nuova generazione*, in *Rivista Giuridica del Lavoro*, 2021, 2, 191; M. BROLLO, *Tecnologie digitali e nuove professionalità*, in *Diritto delle Relazioni Industriali*, 2019, 2, 468 ss.; C. ALESSI, *Professionalità, contratto di lavoro e contrattazione collettiva, oggi*, in *Professionalità Studi*, 2018, 1, 23 ss.; M. FAIOLI, *Mansioni e macchina intelligente*, Torino, Giappichelli, 2018; B. CARUSO, *Occupabilità, formazione e capability nei modelli giuridici di regolazione dei mercati del lavoro*, in *Diritto del Lavoro e delle Relazioni Industriali*, 2007, 1, 1 ss.; F. GUARRIELLO, *Organizzazione del lavoro e riforma dei sistemi di inquadramento*, in *Quaderni Rassegna Sindacale*, 2005, 3, 51 ss.; U. CARABELLI, *Organizzazione del lavoro e professionalità: una riflessione su contratto di lavoro e post-taylorismo*, in *Diritto del Lavoro e delle Relazioni Industriali*, 2004, 1, 1 ss.; C. ALESSI, *Professionalità e contratto di lavoro*, Milano, Giuffrè, 2004; P. ICHINO, *Interesse dell'impresa, progresso tecnologico e tutela della professionalità*, in *Rivista Giuridica del Lavoro*, 1976, 4-5, 481 ss.; from an international perspective C. VALENTI, *The individual right to continuous training of workers: an analysis of best practices in the international framework*, in *Labour & Law Issues*, 2021, 7, 1, 57 ss.

[29] M.G. GAROFALO, G. ROCCELLA (eds.), *Commentario al contratto collettivo di lavoro dei metalmeccanici*, Bari, Cacucci, 2010.

[30] The 1st level described in CCNL of 2016 encompassed: "*workers who perform simple productive activities to be skilled in which professional knowledge is not required, but a minimum period of practice is sufficient; workers performing simple manual activities not directly related to the productive process for which no professional skills are needed*".

[31] Not surprisingly, in introducing the new classification system, the CCNL states: "*The profound changes in the factors and models of work organization that have occurred in recent years as a function of the evolution of markets, supply chains, value creation processes within companies and technological evolution, characterized by increasing digitalization and innovations*

and on declarations based on the professionality criteria, such as autonomy, hierarchical/functional responsibility, technical/specific competence, transversal skills, polyvalence, multifunctionality, continuous improvement and innovation related to the new integrated management systems,[32] which explicitly mention digital skills.[33]

Further evidence of the growing importance of high-skilled workers and workers with specific skills in the productive organization can be found in the implementation, again by the CCNL Metalworkers' Industry, of a new form of direct workers' participation in the definition of working activity's rules.[34] This experimental approach recognizes the value of "*mutual collaborative learning*" and, consequently, the proactive role of workers

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related to Industry 4.0., entail a transformation of work performance and professional skills. In this context, the classification system intends to enhance the worker's expected contribution in terms of responsibility and autonomy inherent in the different company roles by actualizing the professionalism content and terminology of the current classification system, taking note of technological and organizational innovations and the digital transformation of industry and society from 1973 to the present, taking into account the internationalization of organizations and professional systems also with reference to the European EQ system, ensuring compatibility with the general and sector/industry certification and regulatory framework of company systems".

[32] See F. FOCARETA, *Un nuovo sistema di classificazione tra costanti ed innovazione*, in V. BAVARO, F. FOCARETA, A. LASSANDARI, F. SCARPELLI (eds.), nt. (27), 305 ss.; A. MARESCA, *Il nuovo sistema di classificazione: valori ispiratori e tecniche applicative*, in T. TREU (ed.), nt. (27), 37 ss.; A. PRETEROTI, S. CAIROLI, *Il nuovo inquadramento professionale nell'industria metalmeccanica 4.0*, in G. ZILIO GRANDI (ed.), nt. (27), 141-158; L. PERO, *L'inquadramento professionale dei metalmeccanici e i cambiamenti organizzativi di lungo periodo*, in *Economia e Lavoro*, 2021, 3, 41 ss.; S. NEGRI, G. PIGNI, *Il nuovo sistema di inquadramento professionale: tra resistenze e cambiamento*, in *Bollettino Speciale Adapt*, 2021, 1.

[33] "*Soft skills and participation in improvement*", for example, are defined as "*the knowledge and know-how that the worker can apply and carry over to different functional and process areas and that enable the results of specific technical skills in terms of effectiveness and efficiency. They include interpersonal skills of listening and communication, individual work and group collaboration, problem-solving for participation in continuous improvement, general digital skills, lifelong learning skills, and multicultural and linguistic adaptation skills", which include the "use of IT and digital tools*". On the other hand, "*continuous improvement and innovation",* are defined as *"participation in new integrated operational management and work organization systems e.g., of the ISO 9000, 14000, 18000/45000 or regulatory type that require abilities to contribute to continuous improvement cycles and innovation processes in the face of changes in technology and markets. for the improvement of working conditions, efficiency" including "– Ability to use, develop individually and/or collaboratively, methodologies and tools, including digital, provided within organizational models – Ability to lead/guide improvement and/or innovation – Ability to disseminate practices and develop innovative proposals*".

[34] See Article 9-bis of CCNL of Metalworkers Industry.

as well, who precisely because of their expertise are no longer reduced to the mere execution of directives issued from the top of the hierarchical pyramid. In this perspective, they contribute to improving the "*organizational functioning of the company for the advantage of the undertaking's performance and workers*".

Of particular interest in the field of job description is also the mechanism introduced by the CCNL Service Sector in 2019 to upgrade the classification before the renewal in companies operating in the ICT sector.[35] The CCNL specifically introduces only for companies operating in the ICT sector – and the specific provision for this branch of the market is the real novelty – a job classification based on the E-CF index,[36] accompanied by a procedure that allows the update of the job description before the expiration of the national contract itself.

A similar mechanism, even if experimental and based at the company level, is also contained in the CCNL of Metalworkers' sector of 2021.[37] Other contracts are still at the planning stage, introducing methods through which to initiate pathways for defining new professional figures at the company bargaining level.[38]

Closely related to these important changes in the revision of job classifications is the attention dedicated to professional education and training.

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[35] See Article 115 of CCNL Service Sector.

[36] A common European Framework for ICT Professionals in all industry sectors.

[37] See Title II, Article 2, which authorizes experimentation at the company level, in agreement with RSUs and territorial trade unions that sign the CCNL, of "*interventions for the update of the classification within the framework of the common principles identified by the CCNL and the Guidelines drawn up by the National Commission*"; see M. BARBIERI, *Article 2 – Iniziative sperimentali. Commento*, in V. BAVARO, F. FOCARETA, A. LASSANDARI, F. SCARPELLI (eds.), nt. (27), 325-329, highlighting how Article 10 provides for a National Commission on Professional Classification, which is responsible for monitoring the new classification system, evaluating cases of litigation, suggesting updates to the exemplification of professional figures, and above all drawing up Guidelines for the experimental interventions to adapt the new classification to different company contexts, as well as monitoring them.

[38] As in the case of the CCNL of Chemical workers of June 13, 2022, which expressly dedicates to technological, organizational, and digital transformations the experimental Part V of the agreement, which regulates the consequences on labour, industrial relations, and health and safety. The adaptation of the discipline to digitalization is delegated to "*experiments and agreements at the company level*". The 2019 CCNL of Credit Sector (Article 9) is dedicated to the analysis of the impact of new technologies/digitalization on the workplace a bilateral joint National Committee, which is also in charge of defining the new professional figures to be classified as a result of technological changes.

Especially in the Metalworking Sector, training and the acquisition of new skills have become issues of crucial importance, to the point that the CCNL of the Metalworking Industry Sector introduced in 2016 a "subjective right to professional education and training".[39]

The importance of professional training was also confirmed by the interconfederal agreement of March 9, 2018 (so-called "Agreement for the Factory"),[40] as well as by the following implementation agreements such as the one on training in the field of Industry 4.0.[41]

The introduction of a subjective right to professional education and training has characterized also other national collective agreements, again in the metalworking sector, even if with less emphasis.[42] By contrast, attention to this issue has proven to be more softly in sectors where education and training can be crucial as well, such as services or agriculture. Indeed, the most recent renewals of agreements in these sectors have not shown noteworthy innovations.

The interest in national collective bargaining in this area is encouraging, considering that the creation and upgrading of professional skills represent in the current economic context the precondition not only for access to the individual employment position, but more generally to the labour market.

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[39] See CCNL Metalworkers Industry (Articles 6-7) prescribes: "*workers on permanent and fixed-term contracts (where the duration of the contract is compatible and in any case of not less than 9 months) are entitled to be included in continuous training courses lasting 24 hours per capita, in relation to training needs, by drawing up company projects with the involvement of the RSU*".

[40] In the face of digitalization and the technological revolution, it identifies as pillars of economic growth, among others, training and new skills for workers as well as investment in innovation and research. This agreement was then followed by the July 5, 2018, Interconfederal Agreement on Training in Industry 4.0. See also the so-called "Appeal for Europe" of April 8, 2019 signed by Confindustria, CGIL, CISL and UIL in which it is confirmed the importance of creating a pathway at the European level "*of lifelong learning adequate to the extraordinary phase of epochal change brought about by the shift from fossil energy sources to renewables and the innovation of the digital economy, to deal sustainably and effectively with the changes related to globalization, energy transitions, digitalization, an aging population with the resulting productive reorganizations, redesign of manufacturing and services, creation, innovation, reconversion of professional skills, occupational mobility, changes in consumption and lifestyles*".

[41] See the Interconfederal agreement of July 5, 2018, on training in Industry 4.0.

[42] See CCNL Goldsmiths' Industry Agreement of December 23, 2021; CCNL Metalmechanics Cooperatives, Memorandum of Agreement of May 31, 2021; CCNL Metalmechanics SME – Confapi, Memorandum of Agreement of May 26, 2021.

Not surprisingly, the digital divide has disruptive effects on a part of the low-skilled workforce.

Thus, given the importance of this issue, and considering the reluctance of most of the collective agreements to introduce a "subjective right to professional training", we need to ask whether, alongside public policies to assist low-skilled workers, private actors can also be encouraged to adopt provisions similar to those introduced in the metalworking sector.

One of the possibilities could require the law to introduce – as it already does, for example, in the health and safety sector – an obligation on the employer for professional education and training. This not only would reinforce the right in those sectors where is already recognized, supporting trade unions' claims, but will also cover the workforce in all the other sectors. In this case, it would be important for the law to limit its intervention to the establishment of the right and then leave to collective bargaining the detailed regulations (hours per year, subjects, methods, etc.).

Noteworthy for the possible intervention of the law are the "Commissions for training at company level"[43] and figure of the "workers' representative for training", both introduced by the CCNL of the Metalworkers Industry,[44] with the task of supervising the effective exercise of the right by workers (also considering that the employer's violation of this obligation is difficult to punish, especially with fines, and equally difficult to force) as well as with the task of reporting opportunities to access public and private funding for training, and making proposals according to the training needs of the specific workforce (also considering specific factors such as the nature of the activity, the age of the workers, the training already carried out, the professional and cultural background, etc.).

Whatever the source establishing the right (law or collective agreement), what seems essential is that it should be the collective agreement that provides the detailed regulation, with the necessary involvement of company bodies in more structured companies, and territorial bodies to protect those workers employed in small and medium-sized companies where there is a lack of trade unions' representatives.

Precisely along the lines of what is already happening in health and safety.

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[43] Article 6, pt. 6.3 CCNL Metalworkers Industry prescribes the constitution of this commission "*in companies with at least 500 employees employed at the same productive unit*".

[44] Article 6, pt. 6.4 CCNL Metalworkers Industry requires identification of workers' representatives for training "*in productive units with more than 300 employees*".

4. *At the beginning of a regulatory path: health, and safety in remote working, right to disconnection, and trade unions' rights in the digital workplace*

Excluding the matters just mentioned, the attitude of national collective bargaining to intervene and regulate the many other effects of digitalization has so far proved to be more tempered. Three cases are illustrative: the employer's duty of health and safety for remote workers, the right to disconnect, and the exercise of trade unions' rights in the digital workplace.

Regarding the first case,[45] collective bargaining at the national level often intervenes by mirroring what the law already provides for, while it does not take a position on an issue of remarkable importance: the "spatial" extent of the employer's duty to protect the employee's health and safety. An issue that, indeed, is not clearly addressed by the law either.[46]

In detail, it is undisputed that the employer is responsible for the health and safety of the remote worker ("teleworker") when he performs his ser-

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[45] See extensively D. TARDIVO, *Digital nomads' health and safety: the European perspective*, in E. MENEGATTI (ed.), *Law, Technology and Labour*, Bologna, Italian Labour Law E-Studies, 2023; see also P. PASCUCCI, *Note sul future del lavoro salubre e sicuro… e sulle norme sulla sicurezza di rider & co.*, in *Diritto della Sicurezza sul Lavoro*, 2019, 1, 37 ss., spec. 42 ss.; R. PESSI. R. FABOZZI, *Gli obblighi del datore di lavoro in materia di salute e sicurezza*, in L. FIORILLO, A. PERULLI (eds.), *Il Jobs Act del lavoro autonomo e del lavoro agile*, Torino, Giappichelli, 2018, 234; F. MALZANI, *Il lavoro agile tra opportunità e nuovi rischi per il lavoratore*, in *Diritto Lavori Mercati*, 2018, 1, 25; S. CAPONETTI, *L'obbligazione di sicurezza al tempo di Industry 4.0*, in *Diritto della Sicurezza sul Lavoro*, 2018, 1, 42 ss.; P. LOI, *La Gig economy nella prospettiva del rischio*, in *Rivista Giuridica del Lavoro*, 2017, 1, 259; L. PELUSI, *La disciplina di salute e sicurezza applicabile al lavoro agile*, in *Diritto delle Relazioni Industriali*, 2017, 4, 1041 ss.; E. DAGNINO, M. MENEGOTTO, M. PERUZZI, *Sicurezza e agilità: quale tutela per lo smart workers?*, in *Diritto della Sicurezza sul Lavoro*, 2017, 1, 1; L.M. PELUSI, M. TIRABOSCHI, *Guida pratica al lavoro agile dopo la legge n. 81/2017*, ADAPT University Press, 2017; M. LEPORE, *La sicurezza e la tutela della salute dei telelavoratori. L'accordo europeo del 16 luglio 2002*, in *Argomenti di Diritto del Lavoro*, 2002, 813.

[46] In the Law No. 81/2017, the only provisions devoted to health and safety are Article 18 par. 2 ("*The employer is responsible for the health and safety and the proper functioning of the technological tools assigned to the employee for the performance of the work activity*") and Article 22 ("*The employer shall ensure the health and safety of the worker who carries out the "agile" performance and to this end delivers to the worker and the workers' safety representative, at least annually, written information in which the general risks and specific risks related to the particular manner of execution of the employment relationship are identified*").

vices at a specific location outside the company's premises (which quite always is his home). Both the law[47] and the contractual provisions comply with this profile.[48] To fulfill this obligation a key condition is the possibility to have access to the place elected by the employee outside the company's premises both for the employer, who has to assess the risks and provide all the safety measures required, and trade union representatives or labour inspectors, who have to verify the compliance with the law.[49]

This implies that both the location chosen by the worker is known in advance to the employer and it is under the legal disposal of the employee, who can permit the access of the other actors.

The unsolved question arises about those cases when the employer allows the worker to perform his duty wherever he wants, even without prior notice. This is the case of the so-called "*work anywhere*" policies (popular among large high-tech enterprises) or even just the case (much more common) where the employer is disinterested in where the employee performs his duties, simply prohibiting him from only certain types of places (e.g., places open to the public that do not guarantee the confidentiality of company information, places without an Internet connection, etc.).

Thus, in these cases has the employer to provide for health and safety measures? In particular, is the employer obliged to protect the employee also concerning risks arising from the environmental-social-political conditions of that place (in cases of kidnapping, contraction of infectious diseases, terrorist attacks, etc.) even though he does not know it?

The question is particularly relevant given that in the case of employees sent to work abroad by the employer the courts, not only in Italy, have repeatedly recognized the employer's liability.[50]

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[47] For the Italian legislation, see Legislative Decree No. 81/2008, Article 3, par. 10 and the provisions of Title VII.

[48] At the European level, see the Framework Agreement on Telework of 2002, especially Article 8.

[49] See Legislative Decree No. 81/2008, Article 3, par. 10; see also Framework Agreement on Telework of 2002, Article 8, par. 3.

[50] For instance, in the case *Palfrey v Ark Offshore Ltd.*, England, and Wales High Court, 2001 an employee, Mr. Palfrey, traveling to West Africa to work on an oil rig contracted a fatal malarial infection. He was informed by his employer that he did not need to be concerned about the risk of malaria considering the workplace was an oil rig. Therefore, Mr. Palfrey took no anti-malarial medication before or during the trip but during the travel to the oil rig he slept on an island where he was bitten by a mosquito and contracted malaria, which became fatal. The High Court found a failure of the employer to take rea-

So, as argued elsewhere,[51] these two cases can be compared given that remote workers who decide autonomously where to work act by an agreement with the employer that authorizes them to do so. Thus, the employer's indifference to the effective place where the worker will perform the task cannot suppress the employer's obligation to health and safety.

Despite the extreme proliferation of remote work experienced in recent years, even in the most radical forms such as digital nomadism, this issue is solved neither by the law (see Law No. 81/2017) nor by the Concerted Protocol on "lavoro agile" of 2021 between trade unions, employer's associations, and the Italian Government, nor by the most recent national collective agreements that often merely recognize remote work as a way of performance to be encouraged and repeat the legal provisions.

Here, instead, collective bargaining at the national level could provide an employer-worker model agreement, where the parties have to define at least the typology of the place in which the worker will decide to perform his tasks and not simply exclude only certain categories of places, or even burdening the worker himself to assess the suitability of the location under health and safety regulations, thereby resulting in a complete reversal of the obligation under Article 2087 of the Civil Code.[52]

Of course, even though acting at the national level would also protect

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sonable care to ensure the safety of the employee because it was supposed to cover also the travel to and from the oil rig. In another case, *Durnford v. Western Atlas International Inc.*, England and Wales High Court, 2003, an employee suffered a disc slip due to an improper minibus provided by his employer to transport him to the third-party site where he was working while abroad. The court found that the employer was liable because it had made the employee travel in unsafe conditions, exposing him to a foreseeable risk of suffering an injury. The Italian Cassazione civile, lav., May 29, 1990, No. 5002 found the employer responsible for malaria contracted by an employee in Cameroon because he did not prove to have adopted every possible measure to prevent the employee from the infection, even though he knew that such humid region was the natural "habitat" of the anopheles; see also, Cassazione civile, lav., March 22, 2002, No. 4129 found the employer (a firm specialized in geological research) was liable for damages suffered by an industrial expert sent in Ethiopia to carry out geological surveys who had fallen victim to kidnapping by a group of guerrillas. The employer, although aware of the dangerous situation in the area, had not provided the necessary preventive measures.

[51] D. TARDIVO, nt. (45).

[52] See the CCNL Professional Firms and insurance agencies 2023, Article 99 prescribing: "*In the Agreement, the Parties must establish (...) the commitment of the remote worker to work only in places of which he can verify in advance the suitability and ensure compliance with the standards and conditions of safety and hygiene of work, as well as compliance with the obligations of confidentiality*".

those workers employed in companies without union representatives, it would not be appropriate for national agreements to define too much in detail specific and predetermined locations where to work. Doing so, indeed, would frustrate the employee's work-life balance which must be defined only by the individual worker in the light of his specific personal needs and which can not be defined at the national level, one for all.

Also crucial would be the specification of the remote worker's duty to cooperate, regulated by Article 22 of Law No. 81/2017,[53] as a special provision of the duty established by Article 20 of Legislative Decree 81/2008 and more in general by Articles 1175 and 1375 of the Civil Code. This would mean, for example, establishing the employee's duty to notify the employer of the specific location or at least the category of location in which he decides to perform, or to change them from those previously communicated, thus enabling the employer to make in advance a new assessment and fulfill the resulting obligations (to train, to inform, to provide equipment, etc.).

Concerning the right to disconnect, national collective bargaining has not yet analytically intervened on it, and when it intervened, it introduced contradictory provisions.

The growing interest of public institutions[54] and scholars in this issue[55] has highlighted how the right to disconnect is crucial in the context of the

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[53] Article 22, par. 2 of Law No. 81/2017 states: "*The worker is required to cooperate in the implementation of preventive measures provided by the employer to cope with the risks associated with the performance of work outside the company premises*".

[54] European Parliament Resolution of 21 January 2021 with recommendations to the Commission on the right to disconnection (2019/2181(INL), www.europarl.europa.eu.

[55] M. BIASI, *Individuale e collettivo nel diritto alla disconnessione: spunti comparatistici*, in *Diritto delle Relazioni Industriali*, 2022, 2, 400 ss.; O. RAZZOLINI, *La disciplina del tempo di lavoro – Lavoro agile e orario di lavoro*, in *Diritto delle Relazioni Industriali*, 2022, 2, 371 ss.; L. ZOPPOLI, *Lavoro agile, persone e amministrazioni: le sfide post-pandemia*, in *Rivista Italiana di Diritto del Lavoro*, 2022, 2, 199 ss.; A. ALAIMO, nt. (12); M.C. CATAUDELLA, *Tempo di lavoro e tempo di disconnessione*, in *Massimario di Giurisprudenza del Lavoro*, 2021, 4, 854 ss.; E. DAGNINO, *Il diritto alla disconnessione nell'esperienza contrattual-collettiva*, in *Lavoro Diritti Europa*, 2021, 4; S. MAGAGNOLI, *Diritto alla disconnessione e tempi di lavoro*, in *Labour & Law Issues*, 2021, 2; A. ALLAMPRESE, *Il dibattito europeo sul diritto alla disconnessione*, in U. CARABELLI, L. FASSINA (eds.), *Smart working: tutele e condizioni di lavoro*, Roma, Futura, 2021, 123 ss.; D. CALDERARA, *Il diritto alla disconnessione*, in S. BELLOMO, A. MARESCA (eds.), *Tempi di lavoro e di riposo. Leggi nazionali, norme europee e interventi della Corte di Giustizia*, Roma, Sapienza Università Editrice, 2022, 110 ss.; M. PERUZZI, *Il dialogo sociale europeo di fronte alle sfide della digitalizzazione*, in *Diritto*

digital workplace to counter the risks of the pervasiveness of digitalization concerning the boundary between private and work life. As mentioned, the progressive overflow of the digital dimension into the analogic one has contributed to structurally weakening this boundary.

Despite this importance, the contractual clauses of the many national collective agreements considered do not allow us to understand what the right to disconnect consists of: whether the right only to not have to respond to communications, which even though they may be sent by the employer and/or colleagues and received by the worker on his device;[56] or in the right to receive no communication at all, as suggested by some examples of those companies that have taken drastic measures such as shutting down servers.[57]

It is not an insignificant difference, given that the continuous receiving of communications (messages, emails, etc.) increases the risk that the worker will consult and respond to them.

On this point, as mentioned, collective bargaining, with a few exceptions from both national[58] and company[59] agreements, does not take a po-

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delle Relazioni Industriali, 2020, 4, 1213; V. MAIO, *Il lavoro da remoto tra diritti di connessione e disconnessione*, in M. MARTONE (ed.), *Il lavoro da remoto. Per una riforma dello smart working oltre l'emergenza*, Piacenza, La Tribuna, 2020, 97 ss.; M. MAGNANI, *I tempi e i luoghi di lavoro: l'uniformità non si addice al post-fordismo*, in *Working Paper CSDLE "Massimo D'Antona".IT*, 2019, n. 404; M. RUSSO, *Esiste il diritto alla disconnessione? Qualche spunto di riflessione alla ricerca di un equilibrio tra tecnologia, lavoro e vita privata*, in *Diritto delle Relazioni Industriali*, 2020, 3, 682 ss.; M. AVOGARO, P. PERRI, *Digitalizzazione e work-life balance: teoria e pratica del diritto alla disconnessione*, in C. ALESSI, M. BARBERA, L. GUAGLIANONE (eds.), *Impresa, lavoro e non lavoro nell'economia digitale*, Bari, Cacucci, 2019, 75 ss.; C. TIMELLINI, *La disconnessione bussa alla porta del legislatore*, in *Variazioni su Temi di Diritto del Lavoro*, 2019, 1, 324-325; E. DAGNINO, *The Right to Disconnect in the Prism of Work-life Balance. The Role of Collective Bargaining: A Comparison between Italy and France*, in G. CASALE, T. TREU, *Transformations of work: challenges for the national systems of labour law and social security*, Torino, Giappichelli, 2018, 437-445; R. DI MEO, *Il diritto alla disconnessione nella prospettiva italiana e comparata*, in *Labour & Law Issues*, 2017, 2, 17 ss.

[56] See CCNL Fishing Entrepreneurship 2023, Article 81-*bis*; CCNL Gas and Water 2022, Article 16.

[57] See M. ALTIMARI, *Tempi di lavoro (e non lavoro) e economia digitale: tra diritto alla disconnessione ed ineffettività dell'impianto normativo garantista*, in C. ALESSI, M. BARBERA, L. GUAGLIANONE (eds.), nt. (55), 61 ss. recalling the corporate collective bargaining of some major enterprises in France (Air France, Arevam Syntec, Orange) and Germany.

[58] For instance, see the CCNL of the Credit Sector of 2019, Article 44, which states: "*out of working hours and in cases of legitimate absence, the employee is not required to ac-*

sition, merely stating the existence of the right to disconnect and does not clarify what technical and organizational measures must be put in place to guarantee the worker's disconnection.

Moreover, sometimes national collective agreements recognize this right only to personnel who perform remotely.[60] This is contradictory. The common experience teaches how interferences conveyed by technology affect both remote workers and workers who perform their duties at the company's premises but who are equipped, for example, with a work phone, or with the possibility of accessing the working email system from their personal devices, or again who regularly use their personal phones to keep in contact with their employer and/or supervisors. So, provisions reserving the right to disconnect for remote workers appear unlawful.

Lastly, national collective bargaining has not yet introduced detailed rules to update trade unions' rights to the workplace transfigured by digitalization.

This is a critical question for the very existence of trade unions. Even before fighting for the protection of employees' rights, trade unions must devise new strategies for the exercise of their traditional functions, and first and foremost to ensure the establishment and maintenance of their connection with the workers they seek to represent.

While scholars are investigating the new potential of digital tools in the

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cess and connect to the company's information system; the employee may deactivate his connection devices thus avoiding the receipt of company communications. The possible receipt of company communications in the aforementioned time and situations does not bind the worker/employee to activate before the expected resumption of work. This is without prejudice to any specific needs"; a similar provision appears in other national agreements such as CCNL Services – Industrial development consortiums of 2022, Article 21-bis; CCNL Trasport – Transportation by rope of 2022, Article 11-bis; Communication – Handcrafts (paper, graphics, publishing) of 2022 (agreement hypothesis), Article 3); Services – Clergy institutions of 2022, Article 75; Food – Handcrafts (agreement hypothesis), of 2021; Food – SME of 2021, Article 17-ter; Building, Wood and Furnishing SME of 2021. On the contrary, the CCNL of the Credit Sector of 2019 (Article 44) recognizes the right to all workers.

[59] See E. DAGNINO, nt. (55), providing an analysis of several company agreements.

[60] CCNL Metalworkers Sector 2021, Article 5; CCNL Energy and Oil 2022; Article 5-*bis*; CCNL Gas and Water 2022, Article 16. On the contrary the CCNL of the Electric sector 2022, Article 27 states "*the Parties recognize the principle that disconnection is a right for all workers not only during remote working-while respecting contractual duties (on-call, shift, scheduled and unscheduled overtime, etc.)*".

exercise of union activity and the right to strike, [61] some contracts attempted to pave the way providing for workers who perform their services remotely for the establishment of electronic bulletin boards [62] or the possibility for remote workers to participate in the union assembly via remote connection. [63]

Similarly, to the right to disconnection, the potential of digitization should be made accessible to "in-presence" workers as well and not limited to remote workers only. This would make it easier, for instance, the consultation of the electronic bulletin board or the participation in the assembly also for workers who for organizational reasons (deadlines to respect, travels, etc.) would find it difficult to participate "in the presence".

For this reason, the choice of those contracts that recognize such rights to the generality of workers is, therefore, to be preferred. [64]

5. *Can collective bargaining solve everything? The case of algorithmic management*

While in all the fields of the world of work affected by digitalization so far considered, the role of national collective bargaining proves decisive, it

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[61] M. MARAZZA, *Social media e relazioni industriali. Repertorio di questioni*, in *Labour & Law Issues*, 2019, 5, 2; M. MAGNANI, *Nuove tecnologie e diritti sindacali*, in *Labour & Law Issues*, 2019, 5, 2, 1 ss.; B. CAPONETTI, *Social media e rappresentanza aziendale: quali scenari?*, in *Labour & Law Issues*, 2019, 5, 2, 27; A. DONINI, *Il luogo per l'esercizio dei diritti sindacali: l'unità produttiva nell'impresa frammentata*, in *Labour & Law Issues*, 2019, 5, 2, 98 ss.; O. LA TEGOLA, *Social media e conflitto: i nuovi strumenti dell'attività sindacale*, in *Labour & Law Issues*, 2019, 5, 2, 144 ss.; A. ROTA, *Tecnologia e lotta sindacale: il netstrike*, in *Labour & Law Issues*, 2019, 5, 2, 196 ss.

[62] See CCNL of the Credit Sector of 2019 Article 38, par. 17: "*Teleworkers have the same trade union rights as workers who perform their activities in traditional ways (...) Enterprises shall establish a special electronic bulletin board or other connection system for trade union communications by Article 25 of Law No. 300 of May 20, 1970, which the persons concerned may consult outside the established working hours*"; see also CCNL Service Sector, 30 July 2019; CCNL Clergy Institutions of 2022, Article 66; CCNL Real estate agencies of 2021, Article 86; CCNL Credit and insurance business insurance, 24 February 2021.

[63] See CCNL of the Credit Sector of 2019 Article 38, par. 17 which, however, refers to specific agreements at the company level.

[64] See CCNL Energy and Oil Collective of July 21, 2022, Part I, Section A(d); CCNL building, wood and furnishing wood furniture SMEs of 31 May 2021.

seems that in other areas, the range of action of national collective agreements is significantly more limited.

This is because these matters – like the use of algorithms – are highly complex and different not only sector-by-sector, but even from one productive organization to another.

So, in these cases, rather than acting on "whether" or "how" to employ such tools, trade unions exercise the role of "controller", especially at the company level.

One could wonder whether national collective bargaining is completely disempowered in this area. [65]

The answer seems negative. However, national bargaining can still maintain an important role even in highly differentiated areas at the firm level such as the use of algorithms. On the one hand, it can specify general principles introduced by the law and adapt them to the practice of the specific sector (e.g. the application of the principle of non-discrimination in the hiring process or performance evaluation). On the other hand, national collective agreements could sustain the action of workers' representatives at the company and local levels by introducing rules and bodies to strengthen trade unions' activity of control over the employer's conduct.

However, to exercise effective control over increasingly technically complex issues, workers' representatives need to develop specific skills. This leads to further reflection on the nature and function of trade unions.

For instance, understanding and discovering the possible dangers associated with the use of algorithms requires long periods of training and study, also to compensate for the lack of knowledge that affects the same employer who could decide to use these tools without fully knowing their potential.

For this reason, collective bargaining at the national level could establish specific positions on the model of workers' representatives for health and safety regulated by the Framework Directive 89/391. To some extent, national collective bargaining is being carried out by a similar attempt in the field of professional training.

These specialized workers' representatives should not necessarily be identified among the members of the RSA/RSU. Given their more "tech-

[65] V. DE STEFANO, *"Negotiating the algorithm": Automation, artificial intelligence and labour protection*, in *International Labour Office, Employment Policy Department*, *Working Paper*, n. 246, Geneva, 2018.

nical" and less "political" function, they could be elected independently, and so ensuring the continuity of their activity and growth of their specific knowledge, regardless of the results of trade unions' representative elections.

Moreover, if the model of the worker's health and safety representative were followed, the costs of the specific education and training of this "technical representative" would be entirely on the employer. In addition, the introduction of a "local" representative, as is the case in health and safety, would also extend his sphere of action in favor of the employees employed in small and medium enterprises without trade union representatives.

So, national collective bargaining remains important in these areas as well: through it, trade unions can renew their function and their model of representation. [66]

6. *Final remarks*

The brief overview carried out on national collective agreements confirms the potential of national collective bargaining as a source for regulating the effects of digitalization on the world of work.

A potential that, at the moment, is still largely unexploited.

Given that, and considering the pace at which digitalization is developing and transforming our daily lives, it is then appropriate to ask whether the law should encourage collective bargaining to intervene in certain areas, especially in those where employees' fundamental rights are put at risk. The law could recognize competencies for collective bargaining or could intervene directly through, for example, the introduction of specific figures of employees' representatives, then referring to collective bargaining for detailed rules. Another way could be found in tripartite agreements, as in the case of the Protocol on the remote working of 2021, even though this way of proceeding takes much longer.

Whatever the technique adopted, national collective bargaining, especially when encouraged by law or by a renewed awareness of collective actors, will continue to play a decisive role in regulating the effects of digitization over the world of work.

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[66] Like in the case of data processing, as argued by I. ARMAROLI, E. DAGNINO, *A Seat at the Table: Negotiating Data Processing in the Workplace*, in *Comparative Labor Law & Policy Journal*, 2020, 41, 1, 173 ss.

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INDUSTRIAL RELATIONS AND NEW TECHNOLOGIES: CONFLICT, PARTICIPATION AND CONCERTATION IN THE DIGITAL LABOUR ERA

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Abstract

The paper focuses on the several challenges posed to industrial relations actors by the digitalisation of work, showing how the growing utilisation of increasingly sophisticated technologies in work performance may constitute both a source of conflict and an opportunity for dialogue for the social partners. In fact, the technological organisation of work, due to its effects on working conditions and employment, in addition to being a subject of bargaining, may constitute a reason for confrontation, if not even for mobilisation and actual conflict. At the same time, however, it cannot be ruled out that the digitalisation of the economy could lead both companies and trade unions to adopt collaborative practices that best address the challenges posed by the digital transition, i.e. combining the competitiveness needs of enterprises with the maintenance of employment levels and the quality of working conditions.

Keywords: Digital Technologies; Work Organisation; Industrial Relations; Collective Conflict; Collective Bargaining; Social Dialogue.

1. *Industrial relations and new technologies: an ambivalent relationship*

When talking about the digitalisation of work, there is often a tendency to confine this phenomenon to the dimension of the employment relationship and, in particular, to that of the executive phase of the relationship, since this is – perhaps – the dimension in which the effects of the digital

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revolution were first and most evident. However, it is undisputed and well established that the use of increasingly sophisticated digital technologies in the organisation of work, far from relating exclusively to labour law, nowadays poses issues of growing importance also for trade union law and, above all, for industrial relations.

In fact, although new technologies are often correctly considered a source (and means) of conflict, it should not be forgotten how they can at the same time represent an opportunity for dialogue and collaboration between companies and trade unions. In this sense, it can well be said that the relationship between new technologies and collective labour relations is an ambivalent one. Their interaction gives rise to new forms of trade union action, which – in turn – push the Italian social partners towards two opposing and alternative models of industrial relations: one antagonistic-conflictual, the other cooperative-participatory.

2. *Technological organisation of work and collective conflict*

With regard to conflictual forms of trade union action linked to the digitalisation of the economy, it should first be noted how the increasing use of IT tools in the performance of work activity has repercussions precisely on the forms of collective self-defence, as well as – even before – on the reasons for protest. [1]

Thus, on the one hand, it should be pointed out how the effects of the large-scale diffusion of increasingly sophisticated technologies – such as, for example, algorithms, robots and wearable devices – on the overall quality of working conditions and employment levels may constitute a reason for confrontation between trade unions and companies, if not for mobilisation and outright conflict. Indeed, despite the fact that they may abstractly

[1] *See* A. ROTA, *Il web come luogo di veicolo del conflitto collettivo: nuove frontiere della lotta sindacale*, in P. TULLINI (ed.), *Web e lavoro. Profili evolutivi e di tutela*, Torino, Giappichelli, 2017, 197 ff.; O. LA TEGOLA, *Social media e conflitto: i nuovi strumenti dell'attività sindacale*, in *Labour & Law Issues*, 2, 2019, 144 ff.; V. ANIBALLI, *Diritti e libertà sindacali nell'ecosistema digitale*, Napoli, Edizioni Scientifiche Italiane, 2022, 39 ff.; S. BORELLI, V. BRINO, C. FALERI, L. LAZZERONI, L. TEBANO, L. ZAPPALÀ, *Lavoro e tecnologie. Dizionario del diritto del lavoro che cambia*, Torino, Giappichelli, 2022, 216-220; M. FORLIVESI, *Sindacato*, in M. NOVELLA, P. TULLINI (eds.), *Lavoro digitale*, Torino, Giappichelli, 2022, 166-176; V. MAIO, *Sciopero e conflitto nel lavoro digitale. Osservazioni in tema di net strike, twitter storm e off simultaneo degli smart workers*, in *Federalismi.it*, 17, 2022, 147 ff.

contribute to improving working conditions, it has been shown that digital technologies often increase health and safety risks for workers, intensify work schedules, work rhythms and workloads, fuel pervasive forms of control and surveillance, as well as enhance the flexibility and precariousness of working relationships.[2] Suffice it to say the e-commerce, logistics and work through digital platforms sectors, sectors in which an extremely flexible use of the workforce is accompanied by an organisation of work that strongly relies on new-generation technologies and which – not surprisingly – are characterised by significant labour conflicts.[3] This significant hostility, moreover, is hard to find in other sectors of the economy, since it is well known that nowadays recourse to strikes is rather contained or, at any rate, more limited than in the past. Undoubtedly, this hostility is indicative of workers' intolerance towards working conditions that are not considered acceptable, but also of the difficulty of companies to engage in a serious discussion with trade unions. Companies in the aforementioned sectors, in fact, have often shown a certain reluctance to dialogue and negotiate. This is, for example, the case of food delivery through digital platforms, a sector in which labour relations have been slow to take off due to

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[2] *Compare* A. ALLAMPRESE, O. BONARDI (eds.), *Logistica e Lavoro – Quaderno della Rivista Giuridica del Lavoro e della Previdenza Sociale*, Roma, Ediesse, 2018; D. DI NUNZIO, *L'azione sindacale nell'organizzazione flessibile e digitale del lavoro*, in *Economia e Società Regionale*, 2, 2018, 77 ff.; L. CARUSO, R.E. CHESTA, L. CINI, *Le nuove mobilitazioni dei lavoratori nel capitalismo digitale: una comparazione tra i ciclo-fattorini della consegna di cibo e i conducenti di Amazon nel caso italiano*, in *Economia e Società Regionale*, 1, 2019, 61 ff.; A. ALLAMPRESE, O. BONARDI, *Studio sulle condizioni di lavoro nella logistica: tempo e salute*, in *Diritto della Sicurezza sul Lavoro*, 2, 2020, 42 ff.; L. DORIGATTI, A. MORI, *Condizioni di lavoro e relazioni industriali nelle catene del valore della logistica*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 3, 2020, 393-397; A. PIZZOFERRATO, *Digitalisation of work: new challenges to labour law*, in *Argomenti di Diritto del Lavoro*, 6, 2021, 1331 ff.

[3] *See* A. TASSINARI, V. MACCARRONE, *The mobilisation of gig economy couriers in Italy: some lessons for the trade union movement*, in *Transfer*, 3, 2017, 353 ff.; S. BOLOGNA, S. CURI, *Relazioni industriali e servizi di logistica: uno studio preliminare*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 1, 2019, 125 ff.; L. CARUSO, R.E. CHESTA, L. CINI, nt. (2), 61 ff.; E. KOCHER, A. DEGNER, *Quali battaglie sindacali nella gig economy? I movimenti di protesta dei rider di Foodora e Deliveroo e le questioni giuridiche relative alla loro organizzazione autonoma e collettiva*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 3, 2019, 525 ff.; M. MARRONE, *Rights against the machines! Food delivery, piattaforme digitali e sindacalismo informale*, in *Labour & Law Issues*, 1, 2019, 1 ff.; P. CAMPANELLA, *Logistica in lotta: primi sguardi*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 3, 2020, 475 ff.; L. DORIGATTI, A. MORI, nt. (2), 397-404; I. REGALIA, *Note sul Protocollo Amazon per la definizione di un sistema condiviso di relazioni industriali*, in *Labour & Law Issues*, 2, 2021, 1 ff.

the will of the digital platforms, which have been reluctant to engage in dialogue with their trade union counterparts.[4] Even more emblematic is the case of *Amazon*, a leading e-commerce company that has always adopted what can be described as a strategy of union avoidance.[5]

On the other hand, it can be observed that workers today tend to use more frequently the same tools used by companies to organise work in order to organise protests and, thus, protect their own working conditions.[6] Examples include the netstrike, the twitter storm and the so-called simultaneous disconnection: forms of trade union struggle on the web that have the undoubted advantage of involving, in addition to workers, the entire citizenry and – in particular – users and consumers, causing the company towards which the protest is directed damage not only to its production, but also to its reputation.[7] This is undoubtedly a circumstance liable to increase tensions between companies and trade unions, especially when one considers that these new forms of protest do not always take the form of a mere concerted abstention from work, but rather assume the guise of sabotage and boycott actions.[8]

In addition, it should at least be noted that the gig economy has definitively cleared the way for so-called strategic litigation, i.e. recourse to the courts by trade unions as a form of self-protection alternative to strike and court action by individual workers.[9] Besides, in sectors where the workforce is unstable and susceptible to blackmail, such as that of food delivery through digital platforms, the legal action of exponential bodies turns out

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[4] Among others, *see* C. CORDELLA, *Le relazioni sindacali nel settore del food delivery: la prospettiva interna*, in *Lavoro Diritti Europa*, 1, 2022, 2 and G. PACELLA, *Le piattaforme di food delivery in Italia: un'indagine sulla nascita delle relazioni industriali nel settore*, in *Labour & Law Issues*, 2, 2019, 179 ff.

[5] *See* I. REGALIA, nt. (3), 5-8.

[6] *Compare* A. ROTA, nt. (1), 197 ff.; O. LA TEGOLA, nt. (1), 144 ff.; M. FORLIVESI, nt. (1), 166-176.

[7] *Compare* A. ROTA, *Tecnologia e lotta sindacale: il netstrike*, in *Labour & Law Issues*, 2, 2019, 196 ff.; O. LA TEGOLA, *Il conflitto collettivo nell'era digitale*, in *Diritto delle Relazioni Industriali*, 3, 2020, 638 ff.; V. ANIBALLI, nt. (1), 39 ff.; V. MAIO, nt. (1), 147 ff.

[8] *See* A. ROTA, nt. (7), 206-210; O. LA TEGOLA, nt. (7), 648-654; V. ANIBALLI, nt. (1), 39 ff. V. MAIO, nt. (1), 150-155.

[9] On this topic, *see* O. RAZZOLINI, *Azione sindacale e tutela giurisdizionale. Studio preliminare a partire da un'analisi comparata*, Milano, Franco Angeli, 2018; G.A. RECCHIA, *Studio sulla giustiziabilità degli interessi collettivi dei lavoratori*, Bari, Cacucci, 2018; V. PROTOPAPA, *Uso strategico del diritto e azione sindacale*, Bologna, Il Mulino, 2021.

to be a particularly valuable way to protect against the abuses of companies, in the face of the comprehensible inertia of individuals.[10] By the way, it is worth emphasising how recourse to the courts as an instrument of self-defence and conflict resolution is an indication of the social partners' difficulty in establishing solid and lasting relations. It is not surprising, therefore, that strategic litigation has found fertile ground precisely in the platform economy and, in particular, in the food delivery sector.

To summarise, it cannot be denied that the digitalisation of the economy and the need to adapt work organisation to technological innovation, as well as their effects on employment and the quality of working conditions, represent two elements that facilitate the emergence of frictions and tensions between companies and trade unions, further fuelling the hostility that already characterises the Italian system of industrial relations. It remains to be seen, however, whether conflict is the only possible response to the great changes affecting the world of work or whether, instead, the challenges posed by technological innovation cannot be addressed differently.

3. *Technological innovation, collective bargaining and participation*

The answer to the question that has just been raised requires to specify that, despite the persistent opposition of their respective interests, companies and trade unions can equally share medium and long-term development goals, provided – of course – that there are solid foundations underpinning them or, at least, the social partners' will to build them. Therefore, it cannot be ruled out at all that the actors of industrial relations, instead of engaging in antagonistic behaviour, which is often fruitless and unproductive, decide to cooperate and find shared solutions to the problems posed by the need to adapt business organisation to technological innovation, i.e. to adopt a relational model of a participatory type.

A case in point is the "Protocol for the definition of a shared system of industrial relations" signed by *Amazon Logistics* and trade unions at the Ministry of Labour and Social Policies on 15 September 2021, which, in a certain way, is the outcome of a long period of mobilisation and conflict.[11]

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[10] F. MARTELLONI, *Riders: la repressione della condotta antisindacale allarga il suo raggio*, in *Labour & Law Issues*, 2, 2021, 172-173.

[11] About which *see* G. CENTAMORE, *I Protocolli Amazon e la "moderna" concertazione sociale*, in *Labour & Law Issues*, 2, 2021, 21 ff. and I. REGALIA, nt. (3), 1 ff.

The protocol significantly starts by stating that «in order to outline a system of industrial relations in line with the changed social and market dynamics, the parties agree on the opportunity to adopt a participatory method characterised by systematic analysis, comparison and verification of issues of common interest», defining industrial relations as «a value in itself». The protocol, in fact, aims to «promote [...] moments of periodic dialogue on the problems inherent to the e-commerce sector» and, in particular, «periodic moments of consultation on work safety and shift organisation».

However, conflict does not always allow industrial relations to evolve towards a more cooperative model. Proof of this circumstance is, to some extent, the development of labour relations in the sector of food delivery via digital platforms.[12] Regarding this issue, it is inevitable to mention the "National Collective Agreement for the regulation of the activity of delivery of goods on behalf of others, carried out by self-employed workers, so-called riders", signed by Assodelivery and Ugl Rider on 15 September 2020, pending the negotiations promoted by the Ministry of Labour with the trade unions of the sector. In fact, although the conclusion of a collective agreement usually marks a kind of truce, i.e. an interruption of the conflict, the signing of the Assodelivery-Ugl Agreement, on the contrary, did nothing but exacerbate the tensions already existing in the sector. The affair, as is well known, has in fact reached the courtrooms and the Assodelivery-Ugl Agreement was disallowed by the Court of Bologna because it was «stipulated by a negotiating party lacking valid negotiating power for the purposes of the derogatory effect referred to in Articles 2 and 47-*quater* of D.Lgs. no. 81 of 2015»,[13] thus confirming the suspicion of those who were doubtful of the genuineness of the Ugl Rider association.[14] However, as the "Supplementary Protocol to the National Collective Agreement for Logistics, Transport, Freight and Forwarding" signed on 18 July

[12] On this topic, *see* at least G. PACELLA, nt. (4), 179 ff.; C. CORDELLA, nt. (4), 1 ff.; C. CORDELLA, *Il lavoro dei rider: fenomenologia, inquadramento giuridico e diritti sindacali*, in *Variazioni su Temi di Diritto del Lavoro*, 4, 2021, 943-949.

[13] Employment Tribunal of Bologna 30 June 2021.

[14] *See*, among others, M. LOMBARDI, *Il Ccnl tra Assodelivery e Ugl sui riders: una "storia infinita", fra questioni contrattuali e disciplina legale*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 4, 2020, 757 ff.; F. CARINCI, *Il Ccnl rider del 15 settembre 2020 alla luce della Nota dell'Ufficio legislativo del Ministero del lavoro spedita a Assodelivery e Ugl, firmatari del contratto*, in *Lavoro Diritti Europa*, 1, 2021, 1 ff.; P. TOSI, *La tutela dei riders, carenze legislative ed eccedenze interpretative*, in *Lavoro Diritti Europa*, 1, 2021, 1 ff.; C. CORDELLA, nt. (12), 943-949.

2018 and the subsequent "Protocol implementing art. 47-bis et seq. of D.Lgs. No. 81 of 2015" signed on 2 November 2020,[15] as well as – above all – the "*Just Eat* Integrative Agreement" of 29 March 2021,[16] different outcomes from the conflict between companies and trade unions are well possible. In particular, this agreement, testifying the possible encounter between the organisational transformation of business and the demands for more guaranteed work, marks a turning point for the digital platform work sector, since the implementation of an important contractual action, as a way of overcoming an exclusively conflict logic, shows that there is space for the development and consolidation of more lasting relations.[17]

In short, it is clear that the digital revolution, together with that complex phenomenon known as Industry 4.0,[18] poses multiple challenges to industrial relations actors, challenges that affect the dynamics and logic of their actions. In fact, although the behaviour of the social partners is often oriented towards a logic of conflict, furthermore exacerbated precisely by the forms of work organisation typical of the digital economy, the challenges posed by technological innovation could induce companies and trade unions to change their strategy, i.e. to adopt a more collaborative and participative approach.[19] Proof of this trend is the "European Framework Agreement on Digitalisation" of 22 June 2020,[20] which bets

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[15] *See*, at least, P. TOSI, nt. (14), 17-21.

[16] *See* G.A. RECCHIA, *L'Accordo integrativo aziendale Just Eat Takeaway: quando la Gig economy (ri)trova la subordinazione e il sindacato*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 3, 2021, 449 ff.

[17] G.A. RECCHIA, *ibid.*, 461.

[18] On this topic, *see* at least M. TIRABOSCHI, F. SEGHEZZI, *Il Piano Nazionale Industria 4.0: una lettura lavoristica*, in *Labour & Law Issues*, 2, 2016, 1 ff.; F. SEGHEZZI, *La nuova grande trasformazione. Lavoro e persona nella quarta rivoluzione industriale*, Bergamo, ADAPT University Press, 2017; A. CIPRIANI, A. GRAMOLATI, G. MARI, (eds.), *Il lavoro 4.0. La quarta rivoluzione industriale e le trasformazioni delle attività lavorative*, Firenze, Firenze University Press, 2018; A. PIZZOFERRATO, (nt. 2), 1331 ff.

[19] *Compare* N. DE MARINIS, *Dal caso Fiat al Patto della Fabbrica. La contrattazione collettiva nello spazio economico globale*, in VV.AA., *Giuseppe Santoro Passarelli. Giurista della contemporaneità.* Liber Amicorum, Torino, Giappichelli, 2018, 1312-1315; L. GUAGLIANONE, *Industria 4.0 e modello partecipativo: spunti per una prima riflessione*, in C. ALESSI, M. BARBERA, L. GUAGLIANONE (eds.), *Impresa, lavoro e non lavoro nell'economia digitale,* Bari, Cacucci, 2019, 631 ff.; C. CESTER, *La partecipazione dei lavoratori: qualcosa si muove?*, in *Argomenti di Diritto del Lavoro*, 3, 2023, 433 ff.

[20] About which *see* M. PERUZZI, *Il dialogo sociale europeo di fronte alle sfide della digitalizzazione*, in *Diritto delle Relazioni Industriali*, 4, 2020, 1213 ff.; A. ROTA, *Sull'Accordo*

precisely on collaboration between the social partners to overcome the challenges posed to labour law and work organisation by the digital revolution,[21] stating that «a shared commitment is needed on the part of employers, workers and their representatives to make the most of the opportunities and deal with the challenges in a partnership approach». A similar approach also characterises the National Collective Agreement signed on 9 March 2018, also known as the "Pact for the Factory",[22] which in fact relies heavily on the empowerment of the social partners and their mutual collaboration to face the several challenges posed to the Italian economic-industrial system by technological innovation and, in particular, that of helping companies in the digital transition while safeguarding workers' rights and the quality of working conditions.[23] So, it is not surprising that one of the main objectives of the agreement is precisely to «strengthen the support measures for an autonomous, innovative and participatory model of collective labour relations, which supports the competitiveness of sectors and production chains, as well as the value and quality of work and promotes, also through the diffusion of second-level collective bargaining, the transformation processes currently underway and the virtuous link between innovations, labour productivity and wages». Indeed, this agreement seems to mark a new chapter in the evolution of the trilateral relationship between companies, trade unions and institutions: a chapter characterised by the convergence of the social partners, committed to col-

quadro europeo in tema di digitalizzazione del lavoro, in *Labour & Law Issues*, 2, 2020, 23 ff.; I. SENATORI, *The European Framework Agreement on Digitalisation: a Whiter Shade of Pale?*, in *Italian Labour Law e-Journal*, 2, 2020, 159 ff.; L. BATTISTA, *The European Framework Agreement on Digitalisation: a tough coexistence within the EU mosaic of actions*, in *Italian Labour Law e-Journal*, 1, 2021, 105 ff.

[21] *Compare* I. SENATORI, nt. (20), 159 ff.

[22] About which *see* L. BORDOGNA, *L'Accordo Confindustria-sindacati del 9 marzo 2018 su relazioni industriali e contrattazione collettiva*, in *Giornale di Diritto del Lavoro e di Relazioni Industriali*, 1, 2018, 37 ff.; N. DE MARINIS, nt. (19), 1312-1315; F. DI NOIA, *Sul "ritrovato" dinamismo del sistema di relazioni industriali: rappresentatività e assetti contrattuali dopo l'Accordo interconfederale 28 febbraio 2018*, in *Diritto delle Relazioni Industriali*, 4, 2018, 1260 ff.; F. LISO, *Qualche erratica considerazione sul recente Accordo interconfederale Confindustria, Cgil, Cisl e Uil del 9 marzo 2018*, in VV.AA., nt. (19), 1316 ff.; M. RICCI, *L'Accordo Interconfederale del 9 marzo 2018: una svolta dagli esiti incerti*, in *Argomenti di Diritto del Lavoro*, 6, 2018, 1392 ff.; M.L. SERRANO, *Brevi note sul Patto della fabbrica del 9.3.2018*, in *Rivista Giuridica del Lavoro e della Previdenza Sociale*, 2, 2018, 371 ff.

[23] *Compare* L. BORDOGNA, nt. (22), 37 ff.; N. DE MARINIS, nt. (19), 1312-1315; M. RICCI, nt. (22), 1392 ff.

laborate according to a substantially unprecedented participatory relational model.[24]

However, so far, the "Pact for the Factory" is essentially unfulfilled, while the implementation of the "European Framework Agreement on Digitalisation" seems to be distant: two circumstances symptomatic of the difficulty of the social partners to build a system of industrial relations that is truly collaborative and participatory. Under these circumstances, the contents of the "National Collective Agreement for the metalworking sector" of 5 February 2021 are particularly significant.[25] In fact, the latest contractual renewal of the sector witnesses a strengthening of cooperation, and at the same time a declination of it at least in part new and different from the past.[26] Indeed, it can be said that the signatory parties have made their own the address expressed by the "Pact for the Factory",[27] having inaugurated a widespread network of reciprocity embracing a large part of the key objects of the contract. This system is substantiated by observatories, commissions and bodies that accompany the take-off of the most interesting issues of this contractual season: decentralised bargaining, employees' classification, participation and training.[28] This is a remarkable circumstance, especially considering that this sector is one of those most affected by technological innovation, as well as the driving role always played by the metalworkers' National Collective Agreement within the Italian industrial relations panorama.[29]

Lastly, it seems reasonable to argue that the introduction of increasingly sophisticated technologies within the organisation of work and their interaction with workers may affect the priorities of trade unions, as well as their strategies of action and claims.[30] Indeed, in a context in which digital

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[24] *Compare* N. DE MARINIS, nt. (19), 1315 and C. CESTER, nt. (19), 442 ff.

[25] *See* at least G. ZILIO GRANDI (ed.), *Commentario al Ccnl Metalmeccanici 5 febbraio 2021*, Torino, Giappichelli, 2021.

[26] *See* M. CARRIERI, *Il contratto collettivo nazionale come laboratorio delle relazioni industriali*, in G. ZILIO GRANDI (ed.), nt. (25), XXII and M. BIASI, *La partecipazione dei lavoratori nel Ccnl Metalmeccanici 5 febbraio 2021: la retta via e il lungo cammino*, *ivi*, 93 ff.

[27] G. SANTORO PASSARELLI, *Sciopero e contrattazione, un nuovo rapporto tra conflitto e partecipazione nelle RI italiane*, in G. ZILIO GRANDI (ed.), nt. (25), 67-68.

[28] *See* M. CARRIERI, nt. (26), XXII.

[29] *Compare* M. CARRIERI, *ibid.*, XIX.

[30] *Compare* D. DI NUNZIO, nt. (2), 83-87; C. MANCINI, *Il sindacato di fronte all'economia di Internet: "Idea diffusa", l'intelligenza collettiva della Cgil*, in *Labour & Law Issues*, 1,

technologies assume such a significant role in defining work organisation and, therefore, working conditions, it does not seem that their introduction and use can be left entirely to the discretion of the employer. In this sense, it seems fair to expect that union claims will soon shift to the ground of work organisation.[31] Thus, it does not seem unrealistic to imagine that in the near future trade unions will seek new information and consultation rights relating precisely to the impact of new technologies on work organisation and the production process.[32] More generally, it is likely that trade unions will struggle to make the (technological) organisation of work a subject of bargaining, with a view to co-determination,[33] thus shifting the centre of gravity of collective bargaining towards the company level.[34] In fact, the idea of not only intervening *ex post* through forms of social protection that can alleviate situations of difficulty, but *ex ante*, through so-called anticipatory bargaining, with which the union participates in the definition of the organisation of work with a view to co-determination, is gaining ground.[35] In other words, it becomes imperative for trade unions

2018, 50-54; G. GOSETTI, *La digitalizzazione del lavoro. Questioni aperte e domande di ricerca sulla transizione. economia e società regionale*, 1, 2019, 113-117; M. AVOGARO, *Verso una rappresentanza tailor-made? Interrogativi e sviluppi del diritto sindacale italiano nell'era digitale*, in G. LUDOVICO, F. FITA ORTEGA, T.C. NAHAS (eds.), *Nuove tecnologie e diritto del lavoro. Un'analisi comparata degli ordinamenti italiano, spagnolo e brasiliano*, Milano, Milano University Press, 2021, 33-43; M. FORLIVESI, nt. (1), 153 ff.

[31] On this topic, *see* M. BENTIVOGLI, *Sindacato futuro nell'era dei big data e Industry 4.0. Industry 4.0: la smart factory necessita della smart union*, in M. BENTIVOGLI, D. DI VICO, L. PERO, G. VISCARDI, G. BARBA NAVARETTI, F. MOSCONI, *#SindacatoFuturo in Industry 4.0*, Bergamo, ADAPT University Press, 2015, 16-21; L. PERO, *Industry 4.0: tecnologie, organizzazioni e ruolo del sindacato*, *ivi*, 26-30; D. DI NUNZIO, nt. (2), 83-87; G. GOSETTI, nt. (30), 113-117; S. LEONARDI, *Digitalizzazione, lavoro e contrattazione collettiva*, in *Economia e Società Regionale*, 1, 2019, 46 ff.

[32] *See* D. DI NUNZIO, nt. (2), 83-87 and M. FORLIVESI, nt. (1), 153 ff.

[33] *Compare* M. BENTIVOGLI, nt. (31), 16-21; L. PERO, nt. (31), 26-30; D. DI NUNZIO, nt. (2), 83-87; C. MANCINI, nt. (30), 50-54; G. GOSETTI, nt. (30), 113-117; S. LEONARDI, nt. (31), 46 ff.; F. MARASCO, *Nuove forme di contrattazione sindacale nelle relazioni industriali su piattaforma*, in *Labour & Law Issues*, 2, 2019, 163 ff.; M. CORTI, *Innovazione tecnologica e partecipazione dei lavoratori: un confronto fra Italia e Germania*, in *Federalismi.it*, 17, 2022, 113 ff.; M. FORLIVESI, nt. (1), 153 ff.

[34] *Compare* S. LEONARDI, nt. (31), 46 ff. and M. AVOGARO, nt. (30), 34-43.

[35] *See* C. MANCINI, nt. (30), 53; G. GOSETTI, nt. (30), 113-117; E. KLENGEL, J. WENCKEBACH, *Artificial intelligence, work, power imbalance and democracy – why co-determination is essential*, in *Italian Labour Law e-Journal*, 2, 2021, 157 ff.; A. PIZZOFERRATO, nt. (2), 1363-1364; M. CORTI, nt. (33), 122.

to play in advance, strengthening the rights of information and consultation regarding the introduction and use of digital technologies: an indispensable condition to be able to negotiate – at a later stage – the technological organisation of work. One thinks, for example, of the so-called "algorithm bargaining".[36] Moreover, although – as already demonstrated – the need to adapt the business structure to the changed reality of the digital economy and Industry 4.0 can easily become an object of confrontation and conflict between the social partners, it is worth pointing out that there is no lack of positive experiences of adapting work organisation to technological innovations in agreement with trade unions. These experiences have shown that it is possible to combine the competitiveness of companies with the maintenance of employment levels and the quality of working conditions.[37] Indeed, it has been argued and widely demonstrated that the introduction of new technologies requires, in order to make them efficient and fully operational, the full and convinced adoption of a participatory and cooperative relationship model between companies and employees.[38] At the same time, however, it cannot be denied that the difficulty for companies to fully understand and govern these new technologies may hinder the conclusion of an agreement with trade unions. From this point of view, the full awareness of the risks and opportunities arising from the implementation of digital technologies seems to be a precondition to any agreement.

In the light of what has been observed, it seems therefore possible to share the view that technological innovation, despite undoubtedly representing a potential source of conflict, influences the content and priorities of collective bargaining, as well as – even before that – the behavioural patterns of the social partners, requiring them to strengthen bargaining and

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[36] On this topic, *see* at least V. DE STEFANO, *"Negotiating the algorithm": Automation, artificial intelligence and labour protection*, in *ILO Employment Working Paper*, 246, 2018, 1 ff.; F. MARASCO, nt. (33), 170-172; E. KLENGEL, J. WENCKEBACH, nt. (35), 157 ff.; S. BORELLI, V. BRINO, C. FALERI, L. LAZZERONI, L. TEBANO, L. ZAPPALÀ, nt. (1), 44-48; M. CORTI, nt. (33), 113 ff.; A. PIZZOFERRATO, (nt. 2), 1363-1364.

[37] *Compare* L. IMBERTI, *Industria 4.0, contrattazione aziendale e lavoro: un caso di innovazione tecnologica e produttiva win-win*, in *Diritto delle Relazioni Industriali*, 2, 2018, 655 ff.; G. MATTIAZZI, *Welfare generativo e partecipazione dei lavoratori alle scelte d'impresa: nuove frontiere per l'innovazione sociale in Veneto*, in *Economia e Società Regionale*, 2, 2019, 79-81; M. FAIOLI, *Unità produttiva digitale. Perché riformare lo Statuto dei lavoratori*, in *Lavoro Diritti Europa*, 3, 2021, 8-11.

[38] *See*, among others, M. TIRABOSCHI, F. SEGHEZZI, nt. (18), 8; M. BENTIVOGLI, nt. (31), 16-21; S. LEONARDI, nt. (31), 55.

participation tools and thus pushing them towards a more collaborative model of industrial relations.[39]

4. *Digitalisation of the economy and social concertation*

Continuing the discussion on the relationship between new technologies and industrial relations, it should finally be noted that the regulatory issues surrounding digital work have perhaps in some way contributed to the revival of tripartite social consultation.

To social concertation, in fact, we owe not only the stipulation of the so-called "*Amazon* Protocol", but also the signing of the "National Protocol on Agile Work" of 7 December 2021.[40] The latter – in turn – demonstrates once again how work organisation can become an opportunity not only for conflict, but also for dialogue and bargaining, intending «to lay the foundations for creating a climate of trust, involvement and participation, as a fundamental premise for the correct application of agile work in the private sector». It is also worth noting the partly new and unprecedented attitude taken by the Ministry of Labour in interacting with the employees' and employers' associations belonging to the sector of food delivery via digital platforms, having in fact intervened directly first as "facilitator" of industrial relations[41] and then as "arbiter" of the same, expressing serious doubts about the fulfilment by the Assodelivery-Ugl Agreement of the requirements necessary to derogate the law pursuant to Articles 2 and 47-*quater* of Legislative Decree No. 81/2015.[42] Finally, it is worth pointing out the important contribution offered by territorial social bargaining in addressing the regulatory issues and social protection needs un-

[39] *Compare* D. Di Nunzio, nt. (2), 83-87; G. Gosetti, nt. (30), 113-117; M. Forlivesi, nt. (1), 162; C. Cester, nt. (19), 441-442.

[40] About which *see* P. Ichino, *Un protocollo poco innovativo ma non inutile*, in *Lavoro Diritti Europa*, 4, 2021, 1 ff.; P. Albi, *Introduzione: il Protocollo nazionale sul lavoro agile tra dialogo sociale e superamento della stagione pandemica*, in *Lavoro Diritti Europa*, 1, 2022, 1 ff.; L. Zoppoli, *Il Protocollo sul lavoro agile nel settore privato e "gli altri"*, in *Lavoro Diritti Europa*, 1, 2022, 1 ff.

[41] *Compare* G. Centamore, nt. (11), 31-34.

[42] The reference is to the Note of the Legislative Office of the Ministry of Labour and Social Policies 17 September 2020, No. 9430, as well as to the Circular 19 November 2020, No. 17. On this topic, among others, *see* M. Lombardi, nt. (14), 757 ff.; F. Carinci, nt. (14), 1 ff.; P. Tosi, nt. (14), 1 ff.

derlying work through digital platforms.[43] Suffice it to think of the "Charter of Fundamental Rights of Digital Workers in the Urban Context" signed in Bologna on 31 May 2018[44] and of the Protocol "Guidelines of the Region of Tuscany for the protection of workers of digital platforms for home food delivery and for a correct contractual application (Cycle-delivery Riders)" of 10 November 2021.[45]

However, it should not be ignored that the recovery of social concertation at the national level may have depended on exogenous factors of an accidental nature that have little or nothing to do with the digitalisation of work. In fact, rather than the common will of the parties to provide a shared response to the challenges posed by the digital revolution, the rediscovery of social concertation would seem to be in some ways linked to the Covid-19 epidemiological emergency, which – as is well known – compelled the government to dust off the instrument of social dialogue and to discuss with employees' and employers' associations to tackle the economic and social crisis triggered by the pandemic.[46] From this point of view, the so-called "Amazon Protocol" and – above all – the "National Protocol on Agile Work" would be nothing more than the tail of the season that first witnesses the stipulation of the shared anti-contagion protocols,[47] then the signing of the "Pact for Public Work Innovation and Social Cohesion" of 10 March 2021[48] and, finally, the involvement of the social partners in the implementation of the "National Recovery and Resilience Plan".[49] Hence, it must be concluded that it is still too early to assess the impact of the digitalisation of work on social concertation, as it is difficult

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[43] *See* M. FORLIVESI, *Alla ricerca di tutele collettive per i lavoratori digitali: organizzazione, rappresentanza, contrattazione*, in *Labour & Law Issues,* 1, 2018, 50-52.

[44] About which *see* F. MARTELLONI, *Individuale e collettivo: quando i diritti dei lavoratori digitali corrono su due ruote*, in *Labour & Law Issues*, 1, 2018, 24-29 and M. FORLIVESI, nt. (43), 52-55.

[45] About which *see* M. FORLIVESI, nt. (1), 166-176.

[46] On this topic, *see* at least M.L. PICUNIO, *La regolazione delle relazioni industriali in Italia oggi*, in G. ZILIO GRANDI (ed.), nt. (25), 3-10.

[47] About which *see* at least F. DI NOIA, *L'autonomia collettiva nella legislazione dell'emergenza da Covid-19*, in *Argomenti di Diritto del Lavoro*, 3, 2021, 645-651.

[48] About which *see* at least A. CAPALBO, *Il patto per l'innovazione del lavoro pubblico e la coesione sociale. I primi interventi normativi: dalla Legge 120/2020 al D.L. 56/2021*, Santarcangelo di Romagna, Maggioli, 2021.

[49] On this topic, *see* T. TREU, *Patto per il lavoro, contrattazione collettiva e Pnrr*, in *Diritti Lavori Mercati*, 1, 2022, 19-25.

to discern a clear causal link between the irruption of the former and the recovery of the latter.

5. *Future perspectives*

Concluding this brief review, it can certainly be said that the increasing use of digital technologies in the workplace has opened up new scenarios for industrial relations actors.

As for the outcome of the interaction between new technologies and collective labour relations, however, this will depend on the concrete attitude of the social partners. It has been seen, in fact, that while technological innovation can exacerbate conflict, at the same time it can induce the actors of industrial relations to adopt different, collaborative behaviour, in the awareness that the challenges posed by the digital revolution can only be overcome when companies, trade unions and workers cooperate with each other. Nevertheless, despite being called upon to adopt cooperative behaviour to face the digital transition in the best way, the social partners are struggling to embrace a more collaborative model of industrial relations: a circumstance that risks having negative repercussions on companies and workers. Perhaps the time is not yet ripe, but the route is marked and the most likely scenario for the future seems to be that of a collaborative model of industrial relations. It only remains to see whether companies and trade unions will really go down this path, as well as how long it will take them to reach their destination and how far their mutual collaboration will go.

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