

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

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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

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

²On 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.

³On 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.

⁴Compare 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

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*, Cacucci, 2019.

⁶ See A. LO FARO (ed.), *New Technology and Labour Law. Selected topics*, Torino, Giapichelli, 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

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. PIGLIALARMÌ, *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-

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.

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

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

²⁷ On which see M. FORLIVESI, *Next Generation EU: una nuova frontiera dell'integrazione europea*, 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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