Carla Spinelli

Industrial Relations Practices in the Digital Transition: What Role for the Social Partners?

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1. *Introduction*

Work organisation systems are increasingly characterised by the dominance of new digital technologies, which are putting pressure on industrial relations systems at national and supranational level.

No one could disagree that "it should be part of Europe's digitalisation model to draw on the strength of the social partners and the efficiency gains the AI revolution offers while safeguarding workers' rights"[1].

In the context of the digital transition, the main challenges facing workers' representatives and trade unions are to strengthen their rights to information and consultation on the one hand, and to counteract the growing pervasiveness of employer control on the other[2].

[1] Oosterwijk, *Algorithmic management - a codetermination challenge*, in *Soc. EU*, 2024, 5th March.

[2] Menegatti, Gyulavári, *Decent Work in the Digital Age: European and Comparative Perspectives*, Hart Publishing, 2022; Miranda Boto, Brameshuber, *Collective Bargaining and the Gig Economy*, Hart Publishing, 2023; Senatori, Rymkevich, *Digital Employment and Industrial Relations in Europe*, Giappichelli, 2023.

The aim of this article is to explore what kind of synergies actually exist between EU law, participation procedures and collective bargaining to address the current challenges in the world of work due to digitalisation. The most relevant EU secondary legislation – taking into account existing and future sources of regulation - and framework agreements will be considered. The aim is also to check whether the EU is practising what it preaches by strengthening the involvement of the social partners.

In other words, this paper aims to examine the role that social partners should be able to play in the digital age.

In this perspective, the analysis of the EU Framework Agreement on Digitalisation 2020 (sec. 2) will be the starting point of any reflection, in order to highlight the demands of the social partners themselves, which appear at EU level as a (possible) synthesis of the demands at national level. It will then be necessary to examine the more relevant EU regulatory instruments for dealing with digitalisation at work, both before (section 3) and after (section 4) the FAD, in order to find out whether they provide for any kind of involvement of the social partners and according to which pattern of industrial relations practices. Such an examination will lead to some observations on the regulatory role of information and consultation procedures and/or collective bargaining on the risks of digitalised work at EU (and national) level (par. 5).

The study is based on the research carried out for the author's intervention during the 21st International Conference in memory of Professor Marco Biagi, held in Modena in March 2024.

2. *What do social partners ask for: the EU Framework Agreement on Digitalisation (FAD) 2020*

In the midst of the Covid-19 pandemic, the European social partners – Business Europe, the associations representing small and medium-sized enterprises (SME United) and the public sector (Ceep) together with the European Trade Union Confederation (ETUC) and the liaison committee EUROCADRES/CEC – shared and formalised under Article 155 T.F.U.E. a precise commitment to a more inclusive market, oriented to govern the change brought about by digital technologies in the productive organisation, labour relations and consequently in the market. An autonomous agreement

has been used, the implementation of which, on the basis of the principle of subsidiarity, is left to the national trade unions affiliated to the signatory organisations according to the specific practices existing in their domestic systems.

The European Social Partners Framework Agreement on Digitalisation (FAD) of 2020[3] outlines a five stages circular process of shared management between the actors of the system – companies, workers and their representatives – demanding support interventions for the latter, in terms of information and services, necessary to engage effectively in the different phases of the process.

The Agreement identifies then four issues that should also be discussed and taken into account as part of the process. These are: digital skills and securing employment; modalities of connecting and disconnecting; Artificial Intelligence and guaranteeing the human in control principle; respect of human dignity and surveillance[4].

Regarding the identification of the industrial relations practices which can operate most effectively, the FAD does not offer clear indications, as it simply refers to country-specific procedures and tools. However, the involvement of employee representatives seems more compliant with the purpose and the general setting of the agreement. Indeed, collective bargaining as a regulatory instrument is rarely mentioned in the text, for instance as a way to achieve clarity on the use of digital devices and right to disconnect, or to implement specific rules on privacy pursuant to article 88 of the "General Data Protection Regulation" (GDPR)[5].

The signatory parties of the FAD have not openly required a reinforcement of the legal framework to support their action, but they have recalled the role that EU and national governments have to play by setting up the framework conditions for workers and employers to lay down appropriate solutions, in line "with a subsidiary approach".

[3] European Social Partners' Autonomous Framework Agreement on Digitalisation (22 June 2020), available at https://www.etuc.org/en/document/eu-social-partners-agreement-digitalisation.

[4] Mangan, *Agreement to Discuss: The Social Partners Address the Digitalisation of Work*, in *ILJ*, 2021, 50, IV, p. 696 ff.

[5] Senatori, *The European Framework Agreement on Digitalisation: a Whiter Shade of Pale?*, in *ILLeJ*, 2020, vol. 13, II, p. 171 ff.

3. *The EU legal framework on industrial relations practices in the digital transition prior to the FAD*

In the background of the FAD there were already some EU legal sources offering a slight support to the involvement of social partners in managing and supervising digital workplaces.

Among those, Regulation (EU) 2016/679 on data protection is the essential complementary tool to take into account when digitalisation risks to affect fundamental rights through data processing.

The "General Data Protection Regulation" (GDPR) provides mainly for an individual approach to the topic addressed. However, there are a few articles of the GDPR which refer to collective agreements.

For example, article 9 states that the processing of the so-called "sensitive data" is allowed if necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law, in so far as it is authorized by Union or Member State law or a collective agreement, pursuant to Member State law, providing for appropriate safeguards for the fundamental rights and the interests of the data subject (paragraph 2, letter b). So, it allows a collective agreement to authorize, as an alternative to the law, the processing of such special categories of personal data: namely, those ones revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, biometric data, data concerning health or data concerning a natural person's sex life or sexual orientation.

Moreover, according to article 88, which regulates the "Processing in the context of employment", Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organization of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship (paragraph 1). Those rules

shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of personal data within a group of undertakings, or a group of enterprises engaged in a joint economic activity and monitoring systems at the work place (paragraph 2).

Recital 155 specifies that Member State collective agreements include "works agreements" and adds that they may provide for specific rules on the processing of employees' personal data for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee.

On the other hand, room for workers' representatives to present their views to the controller with regards to the Data Protection Impact Assessment (DPIA) is carved out by Article 35, paragraph 9, but only "where appropriate".

Few years later, as one of the first intervention to implement the European Pillar of Social Rights, Directive 2019/1152/UE on "Transparent and Predictable Working Conditions" was enacted.

It aims to tackle the asymmetry of power between employers and workers on relevant information regarding working conditions through increasing predictability and certainty in the employment relationship. Despite this, workers' representatives and trade unions are never involved in the flow of information, regardless of their potentially beneficial role on strategically using data to increase workers' protection.

Social partners, and workers' representatives in particular, are only mentioned:

- in Recitals 37-38, according to which Member States should allow social partners to provide for better protection through collective agreements even adopting different provisions if they are more appropriate, for the pursuit of the purpose of the Directive;

- in art. 17, in order to protect workers' representatives from any adverse treatment by the employer.

However, as already said, the most relevant EU regulatory instrument preceding the FAD with which the EU Social Partners approach to digitalisation remains more consistent is the I&C Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community.

An evolutionary interpretation suggested that by mandating informa-

tion and consultation duties «on decisions likely to lead to substantial changes in work organisation or in contractual relations» (Article 4, paragraph 2, let. c), this Directive would pose an obligation to inform and consult employees' representatives on any decision concerning algorithmic management[6]. However, some shortcomings persist, since the Directive has a limited scope in terms of workers covered (exclusively employees) and the information and consultation rights cover only significant changes which affect the organisation.

4. *Any change of approach in the recent regulatory developments?*

A more comprehensive and focused approach can be found in the recent regulatory developments, since the digital transition, together with the green and energy ones, were (and are still now) at the core of the EU strategic policies during the first mandate of President von der Leyen. According to the related agenda, the EU's digital strategy aims to make this transformation work for people and businesses, while helping Europe to strengthen its digital sovereignty and set standards, rather than following those of others. In the last months of the previous legislature two fundamental legal instrument have been adopted, at the end of very complicated negotiations conducted during the procedure for their approval: the Artificial Intelligence Act, the world's first comprehensive regulation on artificial intelligence, and the Platform Work Directive, aimed at avoiding misclassification and improving working conditions for these workers.

5. *Regulation (EU) 2024/1689 on Artificial Intelligence*

The Regulation on Artificial Intelligence (EU) 2024/1689 (AI Act) aims to foster the development and uptake of safe and trustworthy artificial intelligence systems across the EU's single market by both private and public actors. At the same time, it aims to ensure respect of fundamental rights of EU citizens and stimulate investment and innovation on artificial intelligence in Europe (Recital 1 and 2; Article 1, paragraph 1).

[6] De Stefano, Taes, *Algorithmic management and collective bargaining*, in *FB*, ETUI, 2021, p. 29.

The AI Act has adopted a wide definition of Artificial Intelligence, which covers every "machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments" (Article 3, paragraph 1).

The scope of application includes providers and deployers of AI systems that have their place of establishment or are located in the EU, or even in a third country as far as the output produced by the AI system is used in the Union (Article 2, paragraph 1).

The AI Act sets harmonised rules for the development, placement on the market and use of AI systems in the Union following a proportionate risk-based approach, that does not create unnecessary restrictions to trade, whereby legal intervention is tailored to those concrete situations where there is a justified cause for concern or where such concern can reasonably be anticipated in the near future.

The AI Regulation imposes regulatory burdens only when an AI system is likely to pose high risks to fundamental rights and safety. The adverse impact caused by the AI system on the fundamental rights protected by the Charter of Fundamental Rights of the EU is of particular relevance when classifying an AI system as high-risk. For non-high-risk AI systems, only very limited transparency obligations are imposed.

AI systems used in educational and vocational training like those used in employment, workers' management and access to self-employment, listed in Annex 3, paragraph 3 and 4 of the Regulation, should be classified as high-risk, since those systems may appreciably impact future career prospects and livelihoods of these persons[7].

According to Recital 92, the Regulation cannot undermine the obligations for employers to inform or to inform and consult workers or their representatives under Union or national law and practice, including Directive 2002/14/EC, on decisions to put into service or use AI systems. In case of planned deployment of High-Risk AI Systems at the workplace, it remains

[7] On the crucial issue of AI's impact on the labour market, working conditions and labour standards, see Ponce del Castillo (ed.), *Artificial intelligence, labour and society*, ETUI, 2024, available at https://www.etui.org/publications/artificial-intelligence-labour-and-society.

necessary to ensure information of workers and their representatives where the conditions for those information or information and consultation obligations in other legal instruments are not fulfilled. Recognising such information right is considered ancillary and necessary to the objective of protecting fundamental rights that underlies the AI Act. As a consequence, an information requirement to that effect should be laid down in the Regulation, without affecting any existing rights of workers.

Moreover, the AI Act shall not preclude the Union or Member States from encouraging or allowing the application of collective agreements which are more favourable to workers in terms of protecting their rights in respect of the use of AI systems by employers (Article 2, paragraph 11).

Article 26 foresees the obligations of deployers of High-Risk AI Systems, which burden also any employer who is "using an AI system under its authority" (Art. 3, paragraph 4)[8].

According to an amendment adopted by the European Parliament on 14th June 2023 to the Proposal for the AI Act, a new paragraph 5.1. should have been added to art. 26, providing that: "Prior to putting into service or use a High-Risk AI System at the workplace, deployers shall consult workers' representatives with a view to reaching an agreement in accordance with Directive 2002/14/EC and inform the affected employees that they will be subject to the system".

In the final version of the Regulation, the current paragraph 7 states instead that: "Before putting into service or using a High-Risk AI System at the workplace, deployers who are employers shall inform workers' representatives and the affected workers that they will be subject to the use of the High-Risk AI System. This information shall be provided, where applicable, in accordance with the rules and procedures laid down in Union and national law and practice on information of workers and their representatives".

The involvement of workers' representative has thus been limited to the right to be informed about the use of the High-Risk AI System, which do not necessary lead to either a consultation or even an agreement.

Another amendment of the EU Parliament was cut back in its ambitions. The obligation to provide for the Fundamental Rights Impact Assessment (FRIA), according to Art. 27, concerns only deployers that are bodies

[8] Cristofolini, *Navigating the impact of AI systems in the workplace: strengths and loopholes of the EU AI Act from a labour perspective*, in *ILLeJ*, 2024, vol. 17, I, p. 79 ff.

governed by public law, private actors providing public services, and deployers that are banking and insurance service providers using AI systems listed as high risk in Annex III, point 5, (b) and (c) of the Regulation. However, even for those limited categories of deployers, the FRIA will need to be carried out only for aspects not covered by the Data Protection Impact Assessment (DPIA) according to the GDPR or other legal obligations[9].

6. *Platform Work Directive (EU) 2024/2831*

Algorithmic management is one of the main feature of the new digital work, which emerged most clearly in platform work, raising questions of accountability and transparency. It consists in a new organisational paradigm which implies the partial or even total replacement of managerial prerogatives[10].

The European Commission adopted in 2021 a Proposal for a Directive to regulate such phenomenon in this specific area of the gig economy, aiming at countering its opacity.

The Platform Work Directive (EU) 2024/2831, enacted as a result of a strong compromise among the stakeholders, introduces measures to facilitate the determination of the correct employment status of persons performing platform work; promotes transparency, fairness, human oversight, safety and accountability in algorithmic management in platform work; improves transparency with regard to platform work, including in cross-border situations, and it also lays down rules to improve the protection of natural persons in relation to the processing of their personal data[11].

The Directive lays down minimum rights to apply to every person performing platform work in the EU, whether or not under an employment contract or in an employment relationship (Article 2, paragraphs 3 and 4).

As the ETUC underlined: "The Directive also recognises the role of

[9] Le Bonniec, *Another Path for AI Regulation: Worker Unions and Data Protection Rights*, in *ILLeJ*, 2024, 17, 2, p. 115 ff.

[10] The topic is widely analysed, see at least: Aloisi, De Stefano, *Your Boss Is an Algorithm*, Hart Publishing, 2022.

[11] Mangold, *Platform work and traditional employee protection: The need for alternative legal approaches*, in *ELLJ*, 2024, vol. 15, IV, p. 726 ff.; Rainone, Aloisi, *The EU Platform Work Directive. What's new, what's missing, what's next?*, in *ETUI PB*, 2024, 6th August.

trade unions in all aspects of the platform economy, including on issues such as algorithm management. Despite calls for weakening these provisions, they were left untouched by numerous attacks confirming the strong need for the collective bargaining in the platform economy"[12].

Directive (EU) 2024/2831 foresees in several norms the involvement of trade unions, workers' representatives freely elected by platform workers and even, what is worth to stress, representatives of persons performing platform work not under an employment contract, insofar as they are provided for under national law and practice (Article 2, paragraphs 6 and 7)[13].

To safeguard the rights and freedoms of natural person, when processing their personal data by means of automated monitoring systems or decision-making systems, digital labour platforms are required to carry out a Data Protection Impact Assessment (DPIA). Being this the case, the platforms shall seek the views of persons performing platform work and their representatives and then provide the assessment to workers' representatives (Article 8, paragraph 2).

To guarantee transparency on automated monitoring or decision-making systems, platform workers' representatives shall receive information by digital labour platforms on their use, together with persons performing platform work and, upon request, competent national authorities (Article 9, paragraph 1).

That information shall be very detailed, concerning: "(a) all types of decisions supported or taken by automated decision-making systems, including when such systems support or take decisions not affecting persons performing platform work in a significant manner; (b) as regards automated monitoring systems: (i) the fact that such systems are in use or are in the process of being introduced; (ii) the categories of data and actions monitored, supervised or evaluated by such systems, including evaluation by the recipient of the service; (iii) the aim of the monitoring and how the system is to achieve it; (iv) the recipients or categories of recipients of the personal data processed by such systems and any transmission or transfer of such personal data including within a

[12] Press release 11.3.24.

[13] For a deeper analysis which compares the provisions on collective representation and collective rights of platform workers respectively enshrined in the Proposal adopted by the European Commission on December 2021 and in the amendments presented by the European Parliament on 22 December 2022, see Purificato, Senatori, *The Position of Collective Rights in the "Platform Work" Directive Proposal: Commission v Parliament*, in *HLLJ*, 2023, I.

group of undertakings; (c) as regards automated decision-making systems: (i) the fact that such systems are in use or are in the process of being introduced; (ii) the categories of decisions that are taken or supported by such systems; (iii) the categories of data and main parameters that such systems take into account and the relative importance of those main parameters in the automated decision-making, including the way in which the personal data or behaviour of the person performing platform work influence the decisions; (iv) the grounds for decisions to restrict, suspend or terminate the account of the person performing platform work, to refuse the payment for work performed by them, as well as for decisions on their contractual status or any decision of equivalent or detrimental effect" (Article 9, paragraph 1).

The information shall be provided in the form of a written document and shall be presented "in a transparent, intelligible and easily accessible form, using clear and plain language" (Article 9, paragraph 2).

Workers' representatives are entitled to receive comprehensive and detailed information about all relevant systems and their features. They shall receive that information prior to the use of those systems or to the introduction of changes affecting working conditions, the organization of work or monitoring work performance or at any time upon their request (Article 9, paragraph 4).

The human in command principle is expressly recognised by the Directive in its articles 10 and 11, being enforced also through the involvement of workers' representatives.

An evaluation of the impact of individual decisions taken or supported by automated monitoring and decision-making systems on persons performing platform work shall be carried out by digital labour platforms with the involvement of workers' representatives, regularly, and in any event every two years. Information on such evaluation shall be transmitted to platform workers' representatives (Article 10, paragraphs 1 and 4).

The right to request the human review on the decisions taken or supported by an automated decision-making system shall be recognised not only to persons performing platform work but also to the representatives acting on behalf of them, in accordance with national law or practice. The digital labour platform shall respond to such request by providing "a sufficiently precise and adequately substantiated reply in the form of a written document" no later than two weeks after the receipt of the request (Article 11, paragraph 2).

Information and consultation rights of platform workers' representatives are enshrined in general terms in Article 13 and qualified as additional to those provided for by Directives 89/391/EEC, 2002/14/EC and 2009/38/EC.

Workers' representatives of platform workers are entitled to information and consultation rights – as defined in Article 2, points (f) and (g), of Directive 2002/14/EC and under the same modalities concerning their exercise laid down in that Directive – "on decisions likely to lead to the introduction of or to substantial changes in the use of automated monitoring or decision-making systems".

What is more, "the platform workers' representatives may be assisted by an expert of their choice, in so far as this is necessary for them to examine the matter that is the subject of information and consultation and formulate an opinion". The expenses for the expert shall be borne by the digital labour platform which has more than 250 workers in the Member State concerned, provided that they are proportionate.

Specific arrangements for representatives of persons performing platform work other than platform workers' representatives are set in Article 15.

The exercise of the rights provided to workers' representatives under Article 8(2), Article 9(1) and (4), Article 10(4) and Article 11(2), examined above, are extended to representatives of persons performing platform work other than workers' representatives, but only "insofar as they are acting on behalf of those persons with regard to the protection of their personal data".

To draw some preliminary conclusions, it can be said that the Platform Work Directive enforces the information (and consultation rights) of workers' representatives and open up the floor to other representative bodies, even if for a limited scope.

To complement the collective rights of persons performing platform work as self-employed the "Guidelines on collective agreements by solo self-employed people"[14] should be taken in due account.

The Guidelines clarify when certain self-employed people can get together to negotiate collectively better working conditions without breaching EU competition rules. The Guidelines apply to solo self-employed people who work completely on their own and do not employ others[15].

[14] Communication from the Commission (2022/C 374/02).

[15] Rainone, *Labour rights beyond employment status: insights from the competition law Guidelines*

The Guidelines form part of the actions seeking to ensure that the working conditions of platform workers are adequately addressed, however, the scope of the Guidelines is not limited to solo self-employed people working through digital labour platforms and covers also situations of solo self-employed people active in the offline economy.

7. *The current scenario: participatory models versus or plus collective bargaining?*

In the light of the above overview of some selected EU regulatory instruments on digitalisation, some tentative observations can be made on industrial relations practices in this field, which will need to be verified later by a more in-depth analysis of their future developments.

There is no doubt that information and consultation procedures, which are well established in the traditional EU industrial relations system, remain crucial in providing good support for managing the risks posed by digitalised workplaces.

In fact, the right of workers' representatives to be informed has been strengthened much more than the right to be consulted, since the obligation to "seek their views" is less frequently mentioned in the norms examined. On the contrary, the content of the information to be provided is very detailed, it must be provided in writing and in good time, and when they are released by a digital labour platform an expert chosen by the workers' representatives can help them to examine the issues involved.

From this point of view, transparency as a means of protection seems to be more important than the direct involvement of workers' representatives, as demanded instead by the social partners in the FAD.

Furthermore, representatives other than workers' representatives are only involved when personal data are processed.

Finally, the role of collective bargaining seems to be limited to enhancing the level of protection offered by the legal provisions, and to increasing workers' rights if and when a collective agreement can be signed according to national rules and practices.

on collective bargaining, 2022, in AA.VV. (eds.), *Defining and protecting autonomous work*, Springer, p. 167 ff.; GIAMPÀ, *Collective Bargaining for Solo Self-Employed Persons in the European Union. Assessing the Efficacy of the European Commission's Guidelines*, in this journal, 2024, I.

Regarding the impact of digitalisation on the world of work, the EU legal framework is still rather fragmented, and even the most recent measures have some shortcomings. The legal basis of the AI Act does not allow to adequately regulate the impact of artificial intelligence on employment relationships, and the chapter of the Platform Work Directive on algorithmic management is too limited in scope. These (and other) critical issues explain why the ETUC insists on calling for an EU directive on algorithmic systems in the workplace, in particular when it comes to algorithmic management, in order to complement the rules already in force[16].

Beyond formal declarations, the EU legal framework does not yet seem to provide effective support for the involvement of trade unions and workers' representatives in digitalisation. It is not really a kind of "auxiliary" legislation, but it may have a spill-over effect.

There are at least other two forthcoming regulations to monitor in the adopted perspective: the Proposal for a Directive amending Directive 2009/38/EC on European Works Councils and transnational information and consultation rights and, even more so, the Proposal for a Directive on Telework and the Right to Disconnect, which follows the failed attempt of the EU Social Partners to update the 2002 Framework Agreement on Telework.

It should be also noted that, Roxana Mînzatu's mandate[17] as Executive Vice-President for Social Rights and Skills, Quality Jobs and Preparedness (as renamed), includes an initiative on algorithmic management. Further legislative developments on the impact of digitalisation in the world of work can therefore reasonably be expected[18].

As digitalisation is a complex organisational process involving recurrent decisions affecting different aspects of working conditions, information and

[16] ETUC, *Resolution calling for an EU Directive on Algorithmic Systems at Work*, adopted at the ETUC Executive Committee of 6 December 2022, available at https://www.etuc.org/sites/default/files/document/file/2023-01/Adopted%20ETUC%20Resolution%20calling%20for%20an%20EU%20Directive%20on%20Algorithmic%20Systems%20at%20Work%20.pdf.

[17] See the Mission Letter published on 17th September 2024, available at https://commission.europa.eu/document/download/27ac73de-6b5c-430d-8504-a76b634d5f2d_en?filename=Mission%20letter%20-%20MINZATU.pdf.

[18] To support a dedicated, legally binding, instrument which can fill the gaps, see the Open Letter in Aa.Vv., *Algorithmic Management and the Future of Work in Europe*, in *Soc. EU*, 2024, 4th November.

consultation procedures are certainly better suited to address the challenges in a partnership approach, respecting the different roles of the parties involved, but collective agreements can help to achieve better results in terms of stronger protection.

Full awareness of the relevance of collective bargaining in managing the significant impact on workers resulting from the introduction of digital technologies emerges from the European sectoral social dialogue texts on digitalisation[19].

Positive examples of successful synergies between workers' representatives and trade unions when information and consultation procedures, or even strategic litigation, lead to the signing of a collective agreement, can be found in the experience of TCAs on anticipation of change and restructuring the organisation of work in companies[20] as well as from Due Diligence litigation in Global Supply Chains[21].

These experiences confirm that a strong commitment on the part of the social partners themselves is necessary to activate any virtuous circle of joint regulation. Therefore, the many failed attempts of social dialogue at EU level and the delays in implementing the FAD at national level[22] do not inspire much confidence at present.

[19] Among the most recent ones, see, for example: the Joint Declarations of the EU Social Partners for the Banking Sector of December 2021, on remote work, and of May 2024, on Artificial Intelligence; the joint statement of the EU Social Partners in the MET industries of February 2023; the Agreement on Digitalisation signed in October 2022, the EU social partners for central/federal government, all available at https://employment-social-affairs.ec.europa.eu/policies-and-activities/european-employment-strategy/social-dialogue/social-dialogue-texts-database_en.

[20] SPINELLI, *Trans-National Restructuring Processes: the Role of Collective Bargaining Beyond Information and Consultation*, in ALES, BASENGHI, BROMWICH, SENATORI (eds.), *Labour and social rights: an evolving scenario*, Giappichelli, 2016, p. 173 ff.

[21] SPINELLI, *Regulating Corporate Due Diligence: from Transnational Social Dialogue to EU Binding Rules (and Back?)*, in this journal, 2022, I, p. 103 ff.

[22] ETUC, BUSINESS EUROPE, SGI EUROPE, SME UNITED, *Implementation of the ETUC1/BusinessEurope/SMEunited/SGI Europe, Framework agreement on Digitalisation*, 3rd Joint Report, 2023, available at https://resourcecentre.etuc.org/sites/default/files/2023-12/FINAL%20Third%20joint%20report%20-%20Implementation%20of%20the%20Digitalisation%20agreement.pdf.

Abstract

This contribution aims at analysing the contemporary challenges the world of work affords because of digitalisation from the perspective of industrial relations practices. What kind of synergies among EU law, participation procedures and collective bargaining, in view to address such challenges, do really exist? The goal is also to verify if the EU practices what it preaches, by boosting social dialogue.

Keywords

Digitalisation, EU labour law, Information and consultation rights, Collective bargaining, Workers' representatives.