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UNIVERSITÀ DEGLI STUDI DI MODENA E REGGIO EMILIA

Olga Rymkevich - Iacopo Senatori
(Edited by)

Digital Employment and Industrial Relations in Europe

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This volume presents the results of a European research project covering the years 2019-2022 (closed on 29.04.2022).

The Impact of Digital Work on Industrial Relations Systems. Lessons from a Comparative Research [*]

Olga Rymkevich and Iacopo Senatori [1]

SUMMARY: 1. The iRel Project: Rationale and Methodology. – 2. Structure of the Country Chapters. – 3. Lesson Learnt.

1. *The iRel Project: Rationale and Methodology*

This book is the final outcome of a research project that addressed the multi-faceted topic of the "digital transformation of work" from the perspective of the regulatory functions performed by the law and industrial relations.

The project, named *iRel. Smarter Industrial Relations to Address New Technological Challenges in the World of Work*, has been carried out in the years 2019-2022 by a team of universities and research centres, that benefited from a grant received from the European Commission under the "Social Dialogue" funding programme. It aimed at discussing the regulatory role of social dialogue in the face of the challenges posed by the introduction of new technologies into workplace practices and production processes, by reconstructing and comparing the practices in place in seven European countries, namely Bulgaria, Denmark, Estonia, Germany, Hungary, Italy and Poland.

The use of the comparative method has been a means to reach a broader understanding of the phenomenon at hand, and to trigger a reflection based on benchmarking, mutual learning and exchange of good practices, in coherence with the purpose of the European Commission's funding programme, finalized to "improving expertise in industrial relations".

It is a common assumption that social dialogue can play a crucial role in the process of digital transformation of employment, due to its flexibility and its strong

[*] This volume presents the results of a European research project covering the years 2019-2022 (closed on 29.04.2022).

[1] Olga RYMKEVICH is a seniour researcher, Marco Biagi Foundation; Iacopo SENATORI is an associate professor at the University of Modena and Reggio Emilia; Member of the Scientific Committee of the Marco Biagi Foundation.

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adaptive potential to bring together productivity, efficiency, improvement of working conditions and respect for fundamental rights of workers. However, social dialogue practices are heterogeneous and differ considerably across the EU Member States, depending on industrial relations traditions, the relative strength of work and capital and other political, economic and labour market peculiarities, national agenda priorities and last but not least, the role of legislation in labour market regulation. This can represent an obstacle to the effective implementation of the EU regulatory initiatives but, on the other hand, mutual learning and continuous exchange of experiences can influence the approaches of the social partners at European and national levels in order to set up more adequate regulatory strategies.

Under this assumption, the project was designed to encompass countries that represent different social, economic and industrial relations models: the Nordic-Scandinavian, the Continental, the Southern/Mediterranean and the Post-communist, Central and Eastern European respectively.

With regard to the area of investigation, the project pursued an original goal, with the adoption of a holistic notion of the "digital transformation" of work and the employment relationship. In fact, at the time when the project was designed, the scholarly reflection was for the most part focused on specific phenomena, such as remote and telework, work in the platform economy and the effects of the digital restructuring and automation of companies and workplaces (a process also described with the formula "Industry 4.0"), that were treated separately in consideration of the respective peculiarities. iRel attempted to look beyond this fragmentation, by bringing together all the three aforesaid perspectives, in order to examine possible correlations between them.

This idea seems to have been confirmed by the subsequent developments, both at the factual/normative and the scholarly levels. On the one hand, the number of academic contributions observing the phenomenon from a viewpoint encompassing all the different aspects of digitalization has increased [2]. On the other hand, it has become clear that some of the most critical issues related to the digital transformation tend to cross-cut all the possible conceptual boundaries between different forms of "digital work". A remarkable example is algorithmic management, that equally involves platform workers, remote workers and workers of the traditional (albeit digitalized) factory. It does not surprise, hence, to note that in the ongoing debate about the European Commission's initiative on platform work the case has been made for a generalization of the scope of the provisions on algorithmic management.

The questions that the research aimed to answer pertain to whether and how digitalization is acknowledged as a matter to regulate by lawmakers and social partners in the countries represented in the project, and to whether digitalization is having an impact on the institutional and structural features of the industrial relations systems.

[2] See for instance T. GYULAVÀRI, E. MENEGATTI (eds.), *Decent Work in the Digital Age. European and Comparative Perspectives*, Hart-Bloomsbury, 2022; A. PERULLI, T. TREU (eds.), *The Future of Work: Labour Law and Labour Market Regulation in the Digital Era*, Kluwer, 2021.

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More precisely, the research plan encompassed questions like: if and to what extent digitalisation is addressed in legislation and collective agreements; if the established industrial relations practices and institutional structures have been put under strain by the fastly changing technological landscape, or they have been capable of reacting swiftly; if trade unions and workers' representatives have been ready to understand the effects of the ongoing technological transformation on the world of work and take on the resulting challenges, like the evolving needs and interests of workers and the new threats posed on their rights (but also the opportunities disclosed by the adoption of technologies in the workplace), or, at the opposite, they have been hampered in their capacity to organize and represent workers affected by this momentous change; to what extent the business models and the new ways of organizing work enabled by digital technologies are questioning the foundations of the rules presiding over the functioning of the industrial relations systems and hampering their effectiveness; how the law and the self-regulation initiatives of social partners are interacting with (and complementing) each other on the topics associated with digitalization, namely if the law has been prepared to support social dialogue in tackling and adjusting to the new regulatory needs, and if, on the other hand, social partners have been prompting, stimulating or inspiring the intervention of the law.

Several changes took place during the three years' time span in which the project has been effective: some were predictable and some were not. The fast page of the technological advancement, on the one hand, and the pandemic, on the other hand, introduced new issues and new perspectives in the iRel research plan. New questions arose, like those posed by the rise of artificial intelligence and by the massive use of remote work as a measure of mass disease prevention. As a result, a number of specific subjects came to the forefront, like the right to disconnect, the right to work remotely and the necessity of a human control on algorithmic decisions, that showed the urgency of a regulation.

In parallel, new initiatives have been launched by regulatory bodies, both at the national and the supranational level, some of which are now in force, while others remain in progress. To mention but a few, the European Framework Agreement on Digitalisation of June 2020, the European Commission's joint initiatives on platform work and the right to collective bargaining of platform workers and other groups of solo self-employed persons, the Artificial Intelligence Act. Mention should be made, in this regard, also of the flourishing judicial activity, both at the national and the EU levels, often triggered by trade unions that used judicial litigation as the key of a clear-cut strategy to advance the rights of workers affected by digitalization and trigger the intervention of lawmakers [3].

As a result, the research has been carried out against a turbulent and continuously evolving landscape, which represented a stimulating factor but also one that sharpened the difficulties encountered. Therefore, the findings, as usual, but in

[3] I. SENATORI, C. SPINELLI (eds.), *Litigation (collective) Strategies to Protect Gig Workers' Rights. A Comparative Perspective*, Giappichelli, 2022.

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particular under the given context, should be considered as sound as provisional and reviewable.

2. *Structure of the Country Chapters*

The chapters included in this book present a structure that mirrors the different stages of the project.

The first stage was dedicated to the reconstruction of the institutional characteristics of the industrial relations systems in the countries involved in the project (constitutional grounds, players, union density, collective bargaining coverage, structure of collective bargaining and distribution of regulatory competences on employment matters between the law and the social partners) and to the description of the state of the art regarding the degree of penetration of new technologies into the economy and the world of work.

The three intermediate stages have been dedicated respectively to the emerging issues in those that have been assumed as the three basic dimensions of digital work, i.e. platform work, remote work and workplace automation (or "Industry 4.0"). The researchers operated according to a common pattern, constituted by a set of questions that specified, for each stage, the general questions summarized in the end of the previous section of this chapter.

The final stage, and the corresponding section of the country chapters, addresses the policy perspectives. In particular, it focuses on two elements: the needs and expectations arising in each country on how to establish a regulatory framework that ensures the advancement of workers' rights and an effective role of social dialogue in the context of an efficient digital transition, and the possible interlinkages between regulation at the levels of EU and the Member States.

3. *Lessons Learnt*

Leaving to the individual national chapters the detailed reconstruction of the results found in each partner country with regard to the questions outlined above, this section will attempt to present concisely the general trends that have been observed from a comparative perspective. These trends concern both institutional aspects (pertaining to the structure and functioning of industrial relations systems) and substantive aspects (pertaining to the contents of the regulatory initiatives undertaken by social partners).

Starting from the institutional aspects, the research showed that coordinated and well-structured industrial relations systems, like those of Denmark, Germany and Italy, tend to perform more effectively in the regulation of "digital work issues" compared to the more fragmented and de-centralised systems of Central Eastern Europe. This feature may be partly explained by the lower attention for the phenomenon from legislatures and social partners in this second group of

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countries, resulting in a lower urgency to adopt specific regulations. However, the generally weak state of industrial relations and the – often – problematic relationship between governments and social partners undoubtedly play a role too.

The degree of formalization of industrial relations practices, on the other hand, did not seem to influence the specific performance of the systems belonging to the first group of countries. For instance, collective bargaining in Denmark and Italy could be placed at the opposite ends of a hypothetical scale of formalization, and nonetheless both the systems showed a remarkable dynamism in the regulation of specific dimensions of digitalization, like platform work (and, for Italy, remote work).

Likewise, the level at which social dialogue takes place is not as crucial for the positive regulatory outcome as the existence of a coordination between the different levels. In Germany, work agreements at the company level are the pivotal sources for the regulation of the effects of digitalization at the workplace, but yet they operate in the framework of a highly institutionalized industrial relations system and a broad and established body of legislation.

With regard to the characters of workers' representation, the difference between systems adopting a single or a dual channel does not seem to be relevant in itself to determine the readiness of a system to respond effectively to the problems of digital work. In fact, the national chapters show that both can equally result in positive or negative outcomes. What is interesting to note, instead, is the peculiar interaction that can take place between the two models in one single system. Some cases addressed in the book show a kind of competition taking place when elected representatives are legitimized to intervene as regulatory agents in case collective bargaining is not present. The national chapters note that this interaction may represent a scheme on how to deal with the challenges of digitalization, as it may establish a pattern of mutual reinforcement between collective bargaining at the company level and employee participation, with the former setting up the general regulatory framework and the latter dealing with the solution of more practical issues (a pattern that echoes the circular "partnership process" proposed by the European Social Partners' Framework Agreement on Digitalisation).

About the relationship established between the law and autonomous social dialogue as regulatory sources, cooperative patterns tend to prevail over competitive ones, at least in the most institutionalized systems. In Denmark and Italy, the law acknowledges a broad regulatory authority to social partners and supports their action albeit in different ways: Denmark is characterized by a high statutory self-restraint, whereas in Italy the law tended to draw from collective agreements, raising their contents to the statutory rank or establishing a framework where social partners could operate with more certainty and effectiveness, like in the cases of platform work and remote work. Likewise, in Germany the law attempted to favour the adaptation of social partners' action to the digital environment, for instance with the law on modernization of works councils.

Overall, digitalization seems to have shaken but not altered the foundations of the industrial relations systems in the countries involved in the project. All of them reacted to the digital challenges with their typical resources, instruments

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and forms of action, and to the extent permitted by the general political and economic conditions of each country. In countries with weak social dialogue, industrial relations practices have not been revitalized by the advent of the digital transformation. On the other hand, countries with more structured and established social dialogue have tackled the initial displacement by introducing innovations in a line of continuity with their traditional patterns. This has also allowed for the incorporation of relevant changes in the system, such as the emergence of new representative actors, as has occurred, for example, in Italy in the context of platform work in Italy.

With reference to contents of the regulatory action of social partners, a recurring element in the experience of all the countries involved in the project defensive approach adopted towards digitalization, at least at the earliest stage. This was reflected in the prevailing attention devoted managing the impact of the digital restructuring of enterprises on employment, in terms of safeguarding jobs and activating resources and strategies for adapting workers' job skills to the new technologies.

Since the technological change has a direct impact on the skills composition of jobs and job requirements, collective bargaining has been frequently addressing reskilling and upskilling through different training policies. In some cases, the aim was to anticipate future reorganisation and mitigate the impact of job losses. Collective bargaining provisions have also addressed labour shortages, which are becoming increasingly common. In general, it has been observed that training is an element present in most collective agreements almost in all the countries concerned, although the space devoted to it differs considerably from country to country and agreement to agreement.

Only in countries with more dynamic and effective industrial relations the contents of the regulatory action have subsequently embraced other aspects like the impact of digital technologies on managerial practices and organization of work and production processes (remote work, algorithmic management), resulting in provisions addressing a broader set of workers' fundamental rights of workers, like those related to dignity, equal treatment, health and safety and privacy.

The comparative picture resulting from the research is thus highly uneven. While the most successful experiences suggest that industrial relations can indeed be a useful regulatory resource to adjust the regulatory solutions to the issues posed by the digital transformation, still much remains to be done to support the development of a well-structured and efficient social dialogue systems even in countries where industrial relations are currently lagging behind.

However, the need to support social dialogue applies equally to the systems that are apparently in a better condition. The regulatory framework must in fact ensure the maintenance of balanced power relations between the social partners. In the face of the threats posed by digitalization, this includes extending the scope of action of workers' representation to categories of workers at risk of exclusion, improving the technical expertise and digital literacy of workers' representatives' and adjusting the modalities of the exercise of workers' representation to the characteristics of digital work.

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BULGARIA

Ekaterina Ribarova [1]

SUMMARY: 1. Summary Review of the Industrial Relations in Bulgaria. – 1.1. Main Trends. – 1.2. Trade Unions. – 1.3. Employers' Associations. – 1.4. Tripartite Partnership. – 1.5. Collective Bargaining and Collective Labour Disputes. – 1.6. Information, Consultation and Workers' Participation. – 1.7. The Impact of the Digitalisation and Other Technological Innovations on the Industrial Relations. – 2. General Policy Approach to Digitalisation and Work. – 2.1. Basic Terminology, Used in the National Documents. – 2.2. Government Policies and Legislation. – 2.3. Tripartite and Other Partners' Documents and Policies. – 2.4. Employers' Associations Policies and Documents. – 2.5. Trade Union Policies and Documents. – 2.6. Collective Agreements. – 2.7. Policies and Documents of the Structures of Organised Civil Society. – 3. Platform Work. – 3.1. General Issues. – 3.2. Legal Background. – 3.3. Statistical Data and Data from Surveys. – 3.4. New Trends in 2020-Consequences of Covid-19. – 3.5. Industrial Relations and the Platform Work. – 3.6. Connections with Theoretical Issues. – 4. "ICT-Enhanced Remote and Mobile Work". – 4.1. General Issues. – 4.2. Legal Background. – 4.3. Statistical Data and Survey Results. – 4.4. Covid-19 Pandemic Affect the Use and/or the Regulation of Remote/Mobile Work. – 4.5. New Forms and New Regulations. – 4.6. Industrial Relations and Remote/Mobile Work. – 5. Workplace Automation and Social Partners Strategies. – 5.1. General Issues and Main Policies and Documents. – 5.2. Statistical Data and Surveys. – 5.3. Sectoral Scope. – 5.4. Topics. – 6. Conclusions.

1. *Summary Review of the Industrial Relations in Bulgaria*

1.1. *Main Trends*

The national industrial relations system has existed since the beginning of XX century, but in 1944-1949 it was practically abolished by the totalitarian communist regime. In the early 1990-s the system was recovered, forced by many strikes, appeared in late 1989-early 1990. The framework for collective labour disputes was created in 1990. In the same year the tripartite partnership was created and collective bargaining at the sectoral and company level was also started. The Government and the social partners improved the relations with ILO and Bulgaria ratified the European Human Rights Convention in 1992.

[1] Ekaterina RIBAROVA, Dr., Research consultant, Institute for Social and Trade Union Research and Education at the CITUB, Sofia, Bulgaria.

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In 1993 the framework for the tripartite partnership and collective bargaining was also created and since then many changes in the Labour Code were also made- in 2001- 2010. Since 2000, when Bulgaria also ratified the Revised European Social Charter and started the negations for the accession to the EU, some new amendments regarding the workers' rights were made, including the rights for information and consultation, the rights of workers to participate in monitoring of the health and safety at work, the workers' rights in cases of insolvency of their employers etc.

The process of privatisation and restructuring in 1992-2007, are the base of new features of industrial relations. They could be defined as follows:

– Declining density of the membership in trade unions and also the density of membership in the employers' associations;

– De-regulation of the industrial relations and de-centralisation of the collective bargaining;

– Although that, there is still strong influence of the tripartism on the policies in the labour relations, social insurance, living standard. Many of the decisions, concerning labour and social issues are taken at the national level, with compulsory tripartite consultations (determination of minimum level of wage, minimum level of social insurance contributions, minimum levels of pensions, of unemployment benefits and of the other social payments, preparation of national programs for employment and vocational training etc.).

1.2. *Trade Unions*

In 1998- 2012 trade union membership has been rapidly declined, but in recent years the density is rather sustainable. Currently it is 16% of the total number of employees. There are two trade union confederations, recognised as representative at national level:

The Confederation of Independent Trade Unions of Bulgaria (CITUB) is the largest trade union confederation in Bulgaria, including 75% from all trade union members. CITUB was established in 1990, on the base of the structures of the former single trade union centre, existed in 1944-1989. Currently it has 39 affiliates-sectoral federations and trade unions (including 35 standard affiliates and 4 affiliates with contracts for support and services), which cover all the sectors in the country and has also regional and municipal structures in all the regions.

The other major trade union is the Confederation of Labour (CL) Podkrepa, including 22% from all trade union members. It was founded on 8 February 1989 by a small group of dissidents. CL Podkrepa has 24 affiliates- sectoral federations and trade unions and has regional organisations in all the regions in the country.

Both trade union confederations are members of the ETUC and ITUC.

There are also some other, very small trade union unifications and non-affiliated sectoral trade unions.

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1.3. *Employers' Associations*

The density of membership of employers' associations, counted on the base of the total number of employers is approximately 18% from all the companies. According to the data of Eurofound in 2012[2] the employers' organisations covered 29% from the private companies in Bulgaria. There are 5 nationally representative employers' associations:

Confederation of the Employers and Industrialists in Bulgaria (CEIBG), established in 2006, after merger of former Union of Bulgarian Employers and the Bulgarian International Business Association, which affiliated the subsidiaries of the multinational companies (MNC-s) in Bulgaria. Currently, the CEIBG has 130 sectoral employers' associations and many companies, which are directly affiliated. The CEIBG has 130 regional and municipal structures. Most of CEIBG members are big national companies, subsidiaries of the MNC-s and other foreign companies. Also some private hospitals, universities etc. are members of the CEIBG. It is a member of the International Chamber of Commerce.

Bulgarian Industrial Association-Union of Bulgarian Business (BIA) was established in 1990, on the base of the structures of former Bulgarian Industrial Association, existed in 1970s and 1980s.Currently it includes 120 sectoral//branch employers' associations and has regional councils in all the regions. Also many of the public and some of the private universities and hospitals are its' members. BIA is a member of BUSINESSEUROPE and of the International Organisation of Employers.

Bulgarian Chamber of Commerce and Industry (BCCI) has existed since 1895. Its' activity was renewed since 1990 and currently it plays a role of business and employers' union. It includes 99 sectoral and branch organisations and it has regional and municipal councils in all the regions. BCCI has a good partnership with the national association of commercial banks, although this association is only focused on business issues. The BCCI is a member of EUROCHAMBERS, International Chamber of Commerce and International Organisation of Employers.

Bulgarian Industrial Capital Association (BICA) was established in 1996, on the base of several groups of companies and holdings, established with the purpose to participate in the privatisation. Currently it has 80 sectoral employers' associations and regional structures in the 3/4 of the regions. It is a member of the SGI Europe and international organisation of employers.

Union for Private Economic Enterprise (UPEE) was established in 1990 and its' affiliates are mainly micro, small and medium sized enterprises and craft enterprises. UPEE is a member of SME united and Esba.

There are also some other small regional and sectoral employers' associations, non-affiliated to one of the five representative at the national level. employers' organisations.

[2] https://www.eurofound.europa.eu/bg/country/bulgaria#actors-and-institutions.

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The main peculiarity of the employers' organisations is the overlap among them. There are many companies, which are members of more than one sectoral or national employers' association and also many sectoral/ branch employers' associations, which are members of more than one national employers' organisation.

1.4. *Tripartite Partnership*

The tripartism has existed in Bulgaria since 1990, but the current national tripartite council was established on the national level in 1993. It consists of members from all representative trade union confederations and employers' organisations, as well as from Government representatives. The council is an important body for discussing employment issues, labour law, social security systems, living standard and the minimum wage, but officially it has only advisory role. There are also tripartite councils at sectoral and regional/municipal level and tripartite councils for special policies (employment, vocational training, health and safety at work etc.). Also the supervisory /managing councils of some of national agencies are established as tripartite structure, for example National Insurance Institute, National Agency for Vocational Education and Training, National Institute for Conciliation and Arbitration etc.

1.5. *Collective Bargaining and Collective Labour Disputes*

Collective bargaining in Bulgaria takes place at the sector and on the company level. Also, municipal level collective bargaining does exist, but only for the companies and organisations, financed by the municipal budgets. In recent years there have been 23 sectoral collective agreements and several agreements in force in the companies with national scope. The number of company-level (1589) agreements is decreasing.

In 2017-2021 the collective bargaining coverage in total (sectoral, municipal and company level), both in the public and private sectors is estimated at **27%** [3]. there is small increase of the coverage of collective bargaining, comparing to previous years. In the public sector (education, local administration, some public services like water supply, railways, posts etc.) the coverage is above 50%. In some sectors there has not been sectoral level collective bargaining since many years (like chemical and pharmaceutical production, textile, clothing, leather and shows, most of the branches of food industry).

In some of the big companies from mines, manufacturing and utilities, both public and private, including MNC subsidiaries, the collective bargaining process is focused on the company level. In some of the MNC subsidiaries, including also companies from the service sectors, provisions of the transnational company agreements (TCA) are implemented as well.

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[3] CITUB data base.

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The number of collective labour disputes decreased in recent years. In the National Institute for Conciliation and Arbitration there were 13 collective labour disputes registered in 2017, covering more than 36000 employees[4].

1.6. *Information, Consultation and Workers' Participation*

According to the European Company Survey 2019[5], only 29% of workplaces have official structures for employee representation, but this concern 76% of the big companies, 51% of medium sized and only 23% of the small companies. Trade unions still play the main role in employee representation, but in many units, there are other elected representatives: representatives: for information and consultations, other special representatives for workers' protection in cases of redundancies and change of employer and usually – H&S committees. However, in many private companies, especially in the SME-s there are not any kind of representatives, except H&S committees or groups. In many of the MNC subsidiaries, operating in the manufacturing and utilities, as well as in many of the big national companies the process of the information and consultation is better implemented. Also, there are Bulgarian representatives in more than 30 EWC-s.

In Bulgaria the legal provisions for board level representation of the workers are very restricted. There are some provisions in the Commercial law, which allow to workers' representatives (including trade union representatives) in the companies with at least 50 employees to attend the shareholders assembly with consultative vote, or/and to attend the managing board/board of directors of any company, for consultations in cases of decisions, concerning labour and social issues in the company. In some big companies, according to the special agreements with the employer's trade union leaders are allowed to attend the supervisory boards with consultative vote or in some cases with the rights to participate in the management decisions. However, such companies are exceptions.

In recent years in some private companies and also in some public companies forms of direct workers' participation are also implemented, especially in companies where particular work organisation was implemented. The research data from the European Company survey 2019[6] indicated, that workers are included regularly and with high influence on the management decisions in 33% of the establishments with 10 and more employees. The implementation of various forms of direct participation could be observed in sectors like metallurgy, machine building (including automotive manufacturing, electronics and electrical engineering), food processing, as well as transport, waste processing, trade, retail, co-

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[4] http://www.nipa.bg.

[5] Eurofound And Cedefop, *European company survey.2019. Workplace practices unlocking employee potential*, European Company Survey 2019 series, Publication office of the European Union, Luxemburg, 2020, p. 111, https://www.eurofoun.europa.eu.

[6] Ivi, p. 107, https://www.eurofound.europa.eu.

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operatives, some of the other services and tourism. Also, in the MNC subsidiaries from various sectors forms of direct participation are implemented. Current digitalisation and increasing information load and exchange also speeds up this process in the most advanced companies in the IT-s and other sectors.

1.7. *The Impact of the Digitalisation and Other Technological Innovations on the Industrial Relations*

The industrial relations in Bulgaria are still not as much affected by the digitalisation. In some of the sectors, where the smart production is already used (machine-building, including automotive, electronic production, in chemical and pharmaceutical production and others) some changes in the scope and subject of collective bargaining and consultations at company and sectoral level have been made. In some of the utilities (energy production and supply, transport, telecommunications, posts, water supply) and in the public administration the digitalisation is implemented, but it caused changes mainly in the number of employees and to some extend in the subject of consultations and collective negotiations. In private services like IT-s and finances the digitalisation is more advanced, but its' influence on the industrial relations could be evaluated only on the base of several cases, as like in most of private services trade unions either do not exist or are with too low level of density.

2. *General Policy Approach to Digitalisation and Work*

2.1. *Basic Terminology, Used in the National Documents*

In the frames of the definitions of digital economy the implementation of a broad number of digital technologies in various sectors and in the life of society and families is included. The "digital work" usually means work in the frames of companies and work-places, where digital equipment and technologies are implemented[7]. The "digital transformation" is characterised by a fusion of advanced technologies and the integration of physical and digital systems, the predominance of innovative business models and new processes, and the creation of smart products and services. The role of human labour is changing, because of simplification of some labour operations and functions and of appearance of more complex operations and functions.

The digitalisation in the industry appears with clear horizontal and vertical components. The vertical chain covers the integrated information flow of the company inside operations (including the marketing research, product design,

[7] Republic of Bulgaria, Ministry of Economy, Strategy for Bulgarian participation in the Industry 4.0; Concept for digital transformation of Bulgarian industry, https://www.mi.government.bg.

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production organisations and management and quality control). The horizontal chain covers the outside business environment, including information for suppliers, subcontractors and clients [8].

2.2. *Government Policies and Legislation*

Bulgarian Government adopted a range of strategies which form the enabling framework for development of digitalisation and smart production in the country, including:

– National Strategy for Scientific Research Development 2020;
– Innovation Strategy of the Republic of Bulgaria;
– National SME Promotion Strategy 2014-2020;
– Innovation Strategy for Smart Specialization 2014;
– Industrial Zones Development Strategy 2015.

The strategic policy framework for digital growth is outlined also in the National Broadband Access Strategy, the *E*-Governance Strategy and the Digital Bulgaria Programme, which are in line with the Digital Agenda for Europe. However, the problem is to link all these strategies and their effective implementation.

The Bulgarian law contains a few provisions, concerning the information and consultations rights and workers' participation, which are particularly related to new technology implementation. According to the Labour Code the employers should inform and consult the employee' representatives on information and consultation concerning: possible changes in work organisation, introduction of new technologies, including also implementation of home work and telework. Similar provisions are put into the Law for Information and Consultation of the Workers/Employees in the MNC-s, Group of Companies and European Societies and in the Law for Health and Safety at Work. Bulgaria also adopted provisions on the GDPR.

2.3. *Tripartite and Other Partners' Documents and Policies*

In 2010 Bulgaria adopted the European Framework Agreement for telework. National agreement was signed by the employers' associations and trade unions, together with the Ministry of Labour and Social Policy. This agreement concerns the working conditions for tele-workers and for home workers. After that, provisions related to the organisation of work, working conditions and collective rights of remote workers (teleworkers) and home workers are stipulated in a new section of the Labour code.

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[8] Bulgarian Industrial Association-Union of Bulgarian Business, Fridrich Ebert Foundation, Industry 4.0: challenges and consequences for the economic and social development of Bulgaria, 2017, https://www.bia-bg.org.

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In mid-April 2017 the National economic council (comprising representatives of the government and employers' organisations) discussed a *Concept for participation of Bulgaria in the 4th Industrial revolution.* The purposes of this concept Are also focused on the preparation of the *National Strategy for participation of Bulgaria in the 4th Industrial revolution.*

In 2018, after consultations with social partners and other civil society organisations the Government decided, to open procedures for projects, addressed to the digitalisation issues and its impact on labour market, work organisations and industrial relations and which could be financed by the Operational programme "Human resource development" for 2014-2021. Some of the procedures are envisaged particularly for social partners. One of the main projects started in 2020 and is focused on the needs of new digital skills and possible activities for evaluation, qualification and further development of the work force.

2.4. *Employers' Associations Policies and Documents*

Some of the employers' associations have their own policies:

Bulgarian Industrial Association suggested changes in the Labour Code, which should be according to the challenges of the digitalisation.

Bulgarian Industrial Capital Association suggested policies for promotion of digitalisation among the industrial enterprises and enterprises, providing services, social partnership for avoiding conflicts, which appear because of the industrial and technological changes, enforcement of the 'digital governance.

Some of the employers' organisations, like BIA, BICA, CEIBG have been also involved in projects on the digitalisation, often implemented together with trade union confederations and financed by the budget lines of the European Commission.

2.5. *Trade Union Policies and Documents*

The Confederation of the Independent Trade Unions in Bulgaria put many issues of the digitalisation and the Industry 4.0 in its program, adopted in the last, VIII Congress in 2017. Such issues are improved in the draft program, which will be presented at the IX Congress, envisaged for May 2022. There is also new document with practical recommendations, adopted in 2019.

The ISTUR as a research unit of the confederation is involved in preparation reviews of research data, concerning digitalisation, platform work, Industry 4.0 every 3 months.

The confederation, a s well as some of its' affiliates and the ISTUR have been also involved in several projects on the digitalisation, which are financed by budget lines of the European Commission.

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2.6. *Collective Agreements*

In general, the consequences from the digitalisation and smart work are still not put as a special subject of the collective bargaining at sectoral level. There are some provisions, which are envisaged for traditional activities, like qualification measures and occupational training, working time arrangements (including flexible working time, shift work, monthly and annually based working time reporting), also some special provisions regarding occupational health and safety (including prevention of the occupational related stress). In some agreements special provisions for additional payment for atypical working conditions (for example, payment for work on call, for work with high intensity and for particular working environment, including high level of mental and emotional efforts and stress) are envisaged Such provisions could be used in cases of implementation of new technical and technological systems and new work organisation, including smart production, digitalisation and other technological changes as well.

In some of the sectoral and company-level collective agreements some new provisions are envisaged, for example:

– Provisions for promotion of high-level technology and social development (brewery, transport, water supply, posts, banks etc.);

– Provisions for promotion of technical, technological and organisational innovations (brewery, some of the banks);

– Provisions for common decisions concerning consequences of particular production methods and work organisation, including also lean production, job rotations, group work etc. (brewery at sector and company level, some transport companies like the Airport of Sofia, posts, some companies from chemical and pharmaceutical productions, some banks and some MNC-subsidiaries from various sectors);

– Provisions for particular activities for health and safety at work in cases of new technology implementation (metallurgy, machine – building, transport, some banks, some MNC subsidiaries from various sectors).

2.7. *Policies and Documents of the Structures of Organised Civil Society*

In 2018 the Economic and Social Council of Bulgaria (comprising representatives of employers' associations, trade unions and organisations, representing various interests) discussed and agreed on the report "The Future of work: challenges of the 4th industrial revolution". In July 2019 the Economic and Social Council of Bulgaria discussed and accepted also a resolution, named "Challenges to the Bulgarian citizens because of the risks of the global digital environment", which is focused mainly on the problems and risks in everyday life and concerns the challenges to citizens as consumers, clients, parents etc. The Economic and Social Council also prepared two other opinions in 2019. One of them was prepared by the side of business and employers, is focused on the challenges to the

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technology, production, sectoral and enterprise restructuring and economic development. The other was prepared by the side of workers and trade unions and is focused on the challenges to the labour and labour relations, work characteristics and work organisation, occupational and professional structures, education and vocational training, health and safety at work, working time, payment, industrial relations etc[9].

Summarising, at the moment most of the social partners and other organisations are working on the issues of digitalisation and Industry 4.0 with a focus on the issues, which are more important for its members and for the country/society in a whole. The common issues for trade unions, employers and in some cases for the Government and NGO-s still are not clearly identified in practice.

3. *Platform Work*

3.1. *General Issues*

There are only a few definitions of the "platform" and "platform work" in Bulgaria, because such kind of work is still not as much popular in practice. In the desk research paper, prepared by the team of ISTUR, the summary of definitions of digital platforms are as follows: organisations, operating in digital environment and establishing connections between various shareholders- business and clients, citizens who like to share and exchange goods and services, employers and people, looking for job etc[10].

For the trade unions, the "platform work" lead to radical changes – the platforms create parallel and too flexible labour market, where the employment is not dependent on any kind of contract. There are no labour contracts, no labour standards like minimum wage, standards for working time and health and safety at work, no vocational training. There are no trade unions or any other forms of representation and collective actions[11].

The usage of the phrase "digital platform" has various meanings in the practice in Bulgaria. There are digital platforms, which are only inter-mediators for persons who look for jobs and for companies/employers, who offer jobs- sometimes temporary, sometimes even permanent jobs. Such platforms charge some fees for their services, but they don't interfere in the employer-employee relations. They are operating like agencies for human resource recruitment and

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[9] https://www.esc.bg.

[10] L. TOMEV,*The Future of work*, Working paper. ISTUR at the CITUB, 2016, p. 11.

[11] E. RIBAROVA, L. TOMEV, N. DASKALOVA, R. ANTOVA, *Smart production in Bulgaria. National report*, Project VS/2016/0093 "Smart production in the manufacturing and work organisation: new scenarios for industrial relation", implemented by IRES-Turin, Italy and partners from the EU member states, on-line working paper, ISTUR at the CITUB, 2017; L. TOMEV, *The Future of work*, cit.

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selection. Workers, who seek for jobs via such platforms are free to negotiate for their relations with the real employers and they could observe the legal standards, which are offered for the jobs.

Other platforms are operating like Temporary agencies for work (TAW) and they really offer jobs and play a role of employer, although the real job is offered by other companies. In such cases there are so-called “triangle” relations between real employer/company-platform and employee. However, although the functioning of TAW is regulated by the law (in Bulgaria as well), the functioning of the platform is still not regulated and in most of the cases such platforms are not registered.

There are also platforms, which are real employers – they offer real jobs, like subsidiaries of big companies, mainly MNC-s, but their activity is also not regulated by the law. Usually they offer temporary jobs or on-call work and some other forms of atypical work.

The platforms are not registered officially and don’t have judicial and social insurance responsibilities. Usually they are operating in the following way:

– *Publishing the project /suggestion for work;*
– *Selection of best suggestions for implementation (time, price etc.);*
– *Payment only for work the company has accepted*[12].

There are some debates concerning the particular meaning of crowd work and “on call” work, implemented via software application. “Crowd work” usually is done on-line and connects many clients, organisations and businesses, who are on long distances from each other. The “on call work”, implemented via software application is made at one place, but is made via digital platforms (for example in transport, services for home, repair services etc.)[13].

3.2. *Legal Background*

There is no statutory regulation for platform work in Bulgaria, although some discussions were initiated. some provisions of the existing labour law could be used for the regulation of the platform work, but some dimensions of platform work need special regulations as well.

Bulgarian labour law allows to conclude labour contract with group of workers, via their representative, which could be used for crowd or cloud work, in case of division of tasks. Since 2010-2011 there are provisions, which regulate the labour relations in cases of homework, telework and Temporary agency work, including regulations for labour contracts, working conditions, working time, payment, also the rights for organising, collective bargaining, information and consultations etc. Some of them are applicable for the platform work as well. As al-

[12] L. TOMEV, *The Future of work*, cit.

[13] L. TOMEV, *The Future of work*, cit.

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ready mentioned, the Bulgarian *Labour Code* envisaged an obligation of the employers to inform and consult the employee' representatives on information and consultation concerning: possible changes in work organisation, introduction of new technologies, including also implementation of home work and telework. Similar provisions are put into the *Law for information and consultation of the workers/employees in the MNC-s, group of companies and European societies* and in the *Law for health and safety at work.*

At the moment most of these provisions are not implemented because of too narrow usage of platform work.

3.3. *Statistical Data and Data from Surveys*

The National Statistical Institute still has not collected information on the platform work and its' impact on the labour market in Bulgaria, although there are some data, concerning the usage if information technologies and services by the companies. There are only limited data on the platform work, collected via surveys in the frames of some projects.

In 2018 a representative survey on the atypical forms of work was made by the agency "ESTAT", assigned by the Centre for Economic Development in the frames of their project "New forms of employment", supported by the budget line of the EC. The survey covers most of the new forms of employment, including both forms caused by the digital economy and other, more traditional atypical forms of employment. According to the survey data [14], the share of platform work is still low even in the frames of atypical employment and even in the frames of the digital atypical employment. The ICT base mobile work is implemented by 6,6% of the respondents, the crowd work – by 3,3%. Regarding the digital platforms for work, 46,1% of the respondents never heard about such platforms and 32,2% have heard, but never visited. Only 2% regular use the services of the platforms for work. Usually the platform work is used in Bulgaria as additional employment, mainly to obtain additional income – 52,8% of the respondents, for new job opportunities – 40%, for obtaining experience – 37% [15].

There is an ETUI survey from 2019, which present similar data – "Digital labour in Central and Eastern Europe" [16]. Concerning the digital work in general, 19,2% from the respondents in this survey have tried it at least once, 2,8% are involved in such work once per month and 1,3% – once per week. Only 2,9% from the respondents have earned at least 50% of their wages from "digital work" in the last 12 months. For the platform work in particular the data are as

[14] M. PROHASKA, *New forms of employment. National report*, Centre for Economic Development, 2019, p. 36.

[15] *ibid*, p. 41.

[16] A. PIASNA, J. DRAHOKOUPIL, *Digital labour in central and eastern Europe: evidence from the ETUI Internet and Platform Work Survey*, ETUI, Brussels, 2019, http://www.etui.org.

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follows: persons, who have tried it at least once are 4,4%, doing this once per month – 1,5%, doing this every week – 0,8%. At least 50% of the wages are calculated from platform work only for 1,1%.

The platform work is done mainly by self employed and by high qualified and skilled employees, as well as by taxi drivers. Mostly young persons (30-35 years) are involved in platform work and digital work, also many students are involved in the platform work. The wages, which are obtained via digital and platform work are with much lower importance comparing to the total incomes of the respondents.

In 2018-2019 also other research of several sectors was made in the frames of the project "Digitalisation in the world of work – impact on the key sectors in Bulgaria, Rumania, Serbia and Austria", which was supported by "Danube@work" and implemented by OGB-Austria, with subcontractors from Bulgaria (ISTUR at the CITUB), Romania, Serbia and Austria. The research concerns automotive industry, commerce, tourism, finances, IT-s, health care and covers many dimensions of the digitalisation: technological restructuring and changes in the companies and jobs; mobile work, telework, platform work etc.[17].

The digital work in general is mostly used in finances and IT-s and partially in the tourism. However, platform work is not much often used according to this survey. In fact, 16,2% from the respondents remark that in their companies on-line platforms exist and some of the working tasks are made by crowd workers. However, such comparatively high share of responses could be explained with the fact, that most of the respondents do not know well the nature of the crowd work. Some of them often think that the crowd work means every task, which is assigned to them on-line.

In the automotive industry the platform work (crowd work and cloud work) is very rarely used, except some particular and difficult forms of implementing tasks, when some professionals like IT-specialists, project engineers and other are recruited, but only from the country (other cities and towns).

In the finances the crowd work is also not as much used and only in non-banking branches. The financial companies usually have information about some professionals via digital channels and could recruit some of them in cases they need their competences. In the cases of using crowd work, there is a division of labour – various teams, working with various contracts (financial specialists, economists, insurance specialists, engineers, human resource specialists, sellers, designers etc.).

According to additionally collected information[18], the platform work in Bulgaria is partially used in some of the private services (transport, retail, marketing

[17] L. TOMEV, *Digitalisation in the world of work-impact on the key sectors. Bulgarian national report*, Project "Digitalisation in the world of work-impact on the key sectors in Bulgaria, Romania, Serbia and Austria", implemented by OGB – Austria in the frames of program "Danube@ Work", ISTUR, 2019.

[18] Data from trade unions, employers' organisations and the media.

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and advertisement, some of the maintenance services, provided to the companies, some of the services for individuals and families and crafts). The platform workers usually are either employed at other companies and use the platform work as second job, or they are students, retired persons etc. There are also self-employed, who provide services, using mainly traditional channels, but sometimes they offer services, using also platforms, to increase their market shares and their incomes. There are also platforms for freelancers, which operate in Bulgaria-for IT services, for retail, marketing and advertisement, also for translation services, distance education, design, crafts, editing, advertisement etc.

In 2019 special platform "JOB CARE" was established by the Balkan Institute for Labour and Social Policy (BILSP), and is administrated by the BILSP-project consultants LLC, together with the institute, with support of the Operational programme "Human Resource Development". The platform is an intermediate platform, which offers jobs mainly for disabled persons, as well as for other vulnerable groups. The platform is addressed both to employers and to the people, who are looking for job, mainly people with disabilities and some other people, who have been long time unemployed or have difficulties to find a job. It provides also on-line training, couching, orientation etc.

3.4. *New Trends in 2020-Consequences of Covid-19*

In general, the digital work increased during the quarantine (since beginning of March 2020) and even sectors and organisations, which haven't implemented it before were forced to do this. The implementing of digital work in some of the sectors and companies/organisations. in many cases it was made only because of the Covid-19 quarantine, ALTHOUGH that, the importance for the transformation towards digital society – both for many workers and also for consumers and all the citizens was great. It seems that many activities could be implemented without personnel contacts.

As there are not enough available data about the platform work in Bulgaria, it is difficult to evaluate to what extend it was affected by the Covid-19. Having in mind the main sectors, where the platform work is used – mainly services like transport, maintenance services for companies and homes, IT-s, finances, crafts etc., it is possible to make some estimated trends. For example, the transport services and some other maintenance services, services for homes were decreased. The platform work is used mainly in the city transport – for taxi drivers and this activity was decreased in the period March-May 2020 and November-December 2020, as well as in the first four months of 2021 in the capital Sofia and in some of the big cities. These means that also the companies, working with platforms decreased its' activity. The same concerns some of the services, especially the services, provided at homes – maintenance and cleaning, repair of technique, crafts etc.

However, there are some services, which volume increased-for example, catering services for homes and companies/offices. Also, services, like digital based

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shopping also increased., including goods like food and medicines. This kind of services increased because of needs of many people to stay home- both such, infected by Covid and others-old persons, people with illnesses, disables, families with small children. Although some of such services were offered by municipal administration, with participation of their own employees and volunteers, also many private companies did this, especially restaurants and cafes, which could not work with clients in another way and also some supermarkets and others.

In Spring and Summer of 2020 and in the same period of 2021 there was decline of the number of the infected by Covid-19 persons and also many of the restrictions were abolished. This is the reason that some platforms increased their on-line suggestions for platform work, for example for on-line home work in advertisement, marketing and retail, for on-line home work in finances and for working in transport with own cars (for taxi drivers) etc.

Although there have been many discussions and some legal initiatives during the quarantine periods, there are not legislative and other initiatives, concerning especially the platform work. Some of the main issues, which require new regulation via labour law include the nature of the platforms, qualification of the platform's role in trilateral relationships, classification and legal status of workers, entitlement to collective rights including organising in trade unions and collective bargaining.

3.5. *Industrial Relations and the Platform Work*

Trade unions are still in the beginning of their activities regarding the platform work. On its' last congress in 2017 the CITUB put in its program some directions concerning the new forms of employment, including the platform workers. Also some projects are implemented, including projects, addressed to workers who are not trade union members – both employed with traditional contracts and involved in atypical employment. Some focus groups are organised and also some new will be organised as well.

In one of the projects, implemented by the CITUB in 2019, a new form of communication and organisation is envisaged-meetings on territorial principle, where every worker could attend, without being member of trade unions (workers parliaments). Also new trade union of the IT- workers and specialists was organised in 2016-2017, where the members are employees with typical contracts, self employed etc. However there are problems in organising workers, which are not employed with traditional contracts.

There are still no employers' organisations, including companies, working mainly with digital platforms. Some companies, which use digital platforms are members of the employers' associations, but the most of their employees are not doing platform work.

There are also many discussions concerning the digitalisation among the social partners, where also the issues of platform work are put in. Some of the main issues, are related to the working time, health and safety at work, the relations between the working and private life, as well as the representation of such workers.

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3.6. *Connections with Theoretical Issues*

One of the main issues concerns the alternative labour market and the increasing of non-formal work and non-formal economy. Usually the platform work doesn't envisage labour contract, agreed wage or working time, training, organising in trade unions etc. The worker usually is self-regulating (self-employed) and his/her own duty is to look for social protection, social insurance etc. usually such work/employment is neither registered, nor taxes and insurance contributions are paid. Another question is whether the platforms use really self-employed persons or most of them are dependent by the platforms, although officially they are self-employed. Do they have the rights to refuse to implement any tasks?

Also, the question of wage formation is important. In the process of wage calculation, do the companies/platforms have in mind the fact that every worker uses his/her own equipment, the payment of insurance is their own duty and that they don't have any compensations in case of illness, accident etc.

Relationship between law and self-regulation. The industrial relations system in Bulgaria is regulated by law, but some processes are self-regulated. This includes the bi-partite partnership and national and regional inter-sectoral level, as well as some procedures at the sectoral and company level. However, at the moment the platform work is not covered neither by the law, nor by the self-regulating social partnership.

Representativeness. The platform work is a big challenge to the workers' and employers' representation. However, in Bulgaria both actors are still too traditional. At the same time, they still are not grassroots movements, which are focused on the platform workers or employers. The grassroots movements are mainly developed among the consumers of digital services and also social networks. The issues they discuss are rather concerned to the quality of services and other issues, which are shared via social media. Also, some labour issues are discussed via social media, but they are mainly issues of standard employer-employee relations.

One of the big challenges for platform workers and trade unions is the isolation of platform work. Most of such workers do have only occasional or short-term tasks and also a high level of turnover could be observed. Trade unions, even in case they are operating on the local/municipal and regional level could encounter a lot of difficulties even to identify the platform workers and then to organise and represent them.

Some of the ILO recommendation regarding organising platform workers include on-line forums for discussions of the labour issues. This could be a means for job search as well as for evaluation of companies and establishing solidarity. However, such forums still could not oppose effectively to the platforms. Another practical example are cooperative platforms, which are established by workers and are self-regulating the suggested services and jobs. They could be appropriate means of self-regulation in case they could ensure qualitative employment, however, for them is difficult to compete with usual business platforms.

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Conflictual vs. cooperative industrial relations. The industrial relations system is not as much conflictual, but some employers try to avoid the labour standards and the rights for organising and collective bargaining are not preserved in many companies, especially in the SME-s and in the non-formal economy. For a pity such system is not very good to raise the level of protection of the platform workers. However, only the legal regulation could improve some of the issues.

Relationship with EU policies/EU law. Regarding the new EU policies, some steps have made by the Government and the social partners, but at the moment they are still in the forms of new programs and discussion. More attention is paid on skills improvement, adaptation of workers, education and training, including the digital skills. Also, the social protection is among the main subjects of the new programs and discussions However, the platforms work is still not among the priorities.

Institutional issues. The self-regulation is not as much developed in the IR system, the self- regulation leads rather to non-existence of industrial relations. In some cases, the usage of telework and home work is integrated in the system of industrial relations at the company level, but is rather an exception Some atypical workers like home workers established their own organisations and there were some attempts by the side of trade unions to integrate them, but not very successful. However, one of the ways to organise platform work is at first to promote them to organise themselves and then to try to affiliate such organisations to the trade unions.

Policy proposals. Some of the most important policies are related to the legal amendments, concerning the platform work, including all the issues of labour and of the workers and employer representation. The most important issues concern standards for minimum payment (payment per hour, day, week and month), social insurance, rights for paid leave, working time regulations, standards for H&S at work as well as the rights for organising and representation for workers and employers, dispute resolution and collective bargaining.

Other recommendation for policies is to force the activity of the statistics to collect data on the labour market and the platform and digital work. The new policies and strategies for digitalisation are dependent on statistical data.

4. *"ICT-Enhanced Remote and Mobile Work"*

4.1. *General Issues*

The ICT-enhanced remote and mobile work is still not enough used in Bulgaria, but is better known comparing to the platform work. The main definition is for "work, which is usually implemented in the place, suggested by the employer (factory, office etc.), but could be implemented from any place, including from home and any other place (another office etc.)" [19]. Usually, it is different

[19] M. PROHASKA, *New forms of employment. National report*, cit., p. 36.

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from the traditional "homework", which is used for crafts and for some industries like clothing, shows, furniture etc. and for which is not necessary to use electronic communications, including mobile phones, computers, tablets etc. The ICT-based remote and mobile work usually requires using electronic means, both for communications and for implementing the working tasks.

4.2. *Legal Background*

Legislation

As already mentioned, in 2010 at first negotiations between trade unions, employers' organisations and Ministry of Labour and Social Policy were provided and a framework agreement on the implementation of the European Framework Agreement on Telework was signed. It was added with some provisions, concerning home work in general. As a result, in 2011 amendments to the Labour Code are made in regards to the implementation of the Framework Agreement on Telework. Currently in the Labour Code there are provisions, which regulate the labour relations in cases of home work (in general sense), telework and temporary agency work. There are regulations for labour contracts, working conditions, working time, payment, also the rights for organising, collective bargaining, information and consultations etc. concerning the additional requirements for teleworking. The idea is that the rules and requirements in question are relevant to new forms of work.

According to the legal provisions, teleworking is a form of organising work carried out under an employment contract, which previously was or could have been performed on the employer's premises, away from those premises through the use of information technology. Teleworking could be implemented voluntary or could be implemented partially under the contract, notably the employer and the employee, may change the mode of work [20].

The Labour Code lays down detailed rules, including the obligations of the employer, as well as requirements for the respective workplace, the necessary equipment and its' maintenance in good working order and a number of other requirements for the performance of work. The law further requires the employer to ensure compliance with all applicable health and safety requirements and broad supervision and control powers are vested in the General Labour Inspectorate in this regard. The employer also should ensure the technical equipment, the Internet connections and all the other necessary facilities, which are necessary for telework.

The content of an individual teleworking employment contract is identical to that of a standard employment contract. This applies to the working hours, resting times and leave periods, remuneration etc. In practice, the contracts for tele-

[20] Art. 107 h, Labour Code, Republic of Bulgaria, Sofia, 2021.

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work do not provide greater flexibility in terms of the conditions of employment They merely allow the worker or employee to carry their work away from the premises of the employer, *i.e.* at their home or another location of their choice. Workers, who are employed partially or fully on such regime, have the same individual and collective rights as their colleagues working from the employer's premises, including the right to organise in trade unions, to participate in the collective bargaining and to be covered by the collective agreements and by settlement of collective labour disputes, to participate in strikes and other collective actions. They also could participate in the general assembly of the workers and employees of the enterprise, be involved in the election of various kind of workers' representatives and be elected as representatives (representatives for information and consultations, members of the Health and Safety committees etc.). In cases when the number of workers, employed on special contracts mainly for teleworking is 20 or more, they could have a special quote among the representatives for information and consultation.

The Bulgarian law envisaged as well some provisions, concerning the information and consultations rights and workers' participation, which are particularly related to new technology implementation: possible changes in work organisation, introduction of new technologies, including also implementation of home work and telework.

Collective Agreements

Till the beginning of 2020 telework was not too often mentioned in the collective agreements at sectoral level, although it was used in some company level agreements and in some companies by recommendations of the management teams. Although that, the digitalisation issues, including restructuring, vocational training and remote work, including some measures to ensure work-life balance are discussed in the process of autonomous social dialogue and collective bargaining.

One of the main agreements, which concerns telework is the company level collective agreement, which is applied in the Vivacom-Bulgarian Telecommunication Company, which is a former state-owned telecom (privatised in the beginning of the new millennium) and which is in fact a company with national scope, having subsidiaries and providing service in all the regions of the country. The main points of the collective bargaining provisions are as follows:

– The telework could be implemented for up to 5 working days during a month, in proportion of the whole amount of working time. (The current pandemic situation was not considered, as in 2021 60% from all the employees used the regime of telework- working from home);

– The telework is voluntary doing, as the employees could also suggest temporary change of his/her work-place and could mention the time-table and the particular address of the places where he/she will implement his/her duties;

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– The whole mechanism, the conditions, the rights and obligations of both sides, and the principles and organisation of work are described in details in the corporate procedure on the telework.

Also, provision, which envisages that employer could assign telework to all employees or to some groups of employees for longer period of time, in case of circumstances, which could cause risks for the Health and Safety at work of the employees at their work-place and during their travel from their office to their homes and back.

Telework has been implemented in other sectors like finances, commerce, tourism, IT-s and others. In banking there are trade unions in three of the biggest banks and there are collective agreements, but till the beginning of pandemic Covid telework was rarely implemented. In tourism there are trade unions only in some hotels and restaurants. Trade unions are also week in retail and wholesale and the employed in online trade are usually not organised in trade unions. Mostly telework is implemented in the IT-s, but there are too week trade unions in some companies and still there are no collective agreements.

4.3. *Statistical Data and Survey Results*

There are not official statistical data concerning the telework. Only some results of surveys could be used for the purposes of the report.

As mentioned, in 2018 a representative survey on the atypical forms of work was made by the agency "ESTAT", assigned by the Centre for Economic Development in the frames of their project "New forms of employment", supported by the budget line of the EC[21]. The survey covers most of the new forms of employment, including both forms caused by the digital economy and other, more traditional atypical forms of employment.

According to the survey data, the ICT base mobile work is implemented by 6,6% of the respondents. Some other data could add the exiting picture. some of the employees have worked ICT based mobile work according to clients premises: 4,4% have worked daily in clients premises; 5% have worked several times per week; 3,7% have worked several times per month. The respondents who have worked mainly from home are even less in most cases: daily have worked –2,7%; several times per week –4,9%. Only the share of these, who reply that have worked several times per month is higher –5,2%.

The differences between the two groups of workers could be explained only with the fact that those, working with clients and having to visit their offices or other work-places should do this in every case when is necessary. The work from home depends mainly by the employers premises and in some cases-by the employees and trade unions, if there are such at the work-place.

[21] M. PROHASKA, *New forms of employment. National report*, cit. p. 72.

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The other research, which was already mentioned, concern several sectors and was made in the frames of the project "Digitalisation in the world of work – impact on the key sectors in Bulgaria, Rumania, Serbia and Austria". The research concerns the automotive industry, commerce, tourism, finances, IT-s, heath care and covers many dimensions of the digitalisation: technological restructuring and changes in the companies and jobs. Also mobile work, telework, platform work etc.[22] are included in the subject of the survey.

The digital work in general is mostly used in the IT-s, finances and partially in the tourism. In the finances and banking the ICT based mobile work and home office (telework) are used, which gives to many workers chances for flexible working time. In the tourism also some flexible jobs are implemented, like telework and ICT based mobile work. This also leads to better flexibility of work, or working time and improves the relations with clients. However, in most cases such work is a voluntary choice of the workers, as this also leads to abolishing the borders between the working and personal life.

According to the additional data[23], the telework and ICT based mobile work are used in some other sectors, like telecommunications, commerce, out sourced services, water supply (mainly telework), also repair services for homes and offices, like water facilities, electricity, heating, IT services and others(mainly ICT based mobile work), also mostly in the IT-s (both homework and ICT based mobile work), in the media(partially), in advertisement, design, marketing, business and legal consultations etc. Also, in the academic research institutes and partially in the universities the home work in general/or work in libraries and other places has been used for long time (even before 1989). Currently it is also used, mainly as telework.

4.4. *Covid-19 Pandemic Affect the Use and/or the Regulation of Remote/Mobile Work*

In general, the digital work- mainly home based telework, increased during the quarantine and even sectors and organisations, which haven't implemented it before were forced to do this. In many sectors and companies the telework has been implemented since the beginning of March 2020 or the number of persons, involved in telework has been increased, as well as most of the workers have worked full-time.

According to research of Eurofound from April-May 2020, the share of working from home (full-time or partially) in Bulgaria was 28,8%, as the average share for the EU was 36,5%. There was an rapid increase comparing to the 2017, when the working on such regime (telework, mainly based on home office) in Bulgaria

[22] L. Tomev, *Digitalisation in the world of work-impact on the key sectors. Bulgarian national report*, cit.

[23] Collected by the information from trade unions, employers' organisations and the media.

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was only 5%[24]. This concerns various sectors like IT-s, telecommunications, commerce, tourism, water supply, electricity supply (partially), finances, also for the first, time education (schools and universities), research institutes, business consultations, partially-in the Government and local administration, partially – in some cultural organisations (libraries), partially in the media etc. Also, many companies for services at homes and offices continue and increase the remote work.

What was also new is that even the business administration of many industrial companies began to use telework, such examples could be presented from many MNC-subsidiaries in Bulgaria as well as some big Bulgarian companies, including companies from metallurgy, electronical production, chemical industry, production of building materials, energy production etc. In most of cases (metallurgy, production of building materials, energy production) and others the telework is implemented via rotation-some employees are working from home for example for a week and some are in the offices, and then they change for another week.

In many cases the new regimes are consulted or even negotiated with trade union representatives or consulted with other workers representatives, in case where there are no trade unions. However, in some industrial companies the implementation of telework for business administration employees was not consulted with trade unions.

In most cases the telework was used till May 2020 and such regimes started again in October 2020, because of the increasing of the pandemic and the number of infected and hospitalized persons. The exception are some sectors and companies, where the telework and ICT based mobile work has been used before 2020. They continue to use their old regimes between May and October 2020, with limited telework and increase the number of persons and the number of working hours/days for telework since October 2020 again.

An on-line survey, assigned by the electronic newspaper Capital Carieri (part of the media group Economedia), made in October-November 2020 was focused on the satisfaction from the telework and ICT based mobile work under pandemic. the questions were addressed both to employees and managers[25]. In general, the results indicated, that the very good Internet connections, the good technical competences of the respondents and the fast supply with laptops have made the transition to telework rather fast and without any difficult problems and barriers.

According to 70% from the respondents, their companies continue the regimes of telework-partially or fully. At the same time, 83% from the companies intend to keep the practice of telework even after the pandemic is finished.

Concerning the working conditions and work satisfaction, 60% declare that

[24] Eurofound, *Living, working and COVID 19*, Publication office of the European Union, Luxemburg, 2020, http://www.eurofound.europe.eu.

[25] *Как еволюира офисът* (How the office has been changed), in: *Capital*, N 49, 2020, pp.11-13.

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they feel better and more productive when they work from home, comparing with their work in the offices. Most of the managers indicated, that the productivity of their employees has been increased.

At the same time, most of the respondents think that at any case the office work is necessary, because they need communications face-to-face, to improve the team work and to promote the social links. Many people shared, that although of better working conditions, they miss the social relations with their colleagues, support, exchange of experience and even informal relations. on the one hand, the stress was reduced, on the other, there are some dimensions like isolation and even lack of leadership.

Such survey is focused mainly to the employees from particular sectors like IT-s, consultations, outsourced services, advertisement, finances, in which the telework and other forms of remote work have been used before the pandemic and the data could not be used for general conclusions. However, some trends concerning the working conditions and job satisfaction could be considered.

In the beginning of April 2021 another survey, assigned by the Capital newspaper on the telework has been provided[26]. The survey included 731 employees, from whom 67,3% are employed by the companies with less than 500 employees and the rest of 32,7% are employed by the companies with 500 employees and above. The sectors, which are covered are similar to the sectors, covered by the survey, which was provided in October-November 2020.

Most of these employees are working on so-called hybrid regime-in some of the working days during the week they work at home and in some other days they work in the offices. Most of the respondents are rather satisfied from this kind of work-place arrangements – 63,9%. Most of the employees also prefer these kind of organisation – 79,9%, comparing to the employees, who like very much to work from home all the time – 62,8% and to these, who like to work from the office all the time – 24,2%.

Telework is mostly preferred by the millennium generation (born between 1981-1996) and they indicated the advantages like better work-life balance, saving the everyday expenses and chances for better productivity from home office. The same advantages are also mentioned by the employees from generation X (those born between 1965-1980), but their share is lower.

Again, among the main disadvantages of the telework is mentioned the possible social isolation and lack of communications with co-workers. This disadvantage is most often indicated by the banking employees – 65,5%, but also 56,9% from the employees in the marketing, advertising and public relations departments and companies indicated the same problem.

Since October 2020 there have been discussions concerning telework in some sectors, especially in the education, mainly for schools. Some teachers, some

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[26] S. MITROVA, *Повечето служители харесват работата от разстояние, но разбират и недостатъците*_(Most of the employees like the telework, but they understand its' disadvantages), in *Capital*, 17 April 2021.

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Government employees, also some parents were not very satisfied by the providing teaching via Internet and there was resistance concerning possible closure of schools and some case concerning universities. However, all the schools and universities were closed in the end of November 2020 and they began to work with presence again since April 2021. The resistance didn't concern the working conditions of the teachers and academicals in general, it concerned the possible worsening of the quality of education.

However, it seems that some companies, especially from the IT-s intend to increase the telework or ICT based mobile work in the future, nevertheless of the continuation of the pandemic. This is because they have good results from the remote work and they evaluate its' advantages – both for the companies and for the people. About 1/3 of all workers, who are working from home in Bulgaria do this because of the pandemic (mainly employees in the education-schools and universities), and 25-30% from them (mainly working in other sectors) will continue to work on such arrangements even after the pandemic[27].

4.5. *New Forms and New Regulations*

In fact, there are not many innovative forms of remote /mobile work emerged in recent years, except the ICT based mobile work, in cases when the employees could work from any place they prefer, not only from home. However, in many cases, especially services, provided at homes and offices the remote/mobile work is not new, it has been only improved via implementation of ICT equipment for assignments and communication with the central offices of the companies and with clients.

There are still no provisions concerning the innovative forms of remote/ mobile work. There are some discussions, which started mainly because of the pandemic and so-called "forced" telework. The discussions concern mainly the health and safety at work as well as control and data protection, and less the working time regulations, mobility, wage-setting criteria etc.

In case the telework or ICT based mobile work exist in the regulations of collective agreements, they usually envisaged limited number of working days /hours and the use of telework in general depends on the particular job requirements. In fact the telework usually is implemented rarely, mainly in cases of employee needs (looking for small children for old or ill members of family etc.).

In general, most of the rights for the workers, who work in such regime haven't been changed, with exception of some particular provisions concerning H&S at work.

[27] CITUB data collection.

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4.6. *Industrial Relations and Remote/Mobile Work*

Impact of remote work on the industrial relations

The telework and ICT based mobile work are still not as much implemented and most of workers do telework only partially, not having particular labour contract for full-time telework or ICT based mobile work. At the moment such circumstances could not have a real impact on the Industrial Relations practices. As mentioned, according to the law and some collective agreements the workers have the same rights for collective representation, as the other workers and in some cases, they have special rights-for quote in the groups of representatives for information and consultations.

However, in some companies from IT sector the Industrial Relations are pressed to be "digitalised" from long time ago. For example, in a big IT company some practices of election of workers' representatives are implemented in the beginning of last decade-2011-2012. Such employers' decision is not based on remote work in particular, but on the fact that most of employees use computers and Internet.

There was a suggestion to collect nominations for the members of the EWC in the company, but to do this on-line. However, this makes confused situation, as such mechanism is not allowed by the Bulgarian law and was not caused by the particular circumstances in the company at this time. The procedure was provided and could be protected by the company trade union and sectoral federation at the court, but they didn't do this. However, many trade unions in the EU member states and European sectoral federations-the former EMF (currently in the frames of Industrial Europe) and UNI-Europe were informed and the case was discussed. In fact the first two elected representatives in the EWC – one official and one deputy were elected on-line, but not according to the Bulgarian law. Later, in recent years, new representatives were elected, but this time the procedures followed the national law.

Such case only could show that if the practices of remote work are extended, some impact (including negative) on the industrial relations is possible.

Impact of the industrial relations practices on remote work

At the moment the impact of the Industrial Relations on the remote/mobile work is still week, because of its' restricted implementation. The regimes of telework or ICT based mobile work could be negotiated in the sectoral collective bargaining, also in the municipal bargaining (only for the public sectors) and mostly on the company level. It seems that currently there are only some company agreements, also in some cases the employers-initiated consultations with trade unions or other workers' representatives concerning the implementation of telework. The negotiations and consultations became more intensive since March 2020, because of the pandemic and the "forced" telework.

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According to trade union representatives at national level, the agreement, signed in 2010 and provisions in the Labour Code, made in 2011(both mentioned above) are already old. Some other amendments in the Labour Code are also necessary, like regulations, concerning working time, extraordinary working hours, working conditions, the particular meaning of "accident at work" in cases of telework or other forms of remote work, including accidents in cases of working after the regular working hours have been completed, provisions for insurance contributions etc.[28].

In conclusion, the remote /mobile work is a new challenge for the working conditions and Industrial Relations in Bulgaria. The pandemic only provoked the processes to happen faster, even in case where strong resistance concerning telework existed – mainly by the employers' side and sometimes by the workers' side.

5. *Workplace Automation and Social Partners Strategies*

5.1. *General Issues and Main Policies and Documents*

The definition of "Industry 4.0" is determined as one of the ways of the implementation of the new digital technologies in the production (mainly industry) and includes broad number technological decisions and business models, which lead to the new forms of economic activity. The Industry 4.0 is also determined as an industrial environment, where cyber – physical systems are used to ensure the communications and mutual actions between the people, machines, equipment, logistic systems and products[29].

According to the employers, under the digitalisation and Industry 4.0 some new business models and forms of employment (including crowd sourcing, crowd work, cloud work, shared economy etc.) appear[30].

Another definition concerns smart production. Smart production includes implementation of new models of organisation of production processes, mainly in the manufacturing. This causes changes in collecting and using the necessary information, changes in the role of R&D departments, supply departments and units, maintenance units etc.[31].

[28] Interview of the *President of the CITUB Plamen Dimitrov*, Newspaper *24 hours*, 29 December 2020.

[29] Bulgarian Industrial Association-Union of Bulgarian Business, Fridrich Ebert Foundation. Industry 4.0: challenges and consequences for the economic and social development of Bulgaria, 2017, https://www.bia-bg.org.

[30] E. Ribarova, L. Tomev, N. Daskalova, R. Antova, *Smart production in Bulgaria*, cit., pp 3-5.

[31] Bulgarian Industrial Association-Union of Bulgarian Business. Fridrich Ebert Foundation, Industry4,0: challenges and consequences for the economic and social development of Bulgaria, 2017, https://www.bia-bg.org.

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Although Bulgarian Government has prepared a Strategy for Industry 4.0, the industrial innovations are implementing slower than the average in the EU. The indicator DESI for Bulgaria is 36.3 (comparing to 52.45 for the EU in average).

In general, there are not tripartite documents and only in a few of collective agreements the issues of digitalisation, Industry 4.0 or smart work are indicated. This concerns partially some of the sectoral collective agreements, which cover sectors and branches, mostly affected by the digitalisation (machine building, electronic production, metallurgy, posts and some others). Also, in and some of the company level agreements, mainly in the MNC subsidiaries and in some of the banks provisions, concerning digitalisation and smart work are agreed.

5.2. *Statistical Data and Surveys*

The data on the common digital environment in the Bulgarian companies for 2020 are as follows[32]:

– 95,5% from all the companies with 10 and more employees have Internet access; 100% of the companies with 250 employees and above have access to Internet;
– 86,1% from the companies with 10 employees and above have access to fixed Internet services and 52% of the companies use mobile Internet services;
– the share of employees in the companies with Internet access is 33,7%;
– the share of employees, where desk computers are used is 32,1%;
– 52% of the companies with 10 and more employees have web-sites;
– 33,8% from the companies use the social media and networks;
– 10,9 from the companies have access to "cloud" computer services;
– 6,9% from the companies use BIG data analysis;
– 10,9% sell their goods or services on-line and 17% buy on-line goods and services, necessary for their activities;
– 23,4% implemented Enterprise Resource Planning systems;
– 17,2% implemented Customer Relationship Management systems;
– 10% implemented on-line invoices.

The data indicated, that mostly in big companies-with 250 employees and above the process of digitalisation is more advanced.

According to the national experts from the employers' organisations, some other dimensions like implementing robots, machines and equipment with digital programs and others could be observed mainly in big companies from particular sectors. According to their opinions, the digitalisation of Bulgarian industry should be enforced, as the companies have to be competitive according to the XXI century standards.

[32] http://nsi.bg.

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In general, there are more advanced sectors in regards to the digitalisation. In the manufacturing the metal sector (especially electronic production, some branches of machine building, including most of the subcontracting automotive companies), chemical and pharmaceutical production, some companies, producing building materials and some of the companies, producing electricity are the most advanced in the digitalisation and implementing new technologies. In services the most advanced are the IT services, but also telecommunications, finances and banking, electricity supplying companies, some commercial companies and companies from tourism have results in the digitalisation of their operations. Also, the transport services and public administration are partially digitalised.

Some of the barriers to the digitalisation are related to the lack of investments, especially for some old companies. These is strongly indicated by the sectoral employers' organisations, mainly regarding to robots and some other digital systems. Another problem is the shortage of qualified personnel, both of high qualified workers, technicians, engineers, as well as of IT professionals. These concern mostly the manufacturing, but also some of the services. The national education and vocational training system still is under reform, purposed to the challenges of digital transformation. At the same time, many well qualified professionals already went to work abroad (both in the EU and in another countries like USA, Canada etc.) and the recovery of balances at the labour market could take long time.

The consequences of digitalisation are still difficult to be observed, as the process is not as much advanced. in some of the big companies. especially MNC subsidiaries, where the Industry 4.0 is more advanced, the technological change brought to the implementation of new production systems, new management systems and new work organisation. In some companies the lean system, "just in time system" and others are implemented. The team work, job rotation, job enrichment are implemented as well.

According to some previous research data[33] in most cases the digitalisation caused better working conditions, including improvement of physical environment at workplaces, improvement of the health and safety at work, better work organisation and increasing of job satisfaction. However, this concern mainly the jobs, where the new technique and technology are used and where the work became "smarter" and more complex. In another cases, where the digitalisation caused simplification of work operations, it could provoke less satisfaction and monotony. There are also examples of increasing of operations, which are implemented only by one or two persons, which caused alienation. In many cases, where the physical dimensions of the H&S at work are improved, the occupational stress is not declining, it even increased.

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[33] Bulgarian Industrial Association-Union of Bulgarian Business. Fridrich Ebert Foundation, Industry4,0: challenges and consequences for the economic and social development of Bulgaria, 2017, https://www.bia-bg.org.

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In the frames of already mentioned project, implemented in 2018-2019 and concerning the digitalisation and its' impact on the labour market in Bulgaria, Romania, Serbia and Austria, an on-line survey among workers and employers from the automotive companies was provided. Most of the employers indicated, that the digitalisation could enhance improvement of analysis, access to the clients, suppliers and sub-contractors, decreasing of non-satisfied and boring work, increasing of productivity. Among the risks the respondents indicated some problems with data protection, redundancies, disturbing of the existing communications at work, increasing of the occupational stress, shortages of qualified personnel. However, only 32% from the employers and managers confirm that in the last two years they implemented new digitalisation projects and 20,3% intend to do such in the next two years. Among the main challenges to the digitalisation they have mentioned the lack of qualification of their employees, high investments costs, needs for ensure better security of data, difficulties in the transformation of the production and work organisation.

Social partners views

Trade union representatives also pay attention on the fact, that in many companies the productivity rapidly increased since the digital technologies were implemented, but the level of wages remain the same. Another problem is the increasing of inequalities at work, especially in some old companies, which are under restructuring and digital technologies are partially implemented. Such process caused appearance of groups of high qualified and well-paid professionals, on the one hand, and groups of all the others, whose jobs will be changed later or won't be changed at all, on the other These could be increasing of the differences in the working conditions and wages among various groups and these could provoke tensions and conflicts.

Some trade union representatives and even employer's experts pay attention on the fact, that sometimes the digitalisation play a role of a "Big Brother". They indicated, that there are already many cases, when a strong control over the workers is implemented and over their movements in the frames of working time. There is permanent monitoring on the work-places, which could provoke increasing of stress and lack of satisfaction.

Something more, in the process of recruitment many employers also investigate the social networks and profiles of the applicants for jobs, to identify their personnel peculiarities, character, relations and even personnel life, which means too much interference in the areas, which are rather concerned to the private areas. Such observations are made also concerning the already employed persons in the companies. At the same time, in some cases workers should be very careful what kind of information they comment and share with their friends in the social networks, even in cases this information doesn't concern the closed data of the companies.

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5.3. *Sectoral Scope*

Metalworking

There are not particular statistical data about the digitalisation of the metalworking, but there are common data on the manufacturing. In 95,6% of the companies with 10 employees and above there is an Internet access, and in the 86,1% of them there is a fixed Internet connection. In 57,6% of companies web sites were established. In 15,2% of the companies' professionals, particularly engaged in the maintenance and support of the computers and Internet connections are employed. In the 35% of the companies some innovations were implemented in 2020[34].

Metallurgy

After privatisation of the main companies, which happened in 1998-2001 there were many structural, technological and organisational changes in metallurgy. Since the accession of Bulgaria to the EU also the chances for extension of the markets and improvement of technique and technology in the sector increased. Some old companies, which could not be restructured and renewed were closed. Although there was decrease of production volume and redundancies in many companies in 2008-2012, because of the world crisis, the trends of revival and increasing of productivity could be observed in recent years (2014-2019). In the sector some of the big companies were privatised by big multinational companies, like Umicore (currently it is owned by Aurubis), Viohalko, Fife Metal etc.

The number of employees in metallurgy increased slowly in 2014-2018, in recent years there is small decrease. There are many employees in the activities of service, maintenance and repair of the equipment, in research and development, logistics, commercial activities etc., who are in fact more than 2/3 of the whole personnel. There are some trends of freezing of the number of employees since the Covid pandemic started in year 2020, but is general there were not substantial redundancies.

In most of the metallurgical companies there is high level of automatization of the production and digitalisation, including implementation of digital programme for operation and control of the production lines. The requirements to the level of qualification for the workers, technicians and engineers are increasing. However, there are shortages on the labour market of the qualified work force, who could be successfully hired for the jobs in metallurgy. Also new production systems and new forms of work organisation like team work, job enrichment, job rotations were implemented in metallurgical companies, especially in the MNC subsidiaries.

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[34] https://www/nsi.bg.

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Machine-building and electronic production (including automotive)

The restructuring and privatisation of most of the companies were implemented in 2000-2005. Since 2007 most of the companies are private and they export large part of their products. In 2008-2011 there was decreasing of the production volume and a lot of enterprises, mainly SME-s were closed. After decrease in 2008-2012 because of financial crisis, there are trends of increase of production of machines and electronic and electrical equipment in 2013-2015 and many medium sized companies became big. Some of most successful companies are in this sector. In 2014-2015 there are trends of rapid increase of automotive industry - mainly as part of supply chains of big MNC-s, as some big subsidiaries and subcontractors (above 250 employees) were established.

In the machine building, automotive, electrical engineering, electronic production and production of other metal goods there are FDI and many subsidiaries of MNC-s, which are obtained in the process of privatisation or are established as new companies. The most important subsidiaries are those of Liebher, Ideal Standard, SKF, Sensata Technologies, Integrated Microelectronics, Yasaki, ABB, Montupet, Witte Automotive and Zeratizit. In some companies already innovations and smart production are implemented, but the new digital production is still not the main characteristic of the studied sectors. There are also trends of increasing of employment since 2013. In 2020 there were also trends of freezing of the number of employees, because of the COVID pandemic.

Industry 4.0 was implemented in many companies, but not all the companies could cover the requirements. It depends on the size, market peculiarities, work force, whether the enterprise is main producer of sub-contractor.

On the base of previous research data[35], employers from machine building and electronics also added that smart production includes implementation of new models of organisation of production processes, mainly in the manufacturing. This causes changes in collecting and using the necessary information, changes in the role of R&D departments, supply departments and units, maintenance units etc. However, the employers, representing the machine-building (except electronics and electrical engineering) also think that it is still too expensive to introduce innovations and smart production, mainly because of shortages of qualified workforce.

Among the most advanced branches is the automotive production, although most of the companies are subcontractors. The digitalisation and automatization are well implemented in this group of companies. The digitalisation strongly improved the productivity, especially in cases of implementing robots. Some operations, however, could not be digitalised and the human labour is still necessary.

According to the data from on-line interviews in the frames of another mentioned project[36], there is no risk of redundancies as result of digitalisation in the

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[35] E. Ribarova, L. Tomev, N. Daskalova, R. Antova, *Smart production in Bulgaria*, cit.

[36] L. Tomev, *Digitalisation in the world of work-impact on the key sectors*, cit.

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automotive, even increasing of personnel could be observed. There are also many changes, including restructuring, improvement of the organisation of production and management, implementing total quality management, outsourcing etc.

The shortages of qualified work force on the labour market is among the main barriers for the digitalisation for the companies in the machine building. The average age of workers is comparatively high. Some of the problems with the personnel in machine – building concern the fact that many of the professions are difficult and require long time learning, but the level of payment not always is according to the expectation of the employees. There are strong shortages of some technicians and high qualified workers like operators of machines with digital programming etc. There are also shortages of engineers. The reasons are similar-requirements of long-term education and not always acceptable level of payment. Many engineers work abroad and also the average age of employees is approximately high.

According to the data of several previous research, both trade union representatives and managers indicated that the existing schools and universities could not provide the level of qualification, which is necessary for the new digital transformation.

Concerning the shortages of qualified workers, many companies started to implement apprenticeship training and so-called "dual" education – hybrid from on the job and class training. There are also some recent trends of integration of efforts of the companies and educational organisations, like technical universities, centres for vocational training and secondary schools with technical profiles.

Transport and supportive branches.

In years 2015-2019 for the transport sector there are data for growth and slow increasing of number of employees. Some trends of decreasing, especially for aviation transport could be observed for years 2020-2021, because of decreasing of tourist and other passengers travel under conditions of Covid-19.

The transport system in Bulgaria has been changed in the last 15 years because of support of the European programs. The conditions for road transport were improved with building new autobahns and roads. The same concern the increasing and development of other infrastructure – of railways, sea and other water transport, and air transport. Some main infrastructural companies like airports etc. were obtained by MNC-s in the frames of concession agreements and these lead to new investments. The rail transport is partially liberalised and new private companies appeared.

According to the statistical data[37], in 97,6% of the companies with 10 employees and above in the transport, storage and posts there is and Internet access

[37] Republic of Bulgaria Ministry of Transport and Communications, *Report on the implementation of the National program "Digital Bulgaria" and the road map*, December 2020, http://www.mtitc.government.bg; http://www.nsi.bg.

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and in the 85,8% of them there is a fixed Internet connection. However, only 40,7% from the companies from these sectors have their own web sites and only 9,3% employ IT professionals for support and maintenance of the computers and on-line communications. In 2020, only 24,6% from all the companies from the services[38] implemented innovations.

The digitalisation is implemented in some of the operations of all the transport sectors, especially in the marketing, sell of the tickets, reservations, managements of the traffic, monitoring etc. these is mostly advanced in the air transport, but also in the sea transport and other branches many operations have been digitalised.

At the same time, the level of technology and technique in most of the transport branches is still below the average EU level. These concern at first the rail transport, where both the transport means and the infrastructure still need improvement and further digitalisation of the operations. The most dangerous operations are already implemented without direct human presence in more than 2/3 of railway infrastructure, but such process should be continued. In the sea and river transport some new systems of organisation and management like RIS and VTMIS were implemented, but they have to be upgraded. Also new systems should be implemented in the air and road transport.

The warehousing and storage are also activities, which need better improvement of the technique and technology, as there still are many partially automatic, mechanic or even manual operations.

Most of the jobs in transport require particular qualification and system of special schools, colleges and universities provide education for the transport branches and companies. At the same time, in the transport also lack of qualified personnel, especially in the context of the further digital transformation could be observed. In some companies the additional qualification and training is implemented, but the digitalisation provoked needs of more broad preparation.

At the same time in some of the supporting operations and storage still the level of qualification of the personnel is comparatively law and these is caused both by the particular character of the jobs and work in the transport and by the slow technical and technological changes in these branches.

It is still difficult to evaluate the working conditions in transport, as far as the Industry 4.0 is still not advanced. In fact, in the transport there are particular working conditions and working time, which make the work-life balance more difficult to be reached. Shift work, night work, working on weekends and on the official non-working days is a rule for most of the employees in the transport sector. As the digital transformation could improve the physical environment, especially reducing dangerous operations and manual operations, it is under discussion to what extend it could improve the work organisation and working time ar-

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[38] https://www,nsi.bg. Note: these includes the mentioned above sectors, but also telecommunications, IT-s, trade, finances, electricity, estates etc.

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rangements. These is possible for some jobs, which could be implemented with telework and ICT based mobile work, but in many cases the work face to face with clients could not be abolished. These also requires improvement of work organisation and better regimes of rest and holidays for the employees in the transport.

Further improvement of new technologies, especially automatization and digitalisation of some of the operations could improve the work and work satisfaction in such companies. Also, in some branches and companies, especially from the warehousing and storage and road transport the wages are still too low. As far as the digital transformation could lead to increasing of productivity, these also should be supported by increasing of wages.

5.4. *Topics*

Social partners' strategies

The social partners at national level initiated some programs and events, including common projects. The future of work and digitalisation are subject of many bi-partite and tripartite discussions and conferences. Still there is not national framework agreement, but a big project with participation of all the social partners – two trade union confederations, five national employers' associations and the Ministry of Labour and Social Policy is already implementing. The main subject of the project is concerned to the digital skills. it includes survey of the needs of new skills for all the sectors, activities for preparation of competence packages and for training, consultations and exchange of best practices. Also, framework of national, sectoral and company level agreements for partnership regarding improving the skills and working conditions should be prepared. the social partners intend to make steps for negotiations and agreements on these topics.

Metalworking

In metal sector the social partnership has long traditions and the dialogue is acceptable.

There are two main trade unions, existing in the metallurgy – Trade Union Federation "Metalicy", affiliated to the CITUB and National Federation "Metallurgy", affiliated to the other trade union confederation CL Podkrepa, as well as some smaller trade unions. The trade union membership density has deceased, but in most of the big enterprises there are trade unions. The employers' organisation is one – Bulgarian Association of the Metallurgy Industry, affiliated to the BIA. In metallurgy there is tripartite and bipartite partnership and the sectoral collective bargaining has existed since 1993.

Both for the employers' organisation and trade unions the maintenance of the qualified personnel is among the main goals. For long time the collective agree-

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ments content includes the qualification issues and the career development. In recent years the collective bargaining negotiations are also addressed to the technological changes and their impact on the qualification, health and safety at work, work organisation etc. These concerns both the sectoral negotiation and the negotiations at the company level. In the collective agreement, which is in force since year 2019, issues like new approach for hiring of new personnel, investment and improvement of the level of education and qualification, implementation of new technologies and the improvement of skills via on-the-job training are included.

Among the main issues is also the level of wages, which is discussing annually. Except traditional points, currently the wages and the social benefits are discussed in the context of the digitalisation and the needs of qualified personnel. Also, the Health and Safety at work are among the main issues in the collective bargaining negotiations, including the consequences from the digital transformation.

Another approach are the common projects, which are implemented by the social partners. The last project, concerning the collective bargaining and social dialogue resulted with some new common initiatives, including signing of common Memorandum, addressed to the issues of digitalisation, the "greening" the industry and the activities for prevention of negative impact of the Covid pandemic. Currently the trade unions and employers' organisation from the metallurgy are involved in the project, related to the digital skills, mentioned above.

In the machine building there is also well-established social partnership, with one main employers' organisation – Bulgarian Branch Chamber of Machine Building (affiliated to the BICA, but having also additional membership in the BIA) and two main trade unions – National Trade Union Federation – Metal Electro, CITUB and Trade Union Federation of the Workers in Machine Building and Metal Processing, affiliated to the CL Podkrepa.

For the electronic production and electrical engineering, the trade unions are the national trade union federation metal-electro-CITUB, one more representative of the CITUB affiliates – Trade Union Federation "Electronic production, machine building, information services" and the Trade Union Federation "Electronic production and Information services", affiliated to the CL Podkrepa. The employers' organisation is the Bulgarian Association of the Electronic Production and Electrical Engineering, which is the main partner (also affiliated to BICA, with additional membership at the BIA).

Trade union density in the machine building and electronic production also declines, but in most of the big companies and in many middle -sized ones there are trade unions. The organisation of new workers is a problem in the new established companies, especially in the automotive. In many new manufacturing companies with new technologies trade unions are not presented. In most of them there are no other forms of representation, except H&S committees which are required by the law. It is difficult to organise work-force from new compa-

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nies, especially in cases of high qualified work-force, because of individualistic values and differing values of new generations.

In cases of innovation, despite the decreasing trade union density, in the existing companies with trade unions presence the industrial relations have not been changed too much. In the automotive sector characterised by rapid development in recent years the trade unions density is too low. Trade unions are present only in several big companies already existing for many years, while they are not present in the new established companies. In most of the new companies there are no other workers' representatives, with exception of members of the H&S committees.

There are tripartite and bi-partite councils for machine-building and electronical production, as well as collective bargaining at sectoral and company level in the machine building.

In the metal sector there are strong trends of de-centralisation of collective bargaining since 2004-2005, visible in electronic equipment production, but also in the machine-building. In the electronic production currently, there is collective bargaining only at the company level. In year 2020 some the social partners from machine building signed a Memorandum on cooperation on the "green" technologies, digitalisation and activities for improving better H&S at work under pandemic. The workers from automotive are partially covered by CLA-in cases of big companies with trade unions, where company level negotiations are made, or /and in cases they are covered by sectoral collective agreement for machine building.

The social partners of machine building also pay a lot of attention on the improvement of skills and increasing the level of qualification of workers. to diminish the existing shortages and to support the adaptation of the employees to the process of digital transformation. There were many common programmes and projects. As a result of a big project, implemented by the BIA, together with CITUB and CL Podkrepa, the profiles of competences, required by more than 20 jobs in the machine building were prepared and the new activities for qualification were initiated. Social partners prepared and addressed common suggestions on the structures and content of the education and qualification programmes to the National Agency for Vocational Education and Training and to the universities.

The social partners form the machine building are also involved in the project, related to the digital skills.

Transport

In the transport there is a well-developed social dialogue with complicated structure. There is a national level, branch level and social dialogue at companies with national scope (Bulgarian Railways, NAVI BULGAR etc.), as well as at regional level (for railways), municipal level (for the urban transport) and at company level (for road transport, air transport, airports, ports, inland water transport and some supportive branches, including warehousing, storage etc.).

On the employers' side, the main organisation is the National transport cham-

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ber, affiliated to the BIA, which practically is the only employer's organisation, participating in the social dialogue. There are some other branch organisations – Bulgarian branch chamber "Roads", Bulgarian union for road transport, both affiliated to the BIA, as well as Bulgarian association of the air companies, National freight forwarding association, both affiliated to the BICA. They usually are either not or only partially involved in the social dialogue.

By the side of trade unions there are several trade union federations and smaller branch trade unions. Trade union federations, which cover workers from all the transport branches are Unification of the transport trade unions in Bulgaria, affiliated to the CITUB and Federation of the transport workers, affiliated to the CL Podkrepa. Unification of the transport trade unions in Bulgaria also covers workers in the road maintenance and road building, urban transport, fishing, telecommunications, some hospitals and structures of public administration. Another trade union, which covers mainly workers from road transport is the Union of the road transport workers in Bulgaria, affiliated to the CITUB. In the railways there are another two trade unions – Union of the railway workers in Bulgaria – CITUB and Railway workers trade union – CL Podkrepa. For the sea transport there is only one trade union – Sailors trade union in Bulgaria, also affiliated to the CITUB. In many medium sized and small companies, especially from road transport, air transport, inland water transport and sea transport, as well as in most of the companies in the warehousing and storage usually there are no trade unions and no social dialogue exist.

The social dialogue exist at the national sectoral level-both tripartite and bipartite. There is national collective agreement for the transport sector in a whole. It covers companies, which are members of the National transport chamber, mainly from the road transport and railways.

For the road transport there is bipartite partnership, but there is no branch level collective bargaining. Collective bargaining does exist only at the company level.

For the railways the social dialogue and collective bargaining are mainly at the level of companies with national scope, including Bulgarian Railways – passengers travel, Bulgarian Railways- fright transport; National railway infrastructure and Railway Bulgaria holding. There are collective agreements in all the companies and for the first three of them also social partnership does exist in their regional subsidiaries.

For the maritime transport there is social partnership and collective bargaining in the biggest, already private company – NAVIBULGAR. The collective agreement is prepared according to the standards of the ITF and covers all the units of the company, including all the operating ships.

For the urban transport in Sofia and in some other big cities the social dialogue and collective bargaining exist at the municipal level. There are several collective agreements for the urban transport.

In most of the companies from other branches, where trade unions exist, there is social partnership and collective bargaining at the company level.

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The social partners in the transport still started their steps regarding digitalisation and its' consequences. The Union of transport trade unions in Bulgaria organised recently national discussion, where the future of the transport and transport work were discussed. The main focus was the future of the urban transport and the changes in the character of work and work organisation.

In the sectoral collective agreement for the transport in total some common activities regarding restructuring and changes in the work force qualification were envisaged. The social partners from the railway companies also envisaged social corporate activities, concerning restructuring, changes in the workforce, qualification and promotion of the social dialogue in cases of organisational change.

Introduction of Organisational Changes

In most of the sectors in Bulgaria there are still not substantial changes of industrial relations at the company level, even in cases of implementing new technologies and digitalisation. In cases of existing of strong trade unions, they usually are involved in the discussions regarding organisational change. The information and consultation procedures exist in many companies, but they often are implemented mainly via company trade unions. In some companies, mainly MNC subsidiaries and other big companies also special I&C representative are elected also EWC representatives are elected in many of the MNC subsidiaries. The information and consultation procedures concern companies mainly from metalworking, chemical and pharmaceutical industries, food processing, banking, partially from transport, telecommunications, construction and production of building materials, mining, electricity production and supply and some others. Also forms of direct workers participation were implemented in companies from mining, production of building materials, metalworking, chemical and pharmaceutical production, food processing, construction, banking, partially in transport, recycling industry, telecommunications, retail etc. In some cases the direct participation is used for implementing the organisational change, but some resent research indicated that the direct participation is rather dependent by the work organisation and managerial approach, than by the digitalisation and other new technologies. However, usually such forms are implemented in big companies and subsidiaries and mostly forms of consultations are implemented.

Metalworking

In most of the big companies from metallurgy the trade unions took new responsibilities under the recent years – they usually agree to support the managers regarding the rules at work, especially the rules under new digital working environment.

In most of the CLA at company level it is envisaged active engagement of trade unions in the education and qualification activities, like needs assessment, preparation of qualification programs, as well as in the organisation, implementa-

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tion and control and evaluation of the education and qualification courses and on-the job training. Trade unions also participate in the support of new employees and take responsibility and support the employers in cases of projects for financing the education and qualification activities.

In the frames of policies of corporate social responsibility the social partners envisaged qualification of old workers, establishing of social units-special small enterprises for disadvantages groups, like disables. Also the measures for the H&S at work already are advanced, some new activities are envisaged in the mostly new company collective agreements. The social partners considered the appearance of new jobs and changes of the conditions of some already existing jobs and they envisaged special H&S conditions regarding the workers (for example, for working with displays etc.). In the big companies from metallurgy there are usually information and consultation procedures, which is useful to present better workers interests in the cases of organisational change. The trade unions and I&C representatives have obtained experience, as they participate successfully in the process of workers' protection under the crisis in 2008-2011, as well as under pandemic 2020-2021. Also, in the subsidiaries of MNC like Aurubis the trade unions and workers have another mechanism like EWC representation, to influence on the management decisions.

In the **machine-building** also trade unions are fully engaged in the activities for vocational education and training. In the big companies and MNC subsidiaries trade unions could suggest improvement of the qualification measures, as well as improvement of the H&S at work regarding new conditions of employment. The information and consultation process is well developed in the MNC subsidiaries, where both trade unions and specially elected representatives are operating. In some subsidiaries like Simens and SKF also transnational company agreements are implemented and trade unions could observe their implementation. In SKF, Siemens and Ideal Standard also EWC representatives are elected and they could be used for further obtaining of information regarding organisational change.

Transport

In most of the transport companies the issues of digitalisation are still not priority, but the situation is going to be changed. In some of the transport companies like airport of Sofia, in railways etc. there are also procedures of information and consultations and in some cases the workers are directly represented by trade unions, in some other-by especially elected representatives. Some changes in the work organisation as well as implementation of forms of direct workers participation at the airport of Sofia and some other companies have been agreed with trade unions. In some of the big companies there is tradition of partnership, regarding qualification, gender equalities, work-life balance and H&S at work. The positions of trade unions could help them and the other workers representatives to participate successfully in the organisational change.

In summary, the issues of industrial relations under Industry 4.0 still are rare-

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ly, or not at all a subject of more sustainable common documents (collective agreements, common policies and strategies etc.). Some of the reasons for that are related to the fact that often trade unions are still focused on the traditional issues. They also are under pressure by the side of employers and their organisations for further de-centralisation of the collective bargaining, which requires more efforts to solve problems, appeared because of this pressure. By their side, the employers and their organisations, especially from the manufacturing sectors are mostly interested in the issues of digitalisation, which rather concern the technology and productivity.

6. *Conclusions*

The industrial relations in Bulgaria are still not enough effective as a method to manage the digitalisation at work. On the one hand, the digitalisation is still not as much advanced in Bulgaria, especially the platform work. Also the ICT based remote and mobile work is still not enough implemented, comparing to other EU member states, although significant progress has been made since the beginning of 2020, because of Covid pandemic. The work automation, Industry 4.0 and smart production are implemented in many sectors. However, in many others mainly computers are used, not the completed digital systems (including robots). In other cases automatization and robots are used, but the computer technologies are restricted to the administration, research and development. In many other sectors and companies, the digital transformation is still in the beginning. Among the main reasons for rather slow development of digitalisation are the high level of investment costs, the lack of qualified personnel and the lack of attitudes for innovations among some of the managers and entrepreneurs as well. Something more, many employers are persuaded that the digital transformation could lead to better productivity, but they are afraid that their costs per unit could increase.

On the other hand, as already mentioned, the social partners are still focused on the traditional issues. At national level the budget procedure and the determination of some parameters like minimum wage, the level of insurance contributions, taxes, level of pensions and other social payments are the most important. In many sectors there are other important challenges like the "green" transformation, which could cause closing of many companies and mass redundancies, as well as regional disbalances in the economic development and labour market. The social partners in the sectors and regions are much more interested in the topics, which could be their challenges for the next years. Finally, at the company level the digitalisation issues are put into the social dialogue and industrial relations system in the companies, where such process is ongoing, but rarely in the companies and organisations, where the process is in the beginning or has not been started yet.

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Last but not least, both social partners at national, sectoral and regional level and the trade unions and employers in the companies and organisations have difficulties to define their main challenges and priorities for the short-term, middle-term and long – term perspectives. That's because in some companies the digitalisation is in the beginning. However, also for the companies and sectors, where the digitalisation is more advanced, the trade unions and even the employers could not exactly define their possible challenges and priorities for long term and middle – term perspective.

Some progress has been made in the last 2-3 years. The social partners, together with the Government began to pay more attention on the digitalisation issues, especially on the skills development. In year 2020, after finishing big project on the social dialogue and collective bargaining, social partners in several sector prepared and sign agreements /memorandums for digitalisation. As mentioned, a new project, implemented together by all the main social partners, including the two trade union confederations, the five national employers' organisations and the Ministry of Labour and Social Policy is ongoing and is mainly focused on the skills development. The project practically covers all the sectors, also the public administration and other public sectors and services and is focused both on the sectoral and company/organisation level.

At the same time, some of the social partners already created their own policies and implement other projects. Also, in many companies, mainly MNC-subsidiaries, including banks, programs for qualification and skills development have been implemented since more than five years. In some other big companies, including public–owned, programs for qualification and skills development are implemented in recent years as well.

The role of the social partners and the industrial relations institutions in the process of digital transformation might be based both on the practical problems in the Bulgarian economy and on the main points of the European social partners framework agreement on digitalisation from 22.06.2020.

The main issues, covered by the agreement concern digital skills and securing employment, modalities for connecting and disconnecting, artificial intelligence and guaranteeing the human control principle and respect on human dignity and surveillance. The Bulgarian social partners are mainly focused on the digitals skills, but also many other issues should be covered, at the level of sectors and in the companies industrial relations. For example, the improvement of the digital skills should be focused much more on the employment security for the moment the employers' view for the digital skills, acceptable for the new technologies, new production systems and work organisation is dominating.

The rights for connecting and disconnecting, as well as the human dignity and surveillance are still rarely discussed. In the frames of the CITUB project, named "Parliament of labour Bulgaria", implemented in 2019, several regional discussion with workers, both trade union and non-trade union members, also self-employed were organised. They concerned some of the issues, mentioned above. It seems that many employers still don't have respect of such workers' rights, es-

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pecially on the rights of connect and disconnect and on the rights for freedom of speech in the social media.

The issues of artificial intelligence are still closed in some companies, where such technique and technologies are implemented and are regulated rather by some company rules, than by collective agreements.

Other, very important issues concern transformations in the work organisation, health and safety at work, working time arrangements, platform and remote work, productivity and payment, work-life balance, social insurance and benefits and others. Some of such issues require additional legislative changes, especially the platform work, working time arrangements, social insurance etc. Attention should be paid also to many other issues and they could take place in the negotiations for collective agreements at sectoral, municipal and company/organisation levels.

Last, but not least, the social partners have to make their own reforms, for example reform in the trade union priorities and especially in their structures and methods of organising. Trade unions should improve their policies and approaches, with more focus on the individuals and groups, having in mind the new forms of work organisation and new forms of employment. The same is concerned the employers' organisations, mainly their priorities and policies, having in mind the new business models.

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DENMARK

Natalie Videbæk Munkholm[*]

SUMMARY: 1. Overview of Domestic Industrial Relations System. – 2. General Policy Approach to Digitalisation and Work. – 3. Platform Work. – 4. Remote Work. – 5. Workplace Automation and Social Partners Strategies. – 6. Conclusion.

1. *Overview of Domestic Industrial Relations System*

Denmark is a Scandinavian country of 5,8 million inhabitants. It is a constitutional monarchy, and state powers are divided between the parliament (legislative), government (executive), and the courts (judiciary)[1]. The rule of law is a fundamental principle in the Danish legal system[2]. Denmark is one of the richest countries in the world, and presumably also among the happiest[3].

The Danish society, the public sector and Danish industries have embraced digitalisation. The Danish public sector was in 2018 and 2020 by the UN placed as the world's best digitalised public services[4], and Denmark ranks first in the EU Digital Economy and Society Index 2021[5].

Pay and working conditions in Denmark are determined primarily by way of negotiating collective agreements. Collective agreements are binding[6] for signatories and their members, and is enforced by mandatory dispute resolution mechanisms, in the end by judicial review by the Labour Court or Industrial Arbitration[7].

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[1] Danish constitution (Grundloven), section 3.

[2] *E.g.* Denmark is ranked #1 in the World Justice Project Rule of Law index 2021, https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2021.

[3] http://worldhappiness.report/ed/2019/.

[4] https://www.djoef-forlag.dk/openaccess/samf/samfdocs/2021/2021_1/Samf_2_1_2021.pdf.

[5] https://digital-strategy.ec.europa.eu/en/policies/desi.

[6] Provisions can be supplemented or amended by agreements at plant level by a mandate to do so in the collective agreement, O. HASSELBALCH, *Labour law in Denmark*, 4th ed., Wolters Kluwer, Alphen aan den Rijn, 2018, p. 44.

[7] *Normen. Regler for behandling af faglig strid*, 27 October 2006 between the LO and the

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Denmark has a unionization rate of 67% and a collective bargaining coverage of 82% (74% in the private sector and 100% in the public sector)[8].

The industrial relations system of negotiating pay and working conditions is an essential element of the Danish socioeconomic setup.

Industrial relations in Denmark, the Danish Model, involves a high degree of self-regulation, a high union density and collective agreement coverage, a central role in society and regulation for social partners form both sides, a voluntary system of negotiations for collective agreement also by way of industrial actions, and a strong enforcement system involving dialogue as well as judicial review and penalties.

Industrial Relations

Industrial relations are to a large extent self-regulated and voluntary. The principles of industrial relations were formally recognized by the September Agreement in 1899 between the Danish Trade Union Confederation (LO, now FH) and the Confederation of Danish Employers (DA). The September Agreement formed the basis for the current Main Agreement between the FH and the DA. The Main Agreement is perceived as expressing general standards, which are reflected in many other Main Agreements. These principles include a right for workers and management to organise, a prohibition of hostile actions against social partners and their members, a duty of peace, the binding nature of agreements on signatories and members, the managerial prerogative, protection against unreasonable dismissal, and the role of shop stewards.

The binding nature of collective agreements create a hierarchy of agreements, where a lower level agreement cannot derogate a higher level agreement. Uppermost are the Main Agreements, which give basic principles and frameworks at confederation level. Main Agreements are concluded in the private sector, where the LO/DA Main Agreement express the main principles, and in all public sectors[9]. Sector agreements are concluded between trade unions and employer organisations for a specific sector, *e.g.* for transportation, for electricians or midwives. Sector agreements must operate within the principles of the Main agreements. Shop level agreements (local agreements) can be concluded between the local representative and management. Local agreements cannot derogate from sector agreements, unless authorised to do so by the sector agreement. The binding nature concerns material provisions, procedural provisions as well as the standards for industrial relations set out in the Main Agreements.

The Labour Court develops and refines the rules and principles of the rela-

DA, The Statutory Act on a Labour Court and Industrial Arbitration (*Arbejdsretsloven)*, no 1003 of 24 August 2017 section 9.

[8] OECD.stat Administrative data, Union density and Collective bargaining coverage 2019 and 2020 – https://stats.oecd.org/Index.aspx?DataSetCode=TUD.

[9] Main Agreements are concluded for the State, the Regions, and the local municipalities.

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tionship between the social partners, and this caselaw likewise forms part of the legal framework for industrial relations.

Freedom of Association and Industrial Relations

There is a broad right to organize and join trade unions and employers' associations in Denmark. Section 78 in the Danish Constitution [10] ensures a right to gather and organise in unions without governmental interference. The Statutory Act on Freedom of Association in Employment [11] in sections 1 and 2 protects the right to join any union and the right to not be a member of a union in connection with employment, by prohibiting dismissals and refusal of employment based on the union membership status of a person.

There is no legislation specifically regulating trade unions and employer associations. The ordinary courts have developed principles for the rights of members of (any) association, which apply *mutatis mutandis* to members of trade unions and employers' associations. The activities of the trade unions and employers' association function according to their articles of association, the principles developed by caselaw, and the generally applicable rules of public activities in society.

Employee Representation

FH, Fagbevægelsens Hovedorganisation (Danish Trade Union Confederation, formerly the LO) is the largest social partner on the employee side, representing approx. 1.4 million workers [12]. FH represents blue-collar workers and salaried employees as well as salaried employees of the former FTF. FH's biggest trade union members are 3F (United Federation of Danish Workers – skilled and unskilled workers), HK (Salaried employees in retail and administration), Dansk Metal (Danish Union of Metalworkers) and FOA (Social and health care, day care, cleaning, kindergarten assistants, nursery school assistants, and others).

AC (the Danish Confederation of Professional Associations) represent professionals and employees with a university degree. AC's biggest trade union members are IDA (The Danish Society of Engineers), DJØF (Trade Union for professionals in law, economics, strategy, management, politics, administration, business, research, communication and more) and DM (Danish Association of Masters and PhDs). AC represents approx. 400.000 employees [13].

As mentioned, approx. 67% of the workforce are members of a trade union, and an estimated 82% of the workforce are covered by a collective agreement. Current distribution of unionised employees between social partners:

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[10] The Constitution of Denmark, Danmarks Riges Grundlov, section 78.

[11] Statutory Act on Freedom of Association, Foreningsfrihedsloven, no 424 of 8 May 2006.

[12] https://fho.dk/om-fagbevaegelsens-hovedorganisation/.

[13] http://www.ac.dk/om-akademikerne/om-akademikerne.aspx.

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Members per 31.12
Unit: **Number**

	2018	2019	2020
Total			
Total	1 861 256	1 871 702	1 906 775
FH Fagbevægelsens Hovedorganisation	1 096 965	1 091 530	1 064 465
Danish association of managers and executive	109 442	108 369	110 726
AC - confederation of professional associations	253 128	262 197	292 683
Outside joint organisations	401 721	409 606	438 901

Source: Statistics Denmark [14].

Employer Representation

DA, Dansk Arbejdsgiverforening (Confederation of Danish Employers) is the oldest and largest employer confederation, established in 1898. DA's members are sector-oriented associations, such as Dansk industry, DI (Danish Industry), Dansk Byggeri (the Danish Construction Association) and Dansk Erhverv (the Danish Chamber of Commerce).

State-employers are not organised in a confederation but are represented by a subsidiary of the Ministry of Finance, the Agency for Modernisation. They represent the employers in collective bargaining matters, whereas many topics are delegated to local negotiations at the individual public institutions. Municipal and regional employers are organised in Kommunernes Landsforening (Local Government Denmark) and Danske Regioner (Danish Regions). The municipalities, as opposed to the state-employers, can conclude collective agreements, subject to authorisation by Kommunernes Lønningsnævn, a state agency for remuneration negotiation. In 2021, 751,000 workers in total were employed in the public sector [15].

The members represented by the DA employ 30% of the total workforce (50% of the private sector).

State Intervention in Industrial Relations

Parliament supports the model of negotiation inter alia by passing only minimum-legislation in areas affecting the labour market [16]. The government works closely with the social partners in areas affecting the labour market. Tripartite consultations and negotiations are initiated before proposing new legislation and

[14] https://www.dst.dk/en/Statistik/emner/arbejde-indkomst-og-formue/tilknytning-til-arbejdsmarkedet/loenmodtagerorganisationer.

[15] https://www.dst.dk/en/Statistik/emner/arbejde-og-indkomst/beskaeftigede.

[16] That is, the Danish or Nordic Model*, e.g.*, *Labour Law in Denmark*, above n 4, p. 23; N. Bruun, B. Flodgren, M. Halvorsen, H. Hydén, R. Nielsen, *The Nordic Labour Relations Model*, Ashgate 1992, p. 464. Further on the Danish model and its origins, see *e.g.,* R. Fahlbeck, *Industrial Relations and Collective Labour Law: Characteristics, Principles and Basic Features*, in *Scandinavian Studies in Law*, 2002, 43, pp. 87-133, O. Hasselbalch, *The Roots – the History of Nordic Labour Law*, in *Scandinavian Studies in Law*, 2002, 3, pp. 11-35.

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before implementing EU Directives aimed at the labour market[17]. Tripartite negotiations formed the backbone of initiatives aiming to reduce redundancies during Covid-19[18].

There is no general labour or employment statute, and there is no general statute regulating industrial relations. Legislation is passed ad hoc to supplement collective agreements, primarily in the areas of social security, health and safety and non-discrimination, and to implement EU-directives. Only few acts provide material rights for groups of workers, such as the Salaried Employees Act, the Seafarer's Act, the Agricultural Assistants' Act, and the Apprentices Act.

Two statutory acts have been passed specifically to support and stabilise industrial relations.

In 1910, the Act on a Labour Court was passed to ensure, that legal disputes would be settled by way of judicial review rather than by way of conflict, and the Act on a Public Conciliator (Forligsmandsloven)[19] was passed to assist with mediation between the social partners in situations of pending industrial conflict. The public conciliator provides measures to the social partners in the form of mediation services. The public conciliators have limited powers, and can only postpone, not hinder or nullify, an industrial action. The public conciliator may decide not to intervene with mediation and settlement proposals.

Legislative interventions to resolve an ongoing and long industrial conflict are rare, but occasionally take place. The last intervention was in 2013 to end a national lock-out of school teachers in public schools. There are no defined criteria in legislation for such state intervention, which are assessed on an ad hoc basis, often with a view to the economic consequences for society.

Collective Bargaining

The collective bargaining system in Denmark is as mentioned self-regulating and voluntary.

There are no statutory provisions obliging employers to sign a collective agreement, follow a collective agreement[20] or be a member of an employers' association. An employer can be bound by a collective agreement *either* by way of membership of an employer's association, who is signatory to a collective agreement covering the work performed, *or* by way of concluding a collective agree-

[17] Tripartite dialogue is continuous, overview available at https://bm.dk/arbejdsomraader/politiske-aftaler-reformer/politiske-aftaler/trepartsaftaler/.

[18] See e.g. https://fho.dk/blog/2020/03/26/vejledning-i-trepartsaftalen-om-loenkompensation-faa-svar-paa-hvem-der-er-omfattet-af-aftalen/.

[19] The Act on a Public Conciliator, Lov om mægling i arbejdsstridigheder, no 09 of 20 August 2002.

[20] Exceptions apply for very specific jobs, such as taxi-drivers, apprentices, subsidized employment and projects procured by the State. Proposals are on the way to universalize agreements for cabotage truck drivers.

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ment directly with a trade union covering certain work performed. Coverage is left to the activities of the social partners.

Conclusion of collective agreements are in the hands of the social partners, who can initiate negotiations with an employer with a view to cover the work performed at the work place with a collective agreement. Collective bargaining, which was formally recognized in 1899 has spread to all sectors, including public employment, except for the small group of Civil Servants[21]. There is no formal duty for an employer to negotiate with any trade union. The trade unions have a wide right of engaging in industrial action, and the risk of conflict, in reality, motivates most employers to engage in negotiations. The Act on Salaried Employees along those lines establishes a duty to negotiate in good faith, but no obligation to conclude an agreement.

If negotiations are slow, trade union engage in industrial action, including strikes and blockades, against the employer. There is no statutory regulation providing a legal framework for industrial action, it is the prerogative of the Labour Court to assess the lawfulness of industrial action[22]. Caselaw has developed a number of legal principles on the lawfulness of industrial action. Industrial action is lawful only with a view to obtain a collective agreement concerning pay or working conditions for the employees. Furthermore, the trade union must have a current interest of sufficient strength in concluding the agreement, meaning, that a certain amount of work within an area of interest to the trade union must be performed by employees. Secondary action can likewise be lawful under certain criteria, including that the primary action is lawful, and that the secondary action is suitable to influence the primary action.

Industrial action may be activated by the employees, as strikes or blockades, or by the employers, as lockouts or boycotts. Industrial actions take place regularly, whereas society-wide conflicts involving all sectors are rare and have not occurred since 1998.

Dispute Resolution

When covered by a collective agreement, an employer becomes part of the general industrial relations system, where disputes must be settled by way of agreed procedures and in the end by judicial review.

Dispute resolution follows a system for dialogue and negotiation set out in *Normen* – Rules for Handling Industrial Dispute, agreed to by DA and LO (now FH) and the Statutory Act on a Labour Court[23]. A dispute is settled first by engaging in dialogue and negotiations at plant and sector levels, also involving the

[21] Statutory Act on Civil Servants, Tjenestemandsloven, Act no 511 of 18 May 2017, https://www.retsinformation.dk/eli/lta/2017/511.

[22] Statutory Act on a Labour Court, Act no 1003 of 24 August 2017, section 9 (1) litra 3).

[23] *Normen. Regler for behandling af faglig strid,* 27 October 2006 between the LO and the DA.

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social partners party to the collective agreement. If a dispute is not settled by dialogue, it will be settled by judicial review by the Labour Court or Industrial Arbitration[24]. The system in *Normen* has been elevated as declaratory model for solving industrial disputes across all sectors, also trade unions or employers outside the DA and FH confederations[25].

The Labour Court, which is presided by Supreme Court judges, assesses breach of agreement, interpretation and breach of main agreements, the lawfulness of industrial action, whether an agreement is a collective agreement, disputes about the competencies of public conciliators, disputes about provisions on industrial arbitration, refusal to cooperate in industrial arbitration, and the nature of collective agreements for temporary agency workers[26]. If an agreement does not provide otherwise, the Labour Court can issue discretionary penalties for breach of agreement, including breach of principles developed by caselaw[27].

2. *General Policy Approach to Digitalisation and Work*

Policy Initiatives

The current approach to digitalisation has been at policy level, with a view to promote the societal benefits of increased us of digital tools and artificial intelligence.

The most recent initiative is the Government's 10 future steps as part of the reform course "Denmark can more I" from the Ministry of Finance, September 2021[28]. The steps include efforts improving the organisation of the labour market, such as platform work[29].

Policy initiatives from the former government was embedded in the initiation of the Disruption Council in 2017. The disruption council concluded its work in 2019 with a report "Prepared for the Future of Work"[30], which is a follow up on the Governments Strategy for Denmark's Digital Growth from 2018[31], and a

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[24] The Statutory Act on a Labour Court and Industrial Arbitration, Arbejdsretsloven, no 1003 of 24 August 2017 section 9.

[25] The Act on a Labour Court section 33 (2).

[26] The Act on a Labour Court section 9 (1), no 1-9.

[27] The Act on a Labour Court section 12.

[28] https://fm.dk/nyheder/nyhedsarkiv/2021/september/danmark-kan-mere-i/.

[29] https://fm.dk/media/25231/danmark-kan-mere-i_faktaark_a.pdf, p. 13.

[30] Ministry of Employment, *Prepared for the Future of Work. Follow-up on the Danish Disruption Council*, January 2019, https://bm.dk/media/9602/regeringen_disruptionraadet_uk_web.pdf.

[31] Ministry of Business, *Strategi for Danmarks digitale vækst*, January 2018, https://em.dk/media/9127/strategi-for-danmarks-digitale-vaekst_online.pdf.

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number of points of attention for Denmark of the Future[32]. The report address productive and responsible companies in a digital work, and a modern and flexible labour market. The challenges addressed for digital companies are data ethics, and lack of legislative standards for platform and sharing companies. The challenges addressed for the modern and flexible labour market includes:

– requirements for transition and lifelong learning as a response to risk of automation of their work;
– the sharing economy and digital platforms challenging the Danish model;
– greater social divulsions unless everyone participates in progress;
– more flexible labour market access for the most disadvantaged unemployed;
– better work environment data to strengthen preventive efforts;
– Danish companies, including SME's, must have the best possible framework for competing efficiently on fair and equal terms, with *e.g.* large digital platforms;
– a digital transformation, where companies and the public sector must be front-runners, that utilises the advantages of digitalisation. Companies must be supported in ethical and responsible use of data;
– a labour market geared for the future by being ready for transformation, and ready for automatization, digitalisation and new forms of employment;
– as many as possible in employment by an inclusive labour market for everyone.

The (new) government in 2019 promoted the National Strategy for Artificial Intelligence of 2019[33] also promotes that Denmark should be in front, now with a focus on responsible development and use of artificial intelligence. The strategy more clearly gives attention to the requirement, that societal values are central in the use of AI, and that the same requirements should be asked of algorithms and AI as would be asked of employees. The advantages are that AI can ensure more equal treatment by being objective and independent. It is underlined, that AI must not be developed, so it creates or reflects biases or prejudices against *e.g.* gender, persons with disabilities or persons of non-Danish origin. The Strategy promotes the insurance of ethical values, the quality of data, legal certainty and clarity, distribution of responsibilities and liabilities, and transparency[34]. The Strategy promotes four overall lines of attention from a societal perspective:

– To provide a common ethical foundation for artificial intelligence with the human in the center.
– Danish researchers must research in and develop artificial intelligence.

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[32] Ministry of employment, *Sigtelinjer*, Januar 2019, https://bm.dk/media/9601/sigtelinjer.pdf.

[33] Finansministeriet og Erhvervsministeriet: National strategi for kunstig intelligens, marts 2019, s 6: https://digst.dk/strategier/strategi-for-kunstig-intelligens/.

[34] National strategi for kunstig intelligens, s. 7-8 and 15-17.

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– Danish companies must attain growth by developing and using artificial intelligence.
– The public sector must use artificial intelligence to offer world class services.

And, as mentioned, the imitative "Denmark can more I" also aims specifically to address "fake self-employed" in certain sectors and in platform work.

The intentional focus on digitalisation across sectors mean, that Denmark tops the lists in the world for digital public services[35], and in the EU for Digital Economy and Society[36].

In the public sector, legal initiatives provide tools to provide developers of AI and digital solutions with knowledge, so they are better equipped to ensure, that AI and digital solutions comply with existing regulation *e.g.* in GDPR, as well as with fundamental rights[37].

The government in 2021 launched a strategy for Tech-giants and more fair competition and improved consumer protection[38]. The strategy focuses on development and use of AI, developing standards for transparent and reliable AI, and a responsible platform economy, although not aiming at digital labour platforms.

A Data Ethics Council[39] was established in 2019, consisting of 15 appointed experts in data and different aspects of society across industries, consumer organisation, and academia. The Data Ethics Council seeks to support development in an ethical manner that takes into consideration the citizens' fundamental rights, legal certainty and fundamental values of society. The Council contributes to public debate on issues of general interest, *e.g.* a recommendation on the use of face recognition software in public spaces[40].

The social partners follow suit, and both the employers' associations and the trade unions promote digitalisation[41].

The topics of automatization and robotisation of work processes have at the macro level often resulted in a focus on the risk of redundancies[42]. This is ad-

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[35] https://www.djoef-forlag.dk/openaccess/samf/samfdocs/2021/2021_1/Samf_2_1_2021.pdf.

[36] https://digital-strategy.ec.europa.eu/en/policies/desi.

[37] https://videncenter.kl.dk/viden-og-vaerktoejer/informationssikkerhed-og-gdpr/juridisk-ai-vaerktoejskasse/ and *e.g.* H.M. MOTZFELDT, A.T. ABKENAR, *Digital Forvaltning – udvikling af sagsbehandlende løsninger*, DJØF Forlag, 2019.

[38] https://em.dk/media/14230/udspil-om-tech-giganter.pdf.

[39] https://dataetiskraad.dk/data-ethics-council.

[40] https://dataetiskraad.dk/dataetisk-raad-fremsaetter-anbefalinger-om-brugen-af-ansigts genkendelse-i-det-offentlige-rum-mv.

[41] https://www.danskindustri.dk/arkiv/analyser/2018/1/flere-virksomheder-har-sat-digitaliser ing-pa-dagsordenen/; https://www.danskindustri.dk/vi-radgiver-dig-ny/forretningsudvikling /digitalisering-og-innovation/grib-nye-teknologier/kunstig-intelligens/; https://www.hk.dk/ aktuelt/nyheder/2020/09/04/kunstig-intelligens-giver-dig-frihed-til-at-taenke-ud-af-boksen.

[42] https://fagbladet3f.dk/artikel/robotterne-vil-overtage-vores-job.

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dressed by way of Cooperation Agreements requiring shop level dialogue at shop level before introduction of new technology, as well as investments in retraining or relocation of employees before dismissals[43]. The legal framework on information and consultation in the Cooperation Committees has since 1981 included a specific focus on introduction of new technology.

More recently the social partners also provide information and promotes issues relating to digitalisation, artificial intelligence, new business models using algorithmic management tools and how this may challenge existing rules and social dialogue. The social partners, similarly to the government, promotes a human-centered principle for using AI[44], investments in development of AI solutions[45], ethics, and professionalism as key elements when using AI[46]. The social partners also contribute in EU social dialogue at general level, the Framework Agreement on Digitalisation, June 2020[47], and at sector level such as the joint declaration on AI in the insurance sector of March 2021[48].

Platform work is discussed at the policy level as part of digitalisation of society and new business models.

In 2019, the government established a "Council for the Sharing Economy", which in 2021[49] gave 13 recommendations for improved responsibility in the sharing economy. Recommendations for the government include ensuring fair competition between platform companies and traditional companies, as well as between Danish and foreign platforms, investigating the interaction between social security and platform work, mapping how ordinary courts and administrative authorities assess whether service providers are independent contractors or employees, engaging in dialogue with the EU-commission on the relationship between EU competition law and labour platforms. Further, the Council for the Sharing Economy recommends investigating the potential as well as any barriers with regard to use platform work as leverage to provide work for persons on the edge of the labour market.

Legislators and social partners cooperate in discussing the Proposed Directive on improving working conditions in platform work[50].

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[43] Samarbejdsaftalen mellem FH og DA 2006, https://www.samarbejdsforum.dk/Filer/Samarbejdsaftalen_DA_FH.pdf.

[44] https://fho.dk/blog/2016/12/15/digitaliseringen-skal-give-plads-til-mennesket/.

[45] https://www.danskindustri.dk/di-business/arkiv/nyheder/2019/10/di-oremarker-10-millioner-til-at-styrke-dansk-digitalisering/.

[46] https://fho.dk/blog/2019/03/14/etik-og-faglighed-er-noegleord-i-brugen-af-kunstig-intelligens/.

[47] https://www.businesseurope.eu/sites/buseur/files/media/reports_and_studies/2020-06-22_agreement_on_digitalisation_-_with_signatures.pdf.

[48] https://www.insuranceeurope.eu/publications/1639/joint-declaration-on-artificial-intelligence/download/Joint+declaration%20on%20artificial%20intelligence.pdf.

[49] https://em.dk/media/14218/anbefalinger-raadet-for-deleoekonomi.pdf.

[50] COM(2021) 762 final.

Regulatory Initiatives

Legislators

There have been few regulatory initiatives from the government concerning digitalisation of work.

The first interaction between digital platforms and Danish statutory legislation was with the arrival of Uber. Uber began operating in Denmark in November 2014. According to numbers provided by Uber, the company had 2,000 drivers and 300,000 users in Denmark. The Danish Traffic Authorities in 2015 filed charges against Uber for violations of the Taxi Act[51] and the Act on Road Traffics[52]. At the same time, Uber drivers were reported to the tax authorities for suspicions of not reporting their income. In 2016, the Eastern High Court[53] found, that the transports were carried out with passengers, who had no other connection with the drivers apart from using the Uber app, and that the transportation was carried out for payments exceeding the direct costs connected to the transportation. Under these circumstances, the Eastern High Court regarded the transportations as commercial transport of persons as defined in the Taxi Act, Section 1(1). There was no basis for regarding the transportations as carpooling arrangements. Therefore, the drivers were carrying out taxi services without the mandatory license in breach of the Taxi Act[54]. The drivers received fines of DKK 6,000. As a response to the ruling[55], the Taxi Act was amended. The new Taxi Act came into force on 1 January 2018[56]. The amendments did not change the requirements that drivers must have a commercial driving license and that the vehicles, for taxation purposes, must be fitted with seat sensors and taximeters. In February 2017, Uber announced their withdrawal from operations in Denmark due to the amendments to the Taxi Act[57].

The first statutory legislation thus did not directly address platform companies, whereas the underlying rationale was, that platform companies should follow the same rules as more traditional companies. The new taxi regulation was by

[51] Then Statutory Act on Taxidriving (Lov om taxikørsel) no. 329 of 14 May 1997.

[52] Statutory Act on Road Traffic (Færdselsloven), no. 38 of 5 January 2017.

[53] Eastern High Court ruling of 18 November 2016, U 2017.796 Ø.

[54] See similar result in Opinion of Advocate General Szpunar delivered on 11 May 2017 in C-434/15 (Asociación Profesional Elite Taxi v. Uber Systems Spain SL) in which the opinion was given that Uber is to be considered a transport service (taxi service or other urban transport provider) and is not considered an information society service within the meaning of art 2(a) of Directive 2000/31/EC.

[55] https://www.trm.dk/da/nyheder/2017/taxi-090217.

[56] Proposal L 24 2017-18, a Statutory Act on Taxi Driving, http://ft.dk/samling/20171/lovforslag/l24/index.htm.

[57] http://politiken.dk/oekonomi/art5889910/Ny-taxilov-f%C3%A5r-Uber-til-at-lukke-i-Danmark.

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some criticized for not being a proper response to technological developments in the market[58]. The question is on a bigger scale how to properly embrace new technology and increased globalisation including new business models. The development led to the establishment in 2017 of the Disruption Council, mentioned above.

A second regulatory intervention, based on tripartite consultation in 2018, was to adjust the Act on Unemployment Benefits to match a more flexible labour market. The social partners have a long history of being closely consulted by the government or directly involved in tripartite negotiations, as well as in expert committees on reforms affecting social security and the labour market[59]. The main legal issues about platform work were unaddressed in the Government committee work on the Disruption Council. The negotiations however resulted in, inter alia, an "Agreement on a new unemployment benefit system for the labour market of the future". This amendment also did not specifically address platform companies but was motivated by changes in the labour market – including digital work relations[60]. The unemployment benefit system now focuses on the *activities* of a person, rather than on the *employment status* of a person. The amendment was a response to recommendations by the Disruption Council, that pointed to the rigidity of the existing categorization of persons as either employees or as self-employed in two separate pillars in the system, which was not reflecting the modern pattern of fragmented or atypical employments[61]. The reform entailed, that all income earned can be cumulated towards being eligible for unemployment benefits. This adapts the current system of unemployment insurance benefits to the work reality of persons in atypical employments, including self-employment.

Similar amendments have not taken place regarding other forms of social security, such as sick leave benefits.

Another regulatory intervention is a duty on capital platforms to register taxable income for persons, earning income via the capital platform[62]. The duty so far

[58] *E.g.* on 9 February 2017 in Ekstrabladet: *Joachim B. Olsen sviner partifællers taxilov: "Maskinstormere"*; Berlingske Business: *Det liberale Danmark er hårde ved den ny taxilov: "Det er en skandale"*; Avisen.dk: *Uber-kaos i regeringen: Ny taxilov skaber intern splid*; and more recently Finans.dk, 26. October 2017: *Taxabranchen lod en stinker sive*; Finans.dk, 5 November 2017: *Finans' debatredaktør undervurderer groft ny taxilov.*

[59] N.V. Munkholm., *Collective Agreements and Social Security Protection for Non-Standard Workers and Particularly for Platform Workers: The Danish Experience*, in U. Becker, O. Chesalina (eds.), *Social Law 4.0: New Approaches to Ensuring and Financing Social Security for the Digital Age*, Max Planck Institute for Social Law and Social Policy, Munich, 2020 upcoming.

[60] Statutory Amendment Act no. 1670 of 20 December 2017 to Act on Unemployment Insurance.

[61] See proposal for amendment to the Act on Unemployment Insurance, L88, 2017-18, available at https://www.ft.dk/samling/20171/lovforslag/l88/index.htm.

[62] https://www.regeringen.dk/nyheder/2018/politisk-aftale-om-dele-og-platformsoekonomi/.

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applies only to platforms facilitating access to capital assets, such as renting out accommodation, cars or boats[63]. The DAC7 agreement at EU-level[64] stipulates that from 1 January 2023 all digital platforms, including labour platforms, must register the income earned by the service providers/lessors, regardless of status as independent contractor or employed.

A final trace of legislation adapting to new forms of work, but without specifically addressing platform work, is the recent amendment of the Holiday Act in 2018. The scope of the act was intensively discussed for persons in atypical employment relations. This is situations, where labour relation is so atypical, that neither employee status nor status as independent contractor is clear[65]. The Act applies to "employees", defined as "anybody who receives remuneration for personal work performed in a relationship of service"[66]. The scope of application must continue to be interpreted in line with the development of the underlying EU Directive and its interpretation by the CJEU. The preliminary works explain that this group of employees is expected to continue to develop, it is not homogenous and cannot be uniformly defined. Taking as a starting point the protective purpose of the Holiday Act, the preliminary works state:

"*… for self-employed (who are not employees), freelancers, external consultants and fee-earners[67], it will be a specific and individual assessment in each case. It is most congruent with[68] the protective purposes of the Act, that status as employee is only lost, when there is a basis for constituting independence in the performance of work for another person. Decisive is, whether the person in reality is self-employed.*"[69].

The legislators thus introduce a default status where a person is covered by the Holiday Act, unless a basis is provided that the person is in reality genuinely self-employed. This could be considered a subtle rule of presumption, where employee status is the starting point, which can be rebutted by proof for status as genuine self-employment. Albeit an individual assessment is still a prerequisite, the approach to assessing employee status starting with an express presumption, could be applied also to assess the status of platform workers. The Holiday Act came into force on 1 September 2020, and no cases on employment status have yet surfaced.

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[63] Juridisk vejledning A.B.1.2.8.6. Indberetningspligt ved udlejning af blog og andre aktiver, https://skat.dk/skat.aspx?oid=2298268.

[64] Vedtagelse af DAC7 https://www.skm.dk/aktuelt/presse-nyheder/pressemeddelelser/regeringen-styrker-kontrollen-med-platformsoekonomi/.

[65] Statutory Act on Holidays no. 1025 of 4 October 2019 and report of the Holiday Commission, Report 1568 of 2017, available at https://www.regeringen.dk/media/3803/ferielovsudvalgets-betaenkning.pdf.

[66] Preliminary works to Proposal L116 of new Holiday Act, section 2.2. pp. 15 and 39, available at https://www.ft.dk/ripdf/samling/20171/lovforslag/l116/20171_l116_som_fremsat.pdf.

[67] In Danish "honorarlønnede".

[68] In Danish "overensstemmende med".

[69] Author's translation.

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Social Partners

There are no Danish social partners exclusively targeting platform workers. Platform companies and platform workers are members of the established trade unions and employer associations in Denmark, and their interests are promoted by these.

Generally, the established trade unions and employers' associations have a history of extending rights in collective agreements to non-standard groups of workers. Negotiations on agreements specifically for persons in non-standard work has taken place as well, *e.g.* for freelance journalists and photographers. Along the same line, several of the social partners have shown an interest in concluding agreements covering platform workers.

As a completely new initiative, a new employer organisation was established in 2021 aiming to support and promote companies in the Fintech industry, Copenhagen Fintech[70]. Copenhagen Fintech in April 2021 concluded a Main Agreement as well as a collective framework agreement with the main trade union for persons working in the financial industry, Financial Services Union[71]. The agreement provides salary- and working conditions for persons working in fintech companies, meaning companies, that combine new technology and financial services. The framework agreement is adjusted to the special working conditions for financial services organised primarily by way of on-line solutions.

The main social partners have by March 2022 negotiated three tailor-made collective agreements for labour platforms as well as several specific initiatives aiming to support freelancers and independent contractors performing work. These are discussed in the section on Social Partner in Section 3.

3. *Platform Work*

Extent and relevance of platform work

A study on the total extent of the platform economy in Denmark, including the total number of companies, the number of workers at any given time, as well as further statistical data on the particular demographics of the individuals, have not yet been carried out.

Statistics Denmark does not distinguish between different types of platform companies, and the extend of digital labour platforms have not yet been measured specifically.

Other actors have carried out a number of investigations on the use of platform work.

[70] https://copenhagenfintech.dk/.

[71] https://www.finansforbundet.dk/dk/nyheder/2021/ny-aftalepartner-og-rammeoverenskomst-pa-fintech-omradet/.

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In relation to their work with “a strategy for the sharing economy” the Danish Ministry of Industry, Business and Financial Affairs had platforms mapped in 2017. The scope was: “*digital companies that have commercial or non-commercial business models, where consumers and/or companies borrow, buy, sell (used) goods, trade or lease products and/or services to/from each other through digital platforms*”[72]. The mapping included 36 companies, operating in Denmark, which offered some sort of labour intensive service[73].

In December 2018 the Danish Competition and Consumer Authority had Copenhagen Economics audit a statement, concluding that almost 200 digital platforms facilitate private individuals and/or companies to loan, trade or lease services, such as private property, cars or labour[74].

In 2017, approx. 2% of Danish services (capital and labour) were offered via a digital platform[75].

More specifically, a survey in 2017 on digital labour platform showed, that 1% of Danes, aged 15-74 years (42,367 people), during 2017 had offered labour services via a digital platform[76]. 61% of those people earned less than 25,000 DKK (3,400 EUR) by doing so and the group for whom platform work could be considered the primary source of income was so marginal that the report did not include the result.

The same study showed that 38% of the service providers on the labour platforms where in the age-range 20-29. This group was around twice as likely to have performed work on a platform.

The same survey was carried out in 2019[77]. The extent, demography and size of income via platform work was largely at the same level.

The Covid-19 situation had different effects on platform companies[78]. Some companies experience an increase in demand, such as Wolt (takeaway couriers) and Worksome (freelance tasks), whereas other platform companies closed down, such as Chabbner in the restaurant and event-industry.

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[72] https://em.dk/nyhedsarkiv/2017/januar/erhvervsministeriet-kortlaegger-platformsoekonomien-i-danmark.

[73] https://em.dk/media/10142/platformsokonomi.pdf.

[74] https://www.kfst.dk/media/4jvf1aih/digitale-platforme.pdf, s. 2.

[75] A. Ilsøe, L.W. Madsen, Digit*alisering af arbejdsmarkedet. Danskernes erfaring med digital automatisering og digitale platforme*, FAOS Research Note 157, Copenhagen, 2017.

[76] K. Jesnes, F. Braesemann, *Measuring online labour: A subcategory of platform work*, Fafo, Nordic future of work Brief 2, 2019, cf. A. Ilsøe, L.W. Madsen, (2017). *Digitalisering af arbejdsmarkedet. Danskernes erfaring med digital automatisering og digitale platforme*, cit., p. 40.

[77] A. Ilsøe, T. Larsen, *Platformsøkonomiens udvikling i Danmark – stabilitet og forskelle*, Samfundsøkonomen, 2021, 1 https://www.djoef-forlag.dk/openaccess/samf/samfdocs/2021/2021_1/Samf_6_1_2021.pdf.

[78] A. Ilsøe, T.P. Larsen, *Forskere: Coronakrisen rammer platformsøkonomien skævt*, Altinget.dk, 14 May 2020, https://www.altinget.dk/arbejdsmarked/artikel/forskere-corona krisen-rammer-platformsoekonomien-skaevt.

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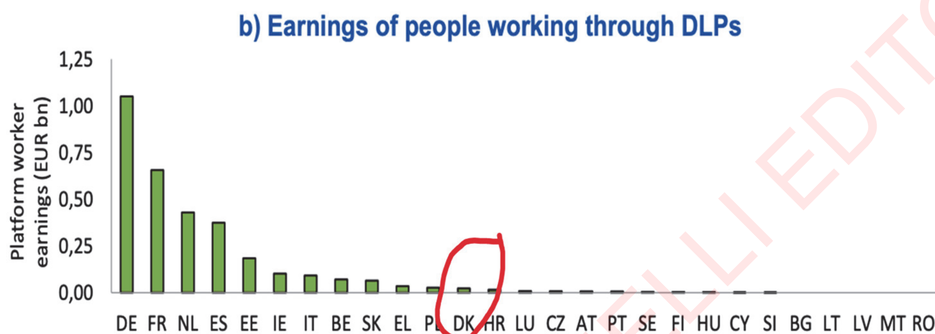
The Danish levels more or less corresponds with the levels in the other Nordic countries, where platform work is estimated at 0,3% or 2% of the work force[79].

The EU study Digital Labour Platforms in the EU, June 2021[80], provides further insights. The income in Denmark via digital labour platforms is somewhat in the lower end, compared to income for persons in other EU member states:



Source: Digital Labour Platforms in the EU, p. 31.

The extent in the Nordic countries is generally lower that the average in the EU member states, where 10% of adults in 2017 had income via platform work, and where 2% of workers earn 50% or more of their income via platform work carried out for more than 20 hours per week[81].

The Danish surveys can have several uncertainties. This is not unique to Denmark, but the manner of measuring part of the labour market, that is highly digitalised, where work is sporadic, and where the platform companies do not register their service providers or their income, is an issue. The surveys may include "dark numbers", as platform work is also carried out by migrants, young workers and (formerly) youth from third countries on working holiday visa[82],

[79] K. JESNES, S.M.N OPPEGAARD, *Platform work in the Nordic models*, afsluttende rapport i projektet http://norden.diva-portal.org/smash/get/diva2:1431693/FULLTEXT01.pdf og J.I. STEEN, J.R. STEEN, K. JESNES, R. RØTNES, *The Knowledge-intensive platform economy in the Nordic countries*, Nordic Innovation 2019, https://norden.diva-portal.org/smash/get/diva2:1345344/FULLTEXT01.pdf s. 33.

[80] *Digital Labour Platforms in the EU, Mapping and business models, Final report*, DG Employment June 2021, s. 7, https://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=8399&furtherPubs=yes.

[81] A. PESOLE, ET AL, *Platform workers in Europe: Evidence from the COLLEEM survey,* Luxembourg, Publications Office of the European Union https://publications.jrc.ec.europa.eu/repository/handle/JRC112157.

[82] F.eks. af A. ILSØE, T.P. LARSEN (eds.), *Non-standard work in the Nordics: Troubled waters under the still surface*, emaNord, no. 503, Nordic Council of Ministers, Copenhagen,

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where the surveys may not reach these workers, or the workers may not give much feedback.

Main Issues for Regulation

Labour platforms – generally – operate in an unregulated setting; "where market forces regulate pricing and working conditions" [83].

The focus originally concerned adapting the social security regulation, to adjust to new forms of work already in 2018.

At the same time, the Taxi regulation was adjusted as a result of Uber arriving in the Danish market for transportation of persons.

The next issue was the status as employees or independent contractors, both with regards to rights under statutory legislation and collective representation rights, including concluding collective agreements. In line with the Danish Model, the first regulators on status and material rights were collective agreements in 2018. With the exception of negotiated agreements, the platform workers, however, lack access to other collectively agreed benefits, such as pensions, further training, paid sick leave, etc. [84].

However, as a consequence of the Competition Authority ruling in 2020, the environment for negotiating cooled off, as the platform companies and trade unions were uncertain about the approach to assessment of status by the administrative authority in competition law, which is not aligned with the assessment of status by the social partners/platform companies, such as in the Hilfr-agreement.

Since then, the focus has been on how to improve the organisation of assessment of status of platform workers, as status is the gateway to negotiating agreements, collective representation, health and safety including working time and paid annual leave, as well as social security rights.

No legislative efforts have taken place in Denmark, the Competition authorities looks towards initiatives from the EU Commission. The draft Guidelines by DG Competition on 9 December 2021 is currently discussed and negotiated by government, trade unions and competition authorities.

In the initiative from September 2021 "Denmark can more I", the focus for an organised labour market is on status as employee or self-employed [85] specifically aiming at platform work and "false self-employed" in atypical employment, in other forms of digitally organised work relationships. This specific focus has re-

2021; A. Ilsøe, T.P. Larsen, *Platformsøkonomiens udvikling i Danmark: stabilitet og forskelle*, in *Samfundsøkonomen*, 2021, 1, pp. 45-53; T.P. Larsen, A. Ilsøe, E.S. Bach, *Atypisk beskæftigede i atypiske tider: Regeringens coronahjælpepakker og deres effekter*, in *Samfundsøkonomen*, bind 2020, 4, pp. 39-47.

[83] A. Ilsøe, T.P. Larsen, *Digital platforms at work. Champagne or cocktail of risks?*, in A. Strømmen-Bakhtiar, E. Vinogradov (Eds.), *The Impact of the Sharing Economy on Business and Society*, Routledge, London, 2020, p. 8.

[84] A. Ilsøe, T.P. Larsen, *Digital platforms at work. Champagne or cocktail of risks?,* cit., p. 9.

[85] https://fm.dk/nyheder/nyhedsarkiv/2021/september/danmark-kan-mere-i/, p. 13.

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sulted in a working group being established for discussing legislative ways forward, as well as discussing the solutions in the proposed Directive improving working conditions in platform work from the EU-commission. The working group has representatives from the Ministry of Business, the Ministry of Taxation, and the Ministry of Employment, as well as all the major social partners from all sectors. It is expected, that a legislative proposal perhaps supported by a tripartite agreement will be the result of the negotiations.

Social Partner Initiatives

The social partners have been engaged in three avenues of collective agreements, that perform work in platform companies, as well as in other forms of support for their members:

The first avenue was a tailormade agreement at company level. This was a tailormade agreement with the platform company *Hilfr* as a pilot-project in 2018 The platform is the second largest platform offering cleaning services in Denmark, with 216 cleaners and 1.700 customers[86]. The entrepreneurs themselves initiated contact to the trade union, as a way to develop their business and give their platform a competitive edge in the market[87]. The platform company owners negotiated with 3F, the largest trade union in Denmark for unskilled workers. In 2018, the parties agreed to the *Hilfr*-agreement. The agreement entails[88], that cleaners at the Hilfr platform are either *FreelanceHilfr* or *SuperHilfr*. *SuperHilfr* are covered by the agreement, *FreelanceHilfrs* are not. Superhilfrs are provided with minimum hourly pay, paid holidays, a pension plan, a health care plan, and sick leave benefits. The right to employer funded pension contributions are earned after minimum 320 hours of paid employment with Hilfr within a 3-year-period. The agreement protects against dismissal by stating that deletion or depersonalisation of the employee's profile in the platform can only take place after 2 weeks' notice in writing, and a discretionary decision of dismissal must be based on substantial reasons relating to the company or the employee. Cleaners by default obtain status as *SuperHilfrs* after 100 hours of work via the platform. However, the status is voluntary – cleaners can opt-in before having worked 100 hours and cleaners can opt-out after having worked 100 hours. In reality, the agreement was based on a fully individual opt-in-opt-out mechanism for the individual cleaner[89]. Negotiating a tailor-made agreement for platform work came at a cost. The essential principle of binding collective agreements, where the individual worker and employer cannot derogate the protections of the collective agreement to the detriment of the worker, was sacrificed.

[86] Hilfr.dk.

[87] Faos report 176, p. 6.

[88] Available in English at https://www2.3f.dk/~/media/files/mainsite/forside/fagforening/privat%20service/overenskomster/hilfr%20collective%20agreement%202018.pdf.

[89] This element was heavily criticized.

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The pilot project did not give guidance to future negotiations with more hostile platforms[90]. Trade unions have not yet engaged in industrial action against digital labour platforms (2021). It added to the uncertainty of the market, that the Competition Authorities in Denmark in August 2020 ruled, that *Superhilfrs* are not considered workers in the context of the Competition Act and TFEU article 101[91], and the Hilfr-agreement was thus a breach of competition law. Hilfr conceded to the ruling, and adjusted the working terms of the *Superhilfrs* in order to ensure, that cleaners can still be covered by a collective agreement.

The second was an accession agreement for one platform company, aligning with existing agreements for the same type of work: A second agreement from 2018 was the *Voocali*-agreement[92]. The *Voocali*-agreement was in the form of an accession agreement. *Voocali*.com is an interpretation platform company, which offers interpretation services to public and private entities. The agreement entails, that interpreters, who are employees, are provided with all the rights of the Collective agreement for White Collar Workers in Trade, Knowledge and Service[93], between *HK Privat*, the largest union for salaried employees, and *Dansk Erhverv*, the Danish Chamber of Commerce. The parties agree to conclude a *special* collective agreement for freelancer interpreters at Voocali[94]. This agreement entails[95], that freelancer interpreters receive a guaranteed fee agreed to in the collective agreement with HK Privat, transportation supplements, no-show fee in event of cancellation, a requirement of objective reasons for being excluded from the platform, registration of taxes for freelancers without a Business Registration number, no restrictions with regards to carrying out assignments outside of Voocali.com, data portability to take their user-ratings with them. The freelance agreement did not include occupational pensions, re-training programmes, additional tax-registrations, a complaints mechanism for ratings, as these elements

[90] A. ILSØE, T.P. LARSEN, *Why do labour platforms negotiate= Platform strategies in tax-based welfare states*, in *Economic and Industrial Democracy*, 111 November 2021.

[91] https://www.kfst.dk/media/qv5hoinx/20200826-minimumspriser-p%C3%A5-hilfrs-platform.pdf.

[92] https://www.hk.dk/aktuelt/nyheder/2018/10/01/hk-indgaar-overenskomst-med-platformsvirksomhed.

The accession agreement is available in Danish at https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/erklringvoocalihkprivatendelig.pdf?la=da&hash=F220F50F58285F3F4681F9AE6A81E2E716EF953C.

[93] https://www.hk.dk/-/media/dokumenter/overenskomst/privat/10600/10559_danskerhverv_handel_viden_service_2017_2020.pdf.

[94] Standard contracts and terms for freelancers available at https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/appendix41.pdf?la=da&hash=62EC78D86F778B2EAC6042E523299052.

[95] https://www.hk.dk/-/media/dokumenter/raad-og-stoette-v2/freelancer/appendix74.pdf?la=da&hash=4F6B32877A1D5F6A50AD08129D961D6A.

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were part of the envisaged future negotiations. The rates were negotiated on the basis of the salary-statistics, which includes salary, holiday pay, hardship allowances, sickness pay, supplements, employee fringe benefits, pension contributions of the employer, special holiday days, education costs and insurance. These elements were not separated in the agreement, and the rates for the freelancers included these elements indicating that the freelancers themselves should put aside money from the salaries to cover these additional costs, also those relating to pension payments and sickness pay. The freelance agreement was in force for one year in a trial basis. The agreement is under re-negotiating.

The third agreement was a national sector-agreement between a trade union and an employers association: Thirdly, in January 2021 the first sector-agreement for platform work was concluded between the Danish Chamber of Commerce (Dansk Erhverv) and 3F, and covers food-delivery [96]. The agreement covers workers, and entails that food-couriers are employed by the platform company. The Agreement includes salary- and working conditions that are usual for the logistics sector, including minimum pay, extra payments for certain working hours, flexible working hours and a guarantee for minimum work per week. The takeaway portal Just-Eat have acceded to the agreement, and since October 2021, all delivery couriers of Just-Eat have been covered by the agreement. The main competitor in the food delivery industry, Wolt, who contracts only with self-employed couriers, criticises the agreement for not being attractive enough for the couriers [97].

No collective action: What has not yet taken place in Denmark is collective action against more hostile platform companies. The momentum is however building up, indeed with a new courier platform company Wolt, who is on the quick rise, and who performs services in an area of the market, that is already well-regulated by collective agreements for both motorized and bicycle couriers. In that sense, this new service is a direct competitor to the members of the trade union 3F, who organises and negotiates agreements for most couriers. A recent ruling on the status of a Wolt-courier in relation to Taxes [98] conclude, that the Wolt-courier is an employee. The ruling, as well as the interpretation of the conditions for work via Wolt, may have a spill-over effect on the assessment of the status of Wolt-couriers also in labour and employment law. This could affect the assessment of the lawfulness of industrial action, in time when such a case is heard by the Labour court, and could ease the way for industrial action also against hostile labour platforms.

Alternative services: The social partners have provided a number of services to their members, who wish to start up as freelancers or independent contractors.

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[96] https://www.danskerhverv.dk/presse-og-nyheder/nyheder/2021/januar/take-away-med-overenskomst/.

[97] https://www.horesta.dk/presseklip/2021/januar/konkurrent-gaar-i-rette-med-just-eat-overenskomst-med-3f-er-langt-fra-ambitioes/.

[98] https://radarmedia.dk/her-er-skatteraadets-wolt-afgoerelse-i-fuld-laengde/.

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The purpose is to facilitate a life as freelancer as well as ensure decent working conditions aligned with the working conditions in collective agreements. The bureaus are not viewed as platform companies, but the services are highly automated.

Three trade unions for persons with higher educations (DM (academic professionals), IDA (Engineers) and DJOEF (Law, Economy, Sociology and Business Academics) initiated a collaboration with Worksome, a platform company for highly educated service providers[99]. The unions give input to the contracts and standard terms of business with the platform company, however, the standards are not binding on service providers nor platform companies.

The trade union for administrative and clinical assistants, HK Privat, and the Danish Association of Professional Technicians, TL, have started services for their members, that facilitate earning income as freelancers. HK has launched a "Service bureau" for freelancers[100], TL has launched a bureau called "Teknik and Design"[101]. The models assist members, who wish to earn a living as freelancers/independent contractors, with facilitating the administrative side. The member finds their own customers and assignments, negotiate the prices, and then the service bureaus employs the member and organises the paperwork, invoicing, tax-registration, pay minimum salary. The bureaus are non-profit services to the members, and charge a percentage of the prices as commission. The status of the bureau as employer has not been tested. The service bureaus operate in the borderline between platform companies and trade unions.

4. *Remote Work*

There is no overall generally applicable statutory provision or universal collective agreement that addresses remote work per se. The legal sources are varied, in the form of statutory acts, executive orders, collective agreements at main agreement level, sector level and shop level, the individual employment contract, individual agreements on remote work, or unilateral work place rules on remote work.

Indeed, there is no general legal definition of remote work, or other forms of work performed away from the employer's premises. Definitions are found in the applicable legal sources.

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[99] https://www.djoef.dk/presse/pressemeddelelser/2019/fagforeninger-og-den-digitale-arbejdsplatform-worksome-indg-aa-r-aftale.aspx.

[100] https://www.hk.dk/raadogstoette/freelancer/bureau?gclid=CjwKCAiA6Y2QBhAtEiwAGHybPbQfas1Pwp0yh1eipOL6LOMv7BfK6GfORCp_J7XSz03mjWSIbc7dlxoCSoYQAvD_BwE.

[101] https://tl.dk/om-os/aktuelt/artikler-fra-teknikeren/2016/maj/kraftig-vaekst-paa-freelancefronten/#.

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Telework (*telearbejde*) does not have a specific Danish definition, but the Framework Agreement on Telework is implemented verbatim in certain main agreements, see further below. The definition of Telework thus "a form of organising and/or performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis".

Distance work (*distance arbejde*) is defined in collective agreements at sector level in Denmark. Distance work is defined in the Industry Collective Agreement as "work which is performed regularly outside the employer's business address, but which could just as well have been performed at the company"[102]. Distance work often takes place by using electronic aids, *e.g.* a PC or a telephone, but it also includes other kinds of work that the employee performs, *e.g.* assembling components, at home without using any electronic aids[103]. This means that distance work does not necessarily involve the use of technology or other electronic devices. In some sector agreements an electronic device is included in the definition. The IT Collective Agreement[104] defines distance work as "all work for which electronic aids are being used and where the work is performed outside the company, *e.g.* in the home, but which could as well have been performed at the company"[105]. For instance, an employee who works in Copenhagen, but works 1 week a month in Rome, is distance working.

Remote work (fjernarbejde) does not have a definition distinguished from distance work. Some labour market actors use the terms interchangeably. Some companies choose to define remote work as a special form of distance work, where the work is (always) performed remotely from the employer's premises (if any). Such as the platform company goedit.dk, where the work is remote, and the worker is a self-employed remote worker[106]. This understanding of remote work is particular to the work relationship establishing by contracting self-employed rather than employees to perform tasks, and is not a generally used definition. In this report, this form of remote work is addressed as a new more modern form of remote work.

[102] Danish Industry: https://www.danskindustri.dk/vi-radgiver-dig-ny/personale/arbejdstid/distancearbejde/ and Industry Collective Agreement 2020-23, concluded by the employers' association Danish Industry (*Dansk Industri*, DI) and the worker organization the Central Organization of Industrial Employees in Denmark (*CO-industri*), p. 91.

[103] Danish Industry: https://www.danskindustri.dk/vi-radgiver-dig-ny/personale/arbejdstid/distancearbejde/.

[104] The IT Collective agreement 2020-2023, concluded by the Danish Chamber of Commerce (*Dansk Erhverv*) and the trade union for salaried employees in retail and administration in the private sector (*HK Privat*).

[105] The IT Collective agreement 2020-2023, p. 41.

[106] GoEdit: https://www.goedit.dk/blog/remote-workers-hvem-er-de-og-hvorfor-har-du-brug-for-dem.

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Home work is defined in various legal sources as work performed in the private home of the employee. The amount of work performed from home is as a starting point not decisive. Most significantly is, that the Statutory Act on Work Environment specifically provides, that the Act may have limited application to work, that is performed in the home of the employee, cf. section 4. In the Executive Order no 247 of 2 April 2003 the Minister of Employment states, that the provisions with only few exceptions apply also to work, performed in the home of the employee, cf. section 1. However, all rules on the organisation of the physical work space as well as rules on working on screens apply, when all the work is performed from home, or when work is performed from home regularly and equals approx. 1 day's work within each normal work week. Home work is similar to distance work and remote work, with the specific criteria, that the work is performed from the employee's private home.

Home office does not have a legal definition, but refers to a space designated in an employee's residence for official business purposes.

In Denmark, it is quite normal for employees in many sectors to work remotely once in a while or on a regular basis, usually from the employee's private home, as part of the terms of employment in general at shop level or as a result of an individual agreement.

Early estimates on homeworking show, that approx. 12% of the work force in 2000 was estimated to work partly or fully from home [107]. Danish surveys from 2018 and 2019 show, that 8% of employees worked regularly from home.

During the lockdowns, all non-essential public employees were sent home – either to work from home, or to be at home without working. In the private sector, companies were encouraged to send as many employees as possible home to work, if possible. As a result, homeworking during Covid-19 naturally increased explosively.

Many employees were able to continue working from home. It is estimated that in the private sector alone, approx. 500.00 employees worked from home during Covid-19 lockdown (approx. 33%) compared to 70.000 pre-corona (approx. 4%) [108]. An estimated 830.000 persons performed work from home on a regular day of work during the first lockdown in April 2020 [109]. In the public sector, approx. 18% regularly worked from home in 2020 during Covid-19 lockdown compared to approx. 7% pre-corona [110].

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[107] Proposal for amendment of the Working Environment Act, proposal 147 of 1999/1, https://www.retsinformation.dk/eli/ft/19991BB00147.

[108] Danish Industry survey: https://www.danskindustri.dk/arkiv/analyser/2021/1/90.000-flere-vil-arbejde-hjemme-efter-coronakrisen/.

[109] https://www.danskindustri.dk/arkiv/analyser/2021/11/den-nye-normal-100000-flere-arbejder-hjemme/.

[110] Statistics Denmark, Hjemmearbejde fordoblet i 2020 (Labour Market survey), accessed 18 February 2021: https://www.dst.dk/Site/Dst/Udgivelser/nyt/GetPdf.aspx?cid=32435.

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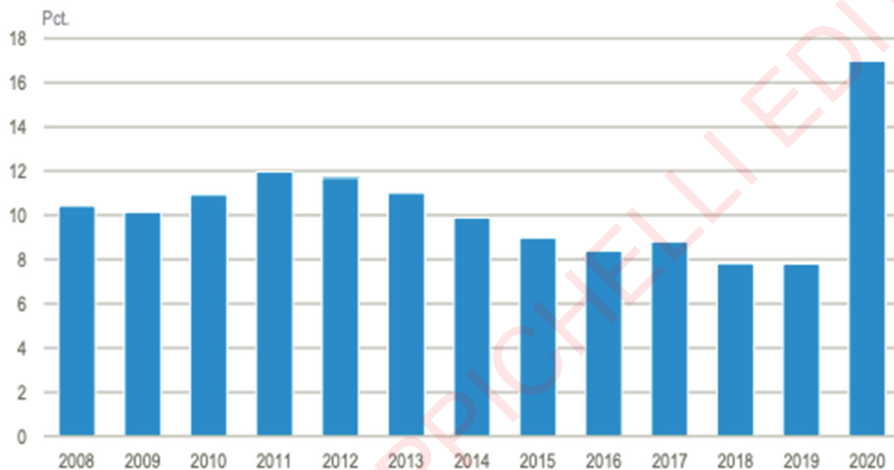
During lockdowns in 2020, this number was doubled, where approx. 17% of all employees worked regularly from home. The below table illustrates the level of homeworking for employees aged 15-64 performed on a regular basis in the years preceding Covid-19 and in 2020 during Covid-19. “Regular” homeworking is defined as working at least half of the time from home within the preceding 4 weeks:



Source: Statistics Denmark [111].

The numbers reflect workers, who worked more than half of their working time from home. If including also those, that worked from home on a more casual basis, the number in the second half of 2020 rose to an overall 40% of all employees.

Many employees were able to continue to work also when sent home to work from home during the lockdown. Homeworking increased across all sectors. The following table illustrates the percentage of persons working “regularly” from home in 2019 (green) and in 2020 (blue) segregated in industries:

[111] Statistics Denmark, Hjemmearbejde fordoblet I 2020 (Labour Market survey), accessed 18 February 2021: https://www.dst.dk/Site/Dst/Udgivelser/nyt/GetPdf.aspx?cid=32435.

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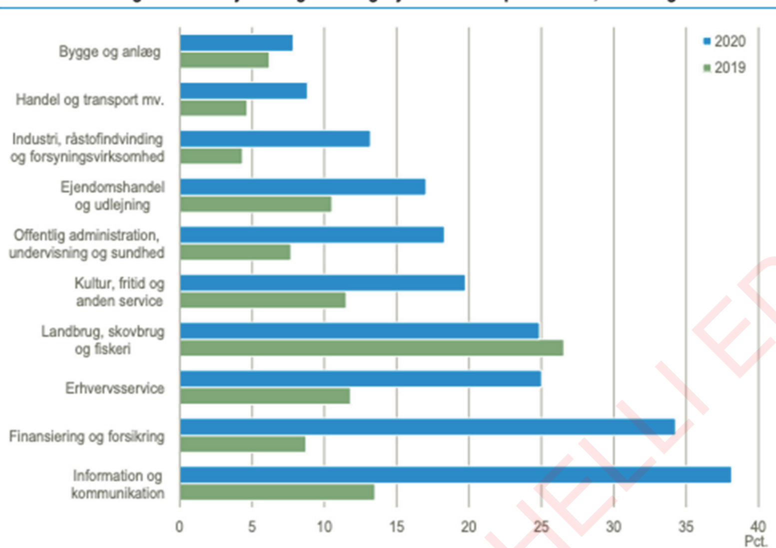

Only in the agriculture, forestry and fisheries industry, the number declined from 2019 to 2020, dropping from 26% to 25%. In all other industries, the numbers rose significantly from 2019 to 2020: The building and construction sector (from 6% to 8%); the trade and transportation industry (from 4,5% to 9%); the industries and utilities (from 4% to 13%); real estate and rentals (10,5% to 17%); public sector (from 7% to 18%); culture, leisure and other services (from 12% to 20%); in commercial services (from 12% to 25%); in financing and insurances (from 8% to 34%); and information and communication (from 14% to 38%).

The information and communication industry had the highest percentage of employees working regularly from home. The industry, that experienced the largest increase in homeworking was the financing and insurances, that experienced an increase of 25 pct. Points from 9% in 2019 to 34% in 2020.

Implementation of 2002 Framework Agreement on Telework

Before the Framework Agreement on Telework (the European Telework Agreement) was concluded in 2002, several social partners had concluded agreements addressing *distance-work* (as the term then used). One example is the framework agreement on telework, concluded in 1998 by The Danish Chamber of Commerce (*Dansk Erhverv*) and the trade union for salaried employees in retail and administration in the private sector (*HK Privat*) [112].

[112] IT Collective agreement 2020-2023, https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/2020-overenskomster/it-overenskomst-2020-23.pdf p. 47.

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The social partners have implemented the European Telework Agreement at the national level by a number of collective agreements. It is not implemented by statutory act. Implementation was carried out by concluding new agreements or by updating existing collective agreements on telework.

In the private sector, the Main social partners, the Confederation of Danish Employers (*Dansk Arbejdsgiverforening*, DA) and the Danish Trade Union Confederation (*Fagbevægelsens Hovedorganisation*, FH – formerly LO) on 27 October 2006 concluded an agreement on telework, as a Protocol to the Main Cooperation Agreement between DA and FH (*Samarbejdsaftalen*)[113]. The European Telework Agreement is implemented at Main Agreement level in the private sector. The Protocol on Telework (*Aftale om telearbejde – tillægsaftale til samarbejdsaftalen)* came into force on 1 January 2007. The purpose of the Protocol Agreement was specifically to implement the European Telework Agreement, which is translated into Danish and in its entirety is part of the Protocol Agreement on Telework[114].

At sector level, the employers' association Danish Industry (*Dansk Industri*, DI) and the worker organization the Central Organization of Industrial Employees in Denmark (*CO-industri*)[115] have concluded a supplementing collective agreement, Protocol 20, on tele-, distance- and homework (the CO Industry Telework Agreement)[116], which specifically implements the European Telework Agreement. The CO Industry Telework Agreement provides more detailed provisions compared to the European Telework Agreement. The CO Industry Telework Agreement applies to telework, as defined in the European Telework Agreement, as well as to distance- and homework, which is defined as work, which could have been performed at the employer's premises, but is performed outside the company but without the use of information technology, cf. no. 1. It is specified in no. 2, that shop stewards must be kept informed of any dismissals of tele-, distance- or homeworkers. It is specified in no. 3, with regard to the collective rights of tele-, distance- or homeworkers, in addition to what the European Telework Agreement states, cf. no 11, that tele-, distance- and homeworkers are eligible to be elected as and to vote in the election of shop stewards, health and safety representatives, and employee board members. In addition, that tele-, distance- and homeworkers must be counted as employees when thresholds must be met for establishing organs with employee representation. The CO Industry Telework Agreement is implemented at sector level in the private sector.

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[113] The Cooperation Agreement 2006 between DA and LO, 13. ed., Protocol on telework, pp. 29-39, https://www.samarbejdsnaevnet.dk/fileadmin/user_upload/Pdf/Samarbejdsaftalen.pdf.

[114] *Ibidem*.

[115] Parties to the Industry Collective Agreement 2020-2023: https://www.danskindustri.dk/globalassets/di-dokumenter-kun-til-dokumentsider-i-radgivningsunivers/for-alle-kraver-ikke-login/overenskomst-fx-io/industriens-overenskomst-2020-23.pdf?v=210313.

[116] Industry Collective Agreement 2020-23, Protocol 20, pp. 195-200.

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Also at sector level, the Danish Chamber of Commerce (*Dansk Erhverv*) and the trade union for salaried employees in retail and administration in the private sector (*HK Privat*) have over many years had a collective agreement concerning IT work (the IT Collective Agreement)[117]. The IT Collective Agreement applies to IT-companies, including media, tele- and support-companies, whose primary business areas are within sales, development, and/or IT operations. The latest version is the 2020/23 IT Collective Agreement. In the IT Collective Agreement, an appendix on distance-work specifically updates the existing framework agreement on distance-work (since 1998) to implement the European Telework Agreement[118]. The distance-work appendix applies to work, which could have been performed at the company's premises, but which is performed elsewhere and involves the use of electronic equipment. Mobile workers, such as sales representatives and others with changing workplaces, are not covered by the agreement. The content follows the European Telework Agreement. The IT Collective Agreement is implemented at sector level in the private sector.

In the public sector, the European Telework Agreement was implemented in 2005 by Ministerial Circular of 6 July 2005 informing about the collective agreement on telework in the state[119]. The Ministry of Finance (FM) on the state's side, and the Central Organizations' Joint Committee (CFU) on the workers' side, concluded an implementing collective agreement on telework for employees in the state (State Telework Agreement). The State Telework Agreement applies to civil servants, employees employed on civil servant-like working conditions, and to all public employees covered by collective agreements applicable in the state. Teachers are explicitly exempt from the State Telework Agreement[120]. The State Telework Agreement specifies, that the State Telework Agreement is considered to implement the European Telework Agreement for persons covered by the scope of the State Telework Agreement[121]. The European Telework Agreement has thus been implemented in its entirety in the public sector at State level. The State Telework Agreement provides, that shop level collective agreements (*lokalaftaler*) will further complete the framework for distance work, cf. section 7. In section 8, the circular provides, that with reference to the shop level agreements. The implementation method in this case in reality provides an overall framework, which then must be completed by two additional levels of agreements at shop level: A shop level collective agreement which sets out the specifics for teleworking/homeworking at the particular entity, and an individual agreement, which must be in place for each person agreeing to perform work on a tel-

[117] The IT Collective agreement 2020-2023.

[118] The IT Collective agreement 2020-2023, p. 40.

[119] Circular no 9541 of 6 July 2005: https://www.retsinformation.dk/eli/retsinfo/2005/9541.

[120] *Ibidem*., section 1.

[121] *Ibidem*., section 3.

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ework/homeworking agreement, and which must be based on the shop level agreement for telework[122].

At Municipality level and Regional level, the European Telework Agreement was implemented in 2005 by the Framework Agreement on Tele and Homework between KL – Local Government Denmark (*KL – Kommunernes Landsforening*) and Danish Regions (*Danske Regioner*, then *Amtsrådsforeningen*) on the employers' side, and KTO – the Municipal Employees and Civil Servants (*KTO*) on the workers' side, and by this[123]. The Tele- and Homeworking Agreement was in 2015 updated to the current Framework Agreement on Tele- and Homeworking in local municipalities[124], and Framework Agreement on Tele- and Homeworking in the regions[125]. Both agreements have commentary's explaining the relationship between the agreements and statutory legislation on health and safety at work and occupational injuries, taxation issues, registration of information and data, and liability for damages, the latest version is from 2015[126]. Also these agreements provide a system with an overall framework at sector level, which is supplemented at shop level by two forms of agreement: a shop level collective agreement which provides the specific rights and duties for homeworking/teleworking at the entity, and then an individual agreement that is the voluntary agreement for each employee, with terms based on the shop level agreement and supplemented with individually agreed terms. It is specifically provided in the commentary, that new employees are subject to the same terms for homeworking/teleworking as existing employees. If there is a shop level agreement on homeworking as one of the working conditions, the will to perform homework/telework may be a condition of employment. If there is no shop level agreement, the will to perform homework/telework may not be a condition for employment.

The right or the duty to perform remote work or homeworking is thus dependent on shop level agreements providing a more detailed framework for homeworking/telework at the enterprise, the terms of the individual employment agreement, including implied terms such as pre-existing unilateral company regulations, and supplementing individual agreement specifically on homework. In the implementing sector level collective agreements, also those that go beyond the European Telework Agreement in scope or in regulation of provisions, it is consistently a voluntary element subject to agreement with the individual employee. Sector level agreements allow for shop level agreements, that may introduce an expectation to perform work as homeworking/distance working for specific groups of employees and on a number of specified terms.

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[122] *Ibidem*., section 9.

[123] Agreement of 30 November 2005, https://www.forhandlingsfaellesskabet.dk/media/3370/5_5_1.pdf.

[124] https://www.forhandlingsfaellesskabet.dk/media/995527/6_f_1_1.pdf.

[125] https://www.forhandlingsfaellesskabet.dk/media/1002900/6_f_2_1.pdf.

[126] https://www.forhandlingsfaellesskabet.dk/media/10063/vejl_tele_hjemmearb.pdf.

The Statutory Act on Work Environment (the Work Environment Act)[127] aims to create a safe and healthy physical and mental working environment that is at all times in accordance with technical and social development in society. Although the Work Environment Act applies in all workplaces, the Act does not specifically implement the European Telework Agreement. The starting point is, that the working environment legislation applies to any place, where the employee performs work for an employer – including when the work is carried out in the employee's home on a regular basis – i.e. 1 day per week or more. The DWEA have issued specific guidelines on health and safety for homeworking[128]. The regulation on the layout of the workplace, on work at a computer, on the health and safety organisation, and on daily and weekly rest periods, apply with some adjustments. It is the responsibility of the employer to ensure, that the health and safety regulation is adhered to, and the employee is obliged to cooperate to this end. The employer must ensure a safe and healthy layout of the workplace, including lighting and particular rules relating to screen work[129]. Screen work regulation includes sufficient room for suitable working positions and movements, special regulation of desks, chairs, screens, programmes and lighting, eyesight examinations, the right to glasses for work at the screen, as well as organising regular breaks[130]. Employees performing work regularly from home must participate in the shop level health and safety organisation, and some groups of homeworkers can have their own safety-representative[131]. The annual or biannual work place survey (APV) must include also homework places, and the physical layout as well as the layout for screenwork must be addressed. Likewise, any particular psychosocial problems of working from home must be assessed[132]. The right to daily and weekly rest periods apply also to homeworking, but a number of derogations can be made, if the work is still carried out sufficiently safe and if the employee can take compensating rest periods immediately after. For on-call work performed from home, the normal regulation of daily and weekly rest periods cannot be derogated from[133]. Inspections will normally not be carried out in the private homes of employees. Inspections can be carried out at the request of the employee, and in this case the employer must be notified and the health and safety representative must be included[134].

The DWEA has issued an Executive Order on Display Screen Work[135], im-

[127] Statutory Act on Working Environment, no 674 of 25 May 2020, https://www.retsinformation.dk/eli/lta/2020/674.

[128] AT-Guidance D.2.9-2 about homework, p. 1.

[129] AT-Guidance D.2.9-2 about homework, no. 2.

[130] AT-Guidance D.2.9-2 about homework, no. 3.

[131] AT-Guidance D.2.9-2 about homework, no. 4.

[132] AT-Guidance D.2.9-2 about homework, no. 5.

[133] AT-Guidance D.2.9-2 about homework, no. 6.

[134] AT-Guidance D.2.9-2 about homework, no. 7.

[135] The Danish Working Environment Authority executive order no 1108 of 15 December 1992 about display screen work, https://www.retsinformation.dk/eli/lta/1992/1108.

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plementing the EU Directive on screen work[136]. The Executive Order on Display Screen Work is enforceable and a violation of some specific sections in the Executive Order on Display Screen Work are associated with criminal liability and a violation can therefore result in a penalty.

The DWEA Guideline on screen gives specific guidelines to the existing rules on screenwork[137]. Working at home often means that the employee works with a screen unit, such as desktops, laptops, touch screens, tablets and mobile phones. It can also include other electronic displays of text, numbers, images, graphs, etc. The requirements of the working environment legislation for work with display units follow, in particular, the general working environment rules that apply in relation to the performance of the work, the layout of the workplace and the use of technical aids. In the Executive Order on Screen work, special rules apply when the individual employee regularly works at a screen unit and for a significant part of his regular working hours. This means that special requirements, *e.g.* the work equipment, fixtures and fittings of the workplace, and eye examinations when they work at a display unit takes place almost every working day and constitutes a not insignificant part of the working hours as an average over the working week. This also applies to homeworking.

As a starting point, all rules and regulation concerning mental health also applies when performing work from home. The DWEA Homeworking Guideline specifically addresses mental health as a point to be assessed by the shop level health and safety organisation as part of the annual work place survey. The regulation to prevent and sanction harassment, including sexual harassment, and bullying, including digital bullying, applies also when working from home. The DWEA have in connection with the long lockdown periods in 2020 provided specific webpages with information on how to report and prevent harassment and digital bullying from manager and colleagues[138] and from customers/citizens[139], when working from home.

New Regulatory Initiatives and Practices (Government and Social Partners): Contents and Differences with "Old" Telework.

The surprisingly positive outcomes from the homeworking periods during Covid-19 were in particular, that productivity did not drop, that work-life balance was greatly improved due to increased flexibility with the organization of working hours, many experienced a drop-in stress levels and reduced depression,

[136] Directive 90/270/EC of 29 May 1990 on display screen equipment.

[137] AT-Guidance, D.2.3-1 about screen work, updated December 2020, p. 1: https://at.dk/regler/at-vejledninger/skaermarbejde-d-2-3/.

[138] Harassment from colleagues and managers: https://at.dk/arbejdsmiljoeproblemer/psykisk-arbejdsmiljoe/kraenkende-handlinger/.

[139] Harassment and digital bullying from customers/citizens: https://at.dk/arbejdsmiljoeproblemer/psykisk-arbejdsmiljoe/vold-og-trusler/.

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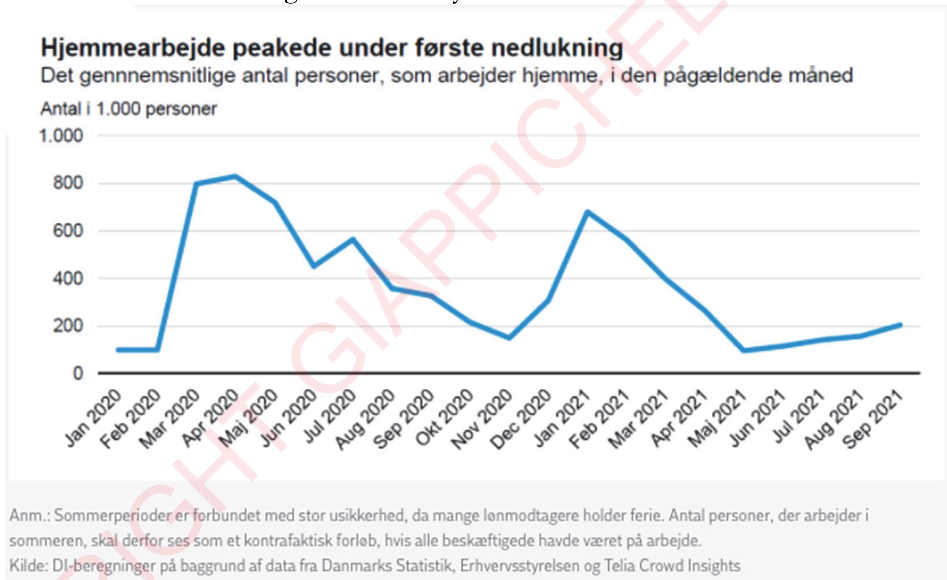
employees enjoyed the uninterrupted working time. Also, that homeworking became possible in many industries. A number of attention points also surfaced, which are discussed further below.

Many workers and employer wanted to continue with homeworking to a larger degree than before Covid-19. Danish Industry estimates, that in most industries in the private sector, homeworking will continue to some degree after restrictions are relaxed, with variations across the industries relating to the type of work performed. But even in industries such as transportation and the construction sector, companies expect homeworking to continue to take place for approx. 7-9% of workers after corona, compared to 3-4% of workers before corona [140].

A survey among private companies in September 2021 carried out by Danish Industry has revealed an increase in the use of home-working even after restrictions are lifted in Denmark [141]. The results suggest, that approx. 200.000 workers perform work from home on a regular work day after Covid-19 compared to 100.000 on a regular work day before Covid-19.



Source: Danish Industry survey 2021 [142].

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[140] Danish Industry surveys of 1.122 companies representing 121.000 employees: https://www.danskindustri.dk/arkiv/analyser/2021/1/90.000-flere-vil-arbejde-hjemme-efter-corona krisen/.

[141] https://www.danskindustri.dk/arkiv/analyser/2021/11/den-nye-normal-100000-flere-arbejder-hjemme/.

[142] https://www.danskindustri.dk/arkiv/analyser/2021/11/den-nye-normal-100000-flere-arbejder-hjemme/.

The Ministry of Employment in early 2021 asked the Social Partners to discuss the regulation on homeworking, with a view to reduce barriers for offering more homework. The current regulation on *e.g.* screen work applies to work stations, where work is performed 1 day per week. This reduced the incentive for employers to offer more homeworking, as this would entail financing full at-home-work stations for screen work, including adjustable chair, separate keyboard, lamps, eye examination, number of screens, etc.

Based on the social dialogue, the Ministry of employment on February 3, 2022, proposed an amendment, which has received wide political support as well as the support of social partners from both sides [143]. With the new amendment, the requirement apply only if screen work is carried out at a work station – at the work place or at home – more than 2 days per week on average [144].

The amendment includes an update to the existing Guideline on screen work, AT vejledning D.2.3-1. The existing guide to homeworking is withdrawn, AT vejledning D.2.9-2. This means, that the rigid framework for homeworking at national statutory level is reduced, with more flexibility to conclude shop level agreements.

Earlier attempts to alleviate the regulation on *e.g.* working time for homeworking were not successful. In 2000, a proposal for an amendment to the rules on daily and weekly rest periods in the Working Environment Act , so they would not apply to homeworking, was not passed [145]. The proposal was an implementation of the Working Time Directive's article 17 to homeworking, to allow employees and employers to agree, that the employee organized the working time independently specifically for homeworking. The reasons promoted for the amendment was, that there is an increase in homeworking, that the requirement of daily and weekly rest periods strongly hinders the flexibility of the modern labour market, that the individual employee no longer is entitled to organize his or her own working time from home, and that controlling the daily and weekly rest periods is practically impossible. The suggestion in 2000 was rejected with a very slim voting majority of 55 v 53 votes [146]. Since then, the issue of generally exempting homeworking from statutory legislation on working time has not surfaced. It could be an issue that surfaces again as part of the overall discussions on how to enable more homeworking.

[143] Danish Employers' Confederation: https://www.da.dk/politik-og-analyser/arbejdsmiljoe-og-sundhed/2022/en-sejr-for-det-fleksible-arbejdsliv/, Danish Confederation of Trade Unions, https://fho.dk/blog/2022/02/07/nye-regler-for-hjemmearbejde/.

[144] https://bm.dk/nyheder-presse/pressemeddelelser/2022/02/nye-regler-for-hjemmearbejde-paa-plads/.

[145] Suggestion for parliament decision on exception, BF 147 1999/1, https://www.retsinformation.dk/eli/ft/19991BB00147.

[146] Voting data: http://webarkiv.ft.dk/?/samling/19991/beslutningsforslag_oversigtsformat/B147.htm.

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Post-covid Perspectives: Open Issues (e.g. Disconnection); Role of Industrial Relations as Regulatory Method

The advantages in a Danish perspective has outweighed the disadvantages. Advantages include increased flexibility for the workers, improved work-life-balance, less transportation time, reduction of stress [147]. Homeworking turned out to be productive and creative. Against all expectation, leaders have not experienced that the productivity has decreased during corona, perhaps even the opposite [148]. In addition sick leave absence decreased [149].

Large surveys indicate, that the percentage of Danes that are in risk of developing stress or depression has decreased from 23% before March 2020 to 19% just after the lockdowns [150]. In addition, in families with small children the risk of developing stress and depression were halved during the first corona-wave in Denmark [151].

For employers, fewer employees at the company's premises may reduce costs for company establishments. Also, the data during Covid-19 lockdowns show higher productivity for homeworking employees, due to more time for uninterrupted work, and generally increases efficiency [152]. Some surveys indicate, that homeworking may reduce the number of sick-leave days [153]. Increased use of homeworking may also improve recruitment, as the geographical area in principle is extended. If workers can work from home some days per week, they are more likely to take a job with a further distance [154].

Social partners underline, that the benefits are gained only if homeworking is by choice and can be properly planned, not if it is forced due to restrictions or sudden lockdowns [155].

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[147] Danish Industry perspectives: https://www.danskindustri.dk/arkiv/analyser/2021/11/den-nye-normal-100000-flere-arbejder-hjemme/.

[148] Virtual leadership report, pp. 43-44.

[149] Virtual leadership report, pp. 43-44.

[150] Project report 2, January 2021, pp. 10-11 and L.H. ANDERSEN, P. FALLESEN, T.A. BRUCKNER, *Risk of Stress/Depression and Functional Impairment in Denmark Immediately Following a COVID-19 Shutdown*, in BMC Public Health, 2021, 21.

[151] L.H. ANDERSEN, P. FALLESEN, T.A. BRUCKNER, *Risk of Stress/Depression and Functional Impairment in Denmark Immediately Following a COVID-19 Shutdown,* cit.

[152] The Danish Economic Councils, an independent economic advisory body, https://dors.dk/english, Productivity report fall 2021, https://dors.dk/files/media/rapporter/2021/p21/p21_endelig/p21_rapportens_hovedkonklusioner_korrektur.pdf, p. 6.

[153] The Danish Economic Councils, an independent economic advisory body, https://dors.dk/english, Productivity report fall 2021, https://dors.dk/files/media/rapporter/2021/p21/p21_endelig/p21_rapportens_hovedkonklusioner_korrektur.pdf, p. 6.

[154] The Danish Economic Councils, an independent economic advisory body, https://dors.dk/english, Productivity report fall 2021, https://dors.dk/files/media/rapporter/2021/p21/p21_endelig/p21_rapportens_hovedkonklusioner_korrektur.pdf, p. 6.

[155] Danish Industry perspectives: https://www.danskindustri.dk/arkiv/analyser/2021/11/den-nye-normal-100000-flere-arbejder-hjemme/.

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Negative effects are also evident. Reduced interaction with colleagues increases lack of well-being, loneliness and isolation among employees. The Danish results of WHO's COSMO survey (the Covid-19 Snapshot Monitoring survey) shows, that with regard to feeling isolated and stressed during the lockdown, the optimism of Danes grew in step with the reopening and at the same time the percentage who felt isolated and stressed were reduced [156]. This may be more evident among young workers [157]. Along the same lines, with increased homework comes an increased risk of the employer more easily overlooking the well-being of employees [158].

Some learning points for the dialogue at company level includes [159], that the success of homeworking depends largely on high levels of pre-existing social capital in many workplaces, i.e. a high level of trust/confidence between employees and management. Also, a high degree of centralized decentralization of management positive affects a smooth transformation to homeworking. If these elements are not present, homeworking may on the other hand create a need for the employer to engage in increased control and monitoring of employees, which is counterproductive to the positive effects also on productivity and efficiency [160].

Before corona, Danish companies had a high level of digitalisation including a robust digital infrastructure [161]. Before Covid-19, 52% of companies had equipped their employees with portable IT-equipment for work purposes with access to mobile internet, 75% of all companies were active on social media – and thus prepared to communicate digitally. In 2019, 8% of revenues in companies came from on-line sales. In particular SME's were considered to be well prepared with a high level of digitalisation. This meant, that although employers did have to upgrade on IT-equipment for homeworking, the starting point with regard to IT-equipment or good internet connections, made it easier to transform workplaces to the situation of homeworking. These factors to a high degree facilitated, that much work could more or less smoothly be continued as remote work/homework.

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[156] R. Böhm, L. Lilleholt, J.T. Meineche, C.F., Strandsbjerg, A. Windfeld, F.C. Windfeld, I. Zettler, *The Covid-19 Snapshot Monitoring in Denmark*, in *Samfundsøkonomen*, 2020, 4, pp. 62-69. https://www.djoef-forlag.dk/openaccess/samf/samfdocs/2020/2020_4/Samf_8_4_2020.pdf.

[157] Danish Confederation of Trade Union feature, July 2021, https://fho.dk/blog/2021/07/16/unge-loenmodtagere-mistrives-med-hjemmearbejde/.

[158] Virtual leadership report, p. 20.

[159] FAOS (Copenhagen University) and CBS studies, Virtual Leadership, p. 14, https://faos.ku.dk/pdf/Virtuel_Ledelse_Rapport_I_-_de_kvalitative_studier_FINAL_DISTRIBUTED.pdf.

[160] FAOS (Copenhagen University) and CBS studies, Virtual Leadership, p. 14, https://faos.ku.dk/pdf/Virtuel_Ledelse_Rapport_I_-_de_kvalitative_studier_FINAL_DISTRIBUTED.pdf.

[161] Danish companies were among the top of the EU index on digitalisation, cf. Statistics Denmark April 2020: https://www.dst.dk/da/Statistik/nyt/NytHtml?cid=36790.

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During corona individual solutions within a flexible framework enabled a high level of efficiency and productivity [162]. For some, the experiences of an almost full integration of working time and leisure time with less need for categorizing the hours as one or the other, were appreciated, as it provided flexibility to organize work in relation to private life, as well as the opportunity to organize for more focused working time [163]. This points towards providing, that flexibility in organization of work tasks and working time could be the standard for homeworking arrangements, as all involved benefit from the flexibility. Rigid regulation and control mechanisms on the employees working time and working tasks counteracts the productivity, efficiency for the company, and counteracts the well-being of the employee, thus increasing the risk of negative mental effects.

Communication is essential for essential for reducing errors and misunderstandings in the organization, and the informal level of communication was particularly challenged during on-line management [164].

Some surveys indicate, that the experiences in families with homeworking could even be a driver for improved gender-balance [165]. In a survey among homeworking fathers, 60% indicate they have played more, talked more, and taken more walks with their children, 85% indicate it has been good for the children, 87% indicate it has been good for themselves to spend more time with their children, and 61% indicate, they will miss the extra time together, when work returns to normal. These outcomes could encourage fathers to be more involved in the family responsibilities also in the future, i.e. improve equality in the home, and thus improve overall gender equality in the labour market.

On the other hand, a work culture where the working time and leisure time are fully fluid and where the employee is always available gives rise to concerns in many aspects. One aspect is health and safety, as it can cause an increased risk for depression, anxiety and exhaustion [166]. As described above, legislation concerning working time etc. is in place, but no statutory provisions specifically concern the issue of always being available, i.e. the right to disconnect. This issue is addressed in a number of collective agreements as the flex-time / fix-time arrangements, in particular for white-collar workers. This could be further developed with a view to specifically point out, when the employee has a right to not be available. The lack of clear provisions on a right to disconnect provides a basis for creating a work culture within the existing framework, of always being available. In a work culture where the employee always has to be available, such as *e.g.* in large law

[162] Trade Union for Managers, survey: https://www.lederne.dk/ledelse-i-dag/ny-viden/2020/ledelse-i-dag-juli-2020/hvad-laerte-vi-af-corona.

[163] Virtual leadership report, p. 47.

[164] Virtual leadership report, p. 37.

[165] Kvinfo 2020: https://kvinfo.dk/koen-og-ligestilling-under-og-efter-covid-19-krisen/.

[166] https://www.europarl.europa.eu/news/da/press-room/20210114IPR95618/retten-til-at-vaere-offline-bor-vaere-en-grundlaeggende-rettighed-i-eu.

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firms, it can be very difficult for a single employee to change the working culture. The change must come from somewhere else, including a strong enforcement mechanism not resting on the individual employee. The European Parliament encourage the EU Commission to provide EU-legislation which gives the employees a fundamental right to disconnect, i.e. a right to be offline so that the employee has permission not to perform work related tasks outside the regular worktime. This concerns in particular telephone calls, e-mails and other kind of digital communication[167]. Such legislation can only be efficient if there is an external supervisory authority which supervises compliance with the rules, and if violations results in sanctions. In addition, as being available for work all the time may be culture-related on not necessarily only power related, something else must supplement any legislative changes. This could be social partners pressing for changes, a societal discourse, or other non-legal aspects. Otherwise it will be very difficult to change an engrained work-culture.

Another point of attention is, that for many industries, working from home was unavailable, due to the character of their work. This was the case *e.g.* for unskilled workers, and workers in *e.g.* health-care, social care, elder-care, tourism, hospitality, the event and experiences industry, police, as well as in many forms of production. The inequality for workers in some industries in not being able to enjoy many of the positive effects of homeworking, such as improved work-life balance, organizing working time, time for focus, reduced absences due to sickness, could lead to a potential increased segregation of the labour market.

Finally, the increased use of homeworking can be integrated as part of an overall "green" climate strategy, to reduce emissions from transportations to and from work[168]. This is one of the reasons provided by the Ministry of Employment in enabling more homeworking by reducing the barriers for screen workstations.

The Social Partners in Denmark has had and continues to have a central role in adjusting and updating the legal framework for homeworking. The social partners have made a number of recommendations to the government based on the experiences learned during Covid-19, which have already resulted in amendments. The negotiations and agreement between social partners give quality to the legislative solutions, for example that solutions are balanced from a worker and an employer point of view, that solutions may take into account the insights of specific industries, and the overall advantage, that both employers and workers are behind suggested solutions.

The framework in the collective agreements continue to be in the hands of the social partners. Updating the framework for homeworking at sector level is on the agenda for the coming negotiations. Likewise, the room for negotiation shop level agreements has been increased with the amendment to the statutory regulation.

[167] *Ibidem*.

[168] A. HEDE, *Undersøgelse af befolkningens adfærd, tillid og tryghed under coronakrisen*, Trygfonden survey in March 2020, overall conclusions: https://www.tryghed.dk/viden/publikationer/page-components/corona-marts-2020.

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5. *Workplace Automation and Social Partners Strategies*

In Denmark, there is no authoritative or comprehensive definition of AI or algorithmic management. The term AI is used about computers, robots and software that can make decisions independently and perform tasks on their own, tasks that were originally reserved for a human [169].

The first approach in Denmark has been to focus on the effects of automation with regards to redundancies and a new demand for skills. This has been addressed for decades in collective agreements.

The new emerging focus is algorithmic management of employees, and how to balance the interests of the company with the rights, such as health and safety, privacy, or non-discrimination, of employees. Several government initiatives have addressed this balance. This has not yet resulted in specific binding provisions in legislation or in collective agreements. Instead, algorithmic management is addressed by an express focus in government policies as well as by pilot-projects in collective agreements, aligning attention at shop level with the existing mechanisms for dialogue and for the health and safety organization at shop level.

As Denmark is already a highly digitalized country, and generally tech-positive, there has been great interest in developing and using digital solutions in companies. On the other hand, the use of algorithms and AI as management tools is still just developing.

A survey among recruitment agencies and temporary agency work agencies indicate, that recruitment is still carried out primarily by human oversight, and software is not yet used to shortlist applicants. Out of 13 agencies across all sectors, only 2 agencies indicate, that they will begin to use IT-systems to support scanning of applicants [170].

More focus is given to automation and AI in performance of work and in organization of work.

Early surveys indicated, that if artificial intelligence is used to a large extent, the natural consequence would be that employees will lose their jobs. KPMG's survey 2017 *Global CEO Outlook – Nordic Executive Summary* shows that 94% of the top managers in the Nordic countries expected to make high investments in technology for robot process automation over the next three years [171]. The study *A future that works: The impact of automation in Denmark*, a joint study from 2017 by McKinsey and Aarhus BSS shows that 40 per cent of all work done

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[169] Algorithms, Data & Democracy: https://algoritmer.org/hvad-er-kunstig-intelligens-og-hvordan-paavirker-det-os/; Dansk Markedsføring: https://markedsforing.dk/artikler/debat/hvad-er-forskellen-paa-ai-machine-og-deep-learning/.

[170] Survey by Danish research team, June 2021.

[171] KPMG, 2017 Global CEO Outlook – Nordic Executive Summary, p. 20: https://assets.kpmg/content/dam/kpmg/no/pdf/2017/06/ceo-outlook-2017-nordics.pdf.

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in the Danish labour market can be automated using today's technology[172]. The analyses show the following:

– On average, 40% of all working hours in Denmark could potentially be automated using today's technology. In some sectors, the potential for automation is as high as 74 per cent, while in other sectors it is 19 per cent.

– The potential for automation in Denmark is lower than on a global level, which the McKinsey Global Institute estimates to be an average of 49 per cent.[173].

– Manufacturing jobs are significantly more likely to be automated than *e.g.* jobs within business service. Denmark's manufacturing industry is comparably smaller than to other countries.

– In general, the unskilled and those with a short education are more likely to be affected by automation than the highly educated.

In Denmark generally, there is a strong focus on using digital tools for innovation and growth from both the government and the social partners, in the private[174] as well as in the public sectors[175].

In the public sector a number of projects on AI have been launched with a view to improve the quality of services to the citizens, *e.g.* in the eldercare and healthcare sector[176]. At the same time, specific attention has resulted in legal guidelines and checklists to developers and users of AI for public services, with at view to ensure that the AI solutions comply with existing regulation in *e.g.* GDPR[177] and funda-

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[172] McKinsey & Company, A future that works: The impact of automation in Denmark: https://www.mckinsey.com/featured-insights/europe/a-future-that-works-the-impact-of-automation-in-denmark#.

[173] Aarhus BSS, Four out of 10 working hours can be automated: https://bss.au.dk/en/insights/business-1/2018/four-out-of-10-working-hours-can-be-automated/.

[174] https://fho.dk/blog/2016/12/15/digitaliseringen-skal-give-plads-til-mennesket/; https://www.danskindustri.dk/di-business/arkiv/nyheder/2019/10/di-oremarker-10-millioner-til-at-styrke-dansk-digitalisering/; https://www.danskindustri.dk/arkiv/analyser/2018/1/flere-virksomheder-har-sat-digitalisering-pa-dagsordenen/; https://www.danskindustri.dk/di-business/arkiv/nyheder/2018/1/podcast-kunstig-intelligens-sikrer-mod-fejlansattelser/; https://fho.dk/blog/2019/05/09/invester-i-danmark/; https://www.hk.dk/aktuelt/nyheder/2020/09/04/kunstig-intelligens-giver-dig-frihed-til-at-taenke-ud-af-boksen; https://fho.dk/blog/2019/03/14/etik-og-faglighed-er-noegleord-i-brugen-af-kunstig-intelligens/; https://www.hk.dk/aktuelt/nyheder/2019/04/08/robotter-kan-blive-dine-hjaelpsomme-kolleger.

[175] Det offentlige har stort fokus på brugen af kunstig intelligens i opgaveløsningen, f.eks. for at løfte kvaliteten i den offentlige sektor, https://www.kl.dk/okonomi-og-administration/digitalisering-og-teknologi/kommunernes-arbejde-med-kunstig-intelligens/; https://videncenter.kl.dk/media/20737/ledelse-af-digital-innovation.pdf; https://videncenter.kl.dk/viden-og-vaerktoejer/informationssikkerhed-og-gdpr/juridisk-ai-vaerktoejskasse/.

[176] https://www.kl.dk/okonomi-og-administration/digitalisering-og-teknologi/kommunernes-arbejde-med-kunstig-intelligens/.

[177] https://videncenter.kl.dk/viden-og-vaerktoejer/informationssikkerhed-og-gdpr/juridisk-ai-vaerktoejskasse/.

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mental rights of citizens[178]. This up-front approach to informing AI-developers of rules and regulations that should be observed, can inform and inspire other sectors as well, including industries where the AI-solutions are applied as managerial tools for employees.

In the Governments National Strategy for Artificial Intelligence of March 2019[179], the focus is that Denmark should be at the front with responsible development and use of artificial intelligence[180]. The strategy focuses on that use of AI should be centered around the values in society, and that the same demands are made for AI as is made for employees. It is highlighted, that algorithms may assist in ensuring equal treatment by being objective, business-related and unrelated to personal interactions. Also, the strategy highlights, that algorithms should be created in manner, so they do not reflect prejudices *e.g.* against specific genders, persons with disabilities or persons of ethnic origin. It is underlines, that data should not be faulty[181]. The government position clearly is, that digitalization goes hand in hand with existing values and regulation in society.

In 2021, the government launched a strategy for Tech-giants and more fair competition and improved consumer protection, that focuses on development and use of AI, standards for transparent and reliable AI and a responsible platform economy (not aiming at digital labour platforms)[182].

As mentioned, the government has established a Council for Data Ethics[183], that contributes to the public discussions, lately with recommendations on facial recognition software in public areas.

These approaches specifically create a societal approach to the use of AI and algorithms, that highlights and underlines the risks to existing values and regulation. This approach from government, balancing the opportunities for growth and innovation with attention to responsibility, societal values and existing regulation, provides a framework for the discourse also in other fora.

Legislation

From a legislative point of view a number of statutory acts and general principles also address algorithmic management and the use of AI. So far, there has been no specific legislative initiatives or caselaw on algorithmic management or the use of AI.

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[178] H.M. MOTZFELDT, A.T. ABKENAR, *Digital Forvaltning*, cit.

[179] Finansministeriet og Erhvervsministeriet: National strategi for kunstig intelligens, marts 2019, s 5.: https://digst.dk/strategier/strategi-for-kunstig-intelligens/.

[180] Finansministeriet og Erhvervsministeriet: National strategi for kunstig intelligens, marts 2019, s 5.: https://digst.dk/strategier/strategi-for-kunstig-intelligens/.

[181] National strategi for kunstig intelligens, s. 7.

[182] Erhvervsministeriet: Tech-giganter: mere retfærdig konkurrence og bedre forbruger beskyttelse, august 2021, s. 17-18: https://em.dk/media/14230/udspil-om-tech-giganter.pdf.

[183] https://dataetiskraad.dk/dataetisk-raad-fremsaetter-anbefalinger-om-brugen-af-ansigtsgen kendelse-i-det-offentlige-rum-mv.

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It is a general rule of Danish labour law that the employer has the managerial power. Therefore, a decision to use artificial intelligence is a managerial decision that must adhere to the legal framework. Use of AI must comply with statutory acts, collective agreements, the individual employment contract, customary practice and general legal principles.

General legal principles include a prohibition of abuse of managerial power, entailing, that decisions must be justified, i.e. objectively based on legitimate (business-related) purpose, must take due consideration the interests of the employee and must be proportionate. This also applies for digital managerial tools, including for control and surveillance measures,

Also in general labour and employment law, the managerial prerogative is limited by the statutory act on camera-surveillance, the GDPR and implementing Statutory Act on Data Protection, the Liabilities Act, the Working Environment Act including the regulation on screen work, protection of private correspondence in the Danish constitution section 72, and the Criminal Act section 263, which applies also to letters, emails, SMS, unwarranted access to programmes and files, secret sound surveillance., the ECHR article 8 on the right to privacy.

Although no regulation specifically addresses automation and robotization, the existing regulation to a certain extent reflect the basic principles provided in the control-agreement, see below, and the limits for the managerial prerogative in industrial relation.

Similar principles as in the DA/LO Control Agreement, balancing the interests of the employer with the interests of the employee in cases of surveillance, have been confirmed by the ordinary courts also outside the scope of the collective agreements [184]. Most lately a ruling of the Supreme Court in 2019, where the Court found, that continuous camera-surveillance of an employee constituted a breach of the managerial prerogative, even when the camera-surveillance had legitimate reasons in controlling for mistakes and disciplining the employee. The Court stated that the surveillance was significant and continuous, also when the employer was not in the office. The surveillance was not legitimately based on objective grounds and not proportionate and had breached the boundaries for the managerial prerogative as well as the (then) statutory act on personal data. The intensive and continuous surveillance had caused a significant mental strain on the employee, resulting in psychological stress. The employee was entitled to a compensation for non-material damages (*tort*) under the Statutory Liabilities Act section 26.

The ruling can be taken as expressing the view, that camera-surveillance – even with a justified purpose – can be considered too extensive if carried out intensively and continuously. Also, that there is a direct connection between continuous surveillance and a level of mental strain above what should be tolerated

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[184] M.G. Lind, *Medarbejderes integritetsbeskyttelse i dansk ret,* DJØF Forlag, 2006; J. Kristiansen, *Den Kollektive Arbejdsret*, DJØF Forlag, 2021, s. 391.

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by the employee. The Supreme Courts assessment may also extend to other forms of intensive and continuous surveillance, such as *e.g.* by algorithms. However, at this point in time (January 2022) caselaw does not specifically address surveillance and control carried out by algorithms.

Also, there is no caselaw nor express regulations under the working Environment Act specifically addressing constant surveillance or algorithmic management of work processes. These issues are approached as matters of general regulation on privacy, health and safety – including extensive surveillance, and requirements of justification for managerial decisions.

Liability for algorithmic tools, that breach existing regulation, as a starting point rests with the employer. This is assumed to be the case, even if the employer due to lack of IT-insight was not aware of any breaches of law, or even if the violations are caused by a developer or external provider of the technology. A ruling on introduction of a new salary-payment-system with a number of mistakes, stated, that the employer was responsible for the breach of agreement by not paying salaries in time. The employer had already at their own initiative paid all losses incurred by the employees by the late and faulty salary payments, such as interests in banks, etc. The faulty salary payments were considered a breach of agreement by the employer, even though the fault was due to an external provider and even thought, the employer had done everything in their power to alleviate the faults of the system. The employer was fined with an additional penalty for breach of contract [185].

The starting point for algorithmic management, not pertaining to the issue of loss of jobs but the issue of protecting health and safety and existing rights, is, that courts will interpret existing legislation in light of new phenomena. The current legislation and caselaw suggests, that courts are aware of the risks to health and safety and personal dignity of algorithmic management involving constant surveillance.

Social Partner Approaches

At the macro level, the social partners have focused first on loss of jobs due to automatization.

At the level of the individual employee, an emerging focus now is on developing tools for addressing new developments concerning algorithmic management and protecting health and safety, privacy, non-discrimination and other fundamental rights of the employee.

Social partners generally have approached digitalization and AI as positive new opportunities.

The employer associations, with perhaps Danish Industry (*Dansk Industri*, DI) as the most visible positions, expects Denmark to take the lead in artificial intelligence, as an important technology of the future, i.e. DI's overall approach to AI

[185] Labour Court ruling A2004.955.

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has been to inform employers about the great potential of this technology and why it is important for the employers to adapt themselves to artificial intelligence. The purpose with this overall approach has been to get more of DI's 10,000 member companies in the forefront of the digital wave and to strengthen the digitalization in Denmark because the companies will thereby gain a competitive advantage[186]. DI has provided guidance to its members about digitalization, *e.g.* through a digitization handbook[187] and through conferences[188], and DI also offers their members impartial and free counselling about this technology[189]. DI has earmarked DKK 10 million. (EURO 1,333 million) to strengthen the Danish digitalization, *e.g.* offering online courses on the use of AI[190].

DI has contributed to a Microsoft and LEAD Agency report on artificial intelligence in Denmark[191]. Politicians and other professionals have likewise contributed to the report. The report illuminates the potentials and barriers regarding artificial intelligence. The points of attention in the report are, *e.g.* how the legislation can provide a proper regulatory framework for the use of artificial intelligence without it being an inhibition for developing, researching and experimenting in artificial intelligence, how to adapt the society to artificial intelligence, how to use artificial intelligence in a responsible way, how the citizens can trust the use of artificial intelligence, how discrimination won't happen when using artificial intelligence etc[192].

The Danish Chamber of Commerce (*Dansk Erhverv*) is the network for Trade, IT, Industry and Service in Denmark. The Danish Chamber of Commerce's overall approach to AI has been to inform employers about the great potential of this technology and why it is important for the employers to adapt themselves to artificial intelligence. The Danish Chamber of Commerce has proposed the Danish Government to make massive investments in AI and has proposed the government to make an AI-fund which will receive DKK 400 million (EURO 53.333 million) each year for a period 2020 – 2035, which in total will be DKK 6,4 billion (EURO 850 million). The reason for this proposal is that Denmark is one of the most digital countries in the world but Denmark is lagging behind when it

[186] Danish Industry: https://www.danskindustri.dk/di-business/arkiv/nyheder/2019/10/di-oremarker-10-millioner-til-at-styrke-dansk-digitalisering/.

[187] Danish Industry: https://www.danskindustri.dk/globalassets/dokumenter-analyser-publikationer-mv/publikationer/digitaliseringshandbogen---digitaliser-din-virksomhed-nu.pdf.

[188] Danish Industry: https://www.danskindustri.dk/arkiv/analyser/2018/1/flere-virksomheder-har-sat-digitalisering-pa-dagsordenen/.

[189] Danish Industry: https://www.danskindustri.dk/tech-der-taller/var-med/ai-garage/11-sparring-i-ai-garage/.

[190] Danish Industry: https://www.danskindustri.dk/di-business/arkiv/nyheder/2019/10/di-oremarker-10-millioner-til-at-styrke-dansk-digitalisering/.

[191] Danish Industry: https://www.danskindustri.dk/brancher/di-digital/analysearkiv/brancheanalyser/2018/4/kunstig-intelligens-i-danmark/.

[192] Report, Artificial Intelligence in Denmark, Potentials and barriers.

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comes to AI. Therefore, it is important that Denmark invests in this technology[193].

The Danish Trade Union Confederation's (*Fagbevægelsens Hovedorganisation*, FH – formerly LO) approach to artificial intelligence is to encourage the Danish government to invest in the future in Denmark by using artificial intelligence in the workplace[194]. First and foremost, there must be invested in people with special skills but those people must also be suited for the future. Robots and artificial intelligence must be welcome as new tools – as new "colleagues" in the workplace. FH's main concern about artificial intelligence is, however, that the potential of artificial intelligence will shadow the significant pitfalls for employees, users and citizens that the use of artificial intelligence may also contain, as the artificial intelligence must support the professionalism but not replace it. In order to secure this, FH will ensure that the employee is in focus for the development of this new technology[195]. Before the use of the artificial intelligence will become a success, the employee must be a part of the development and implementation of the artificial intelligence, especially when it comes to use of artificial intelligence within the area of health, employment and social affairs, where the individual is in focus. According to FH it is also important to have an ongoing dialogue on the limits of artificial intelligence and it is important to have some ethical principles when developing and using artificial intelligence. In order for these principles to become efficient there must be some control to make sure that the use of artificial intelligence won't exceed these ethical principles[196].

In addition, FH takes a clear position on the concerns of the physical and mental strain of using new algorithmic tools used in warehouses, as a result of the increase in internet-trading. FH surveys reveal, that 81% of warehouse workers are concerned for being physically worn down, and 65% experience a high workload and high work tempo as a problem in their everyday work[197].

The trade union 3F organize skilled and unskilled workers. 3F does not promote the great advantages concerning AI, most of the content of the articles published by 3F concerns disadvantages of AI, *e.g.* whether or not AI will take over the employee's jobs, that tech giants can take advantages of all data,[198] that AI can be used to surveillance of the employees[199], etc.

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[193] The Danish Chamber of Commerce: https://www.danskerhverv.dk/presse-og-nyheder/nyheder/2019/maj/dansk-erhverv-foreslar-massiv-investering-i-kunstig-intelligens/.

[194] FH, Invest in Denmark: https://fho.dk/blog/2019/05/09/invester-i-danmark/.

[195] FH, Technology for people: https://fho.dk/blog/2017/06/07/teknologi-for-mennesker/.

[196] FH, Ethics and professionalism is keywords in the use of artificial intelligence: https://fho.dk/blog/2019/03/14/etik-og-faglighed-er-noegleord-i-brugen-af-kunstig-intelligens/.

[197] https://fho.dk/blog/2020/12/18/afgoerelse-mere-lige-loen-paa-lageret/.

[198] 3F: https://fagbladet3f.dk/artikel/vigtigste-kamp-siden-fagbevaegelsens-foedsel.

[199] 3F: https://fagbladet3f.dk/artikel/microsoft-ville-hjaelpe-virksomheder-med-spionere-mod-ansatte.

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The trade union for salaried employees in retail and administration in the private sector (*HK*) organize office and shop workers. HK's overall approach to AI has been to inform and illuminate the employees about the potential of this technology and why it is important for the employees to adapt themselves to artificial intelligence. This has been done *e.g.* by hosting webinars on AI and AI Bots where members can learn more about how to get started using AI[200]. HK has published many articles concerning AI. HK's overall opinion to AI is that AI can help the employees, *e.g.* can AI take over many standardized tasks so that the employee can focus on more difficult and complex tasks[201].

The Legal Framework in Collective Agreements

The legal framework reflect, that the use of technological tools – including algorithms and AI – is a decision within the managerial prerogative. As any other managerial choice, decisions on AI and algorithmic tools must be *executed in correspondence with provisions in the collective agreements and in collaboration with the workers and their representatives according to the collective agreements in force at any time*[202].

Main level agreements already address the introduction of new technology as a topic, that must be discussed in the Cooperation Committees. In the private sector, the Main social partners, DA and FH (formerly LO) already in 1947 concluded a Main Agreement on Cooperation and Cooperation Committee. In 1981 the parties concluded a special technique agreement, which was incorporated in the Main Cooperation Agreement in 1986 (*Samarbejdsaftalen*)[203]. The DA/LO Cooperation Agreement establishes the legal framework for cooperation committees (*samarbejdsudvalg*), the primary workplace forums for information and consultation between workers and management. In these forums, all aspects relating to the organisation of work is discussed. The DA/LO Cooperation Agreement has had a significant impact on the rest of the Danish labour market[204]. Through Cooperation Committees, both workers and management discuss upcoming decisions concerning the introduction and implementation of technological changes in the undertaking.

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[200] HK: https://www.hk.dk/aktuelt/kalender/D2292240645 and also: https://www.hk.dk/aktuelt/nyheder/2021/05/20/laer-at-forstaa-de-nye-digitale-teknologier-paa-kort-kursus.

[201] HK: https://www.hk.dk/aktuelt/nyheder/2020/09/04/kunstig-intelligens-giver-dig-frihed-til-at-taenke-ud-af-boksen and also: https://www.hk.dk/aktuelt/nyheder/2019/04/08/robotter-kan-blive-dine-hjaelpsomme-kolleger.

[202] As expressed in the DA/LO Main Agreement section 4(1).

[203] The Cooperation Agreement between DA and LO. The agreement was last amended on 27 October 2006: https://www.samarbejdsnaevnet.dk/fileadmin/user_upload/Pdf/Samarbejdsaftalen.pdf.

[204] Jens Kristiansen, *Den kollektive arbejdsret*, 2014, p. 398.

Section 1 of the DA/LO Cooperation Agreement states that «*the development of the daily cooperation is based on an interaction between the management and the employees*»[205]. In Section 2 the Cooperation Agreement states, that:

«An efficient and good cooperation presupposes that the Cooperation Committee is well informed about the company's conditions and development. Knowledge and insight from all parties is a prerequisite for the cooperation committee to function. It is the responsibility of the company's management – with a view to the work of the cooperation committee – to inform the committee on an ongoing basis about the company's:

[…]

Major changes and restructurings, among other things, in the use of new technology in the production and administration, including in computer-based technology and systems»[206].

The duty to inform about the introduction of new technology entails, that this requires discussion in the cooperation committee as early as possible, so the employees have a real opportunity to influence and enrich the decision-making process[207].

The Cooperation Committee must specifically be involved in:

– establishing the principles for training and retraining/upskilling of employees, who will operate new technology[208];

– establishing the principles for the company's internal collection of and use of personal data;

– exchange views and discuss proposals for guidelines for the organization of production – and work, as well as carrying out major reorganisations in the company;

– assessment of the technical, financial, personnel, training and environmental consequences regarding the introduction of new or changes in existing technology including computer based technology and systems, when the introduction or changes are significant[209].

If new technology results in redundancies, the company must aim to relocate or retrain each employee for other work in the company[210]. If employees are dismissed, they must be provided with sufficient freedom in their notice period to follow an upskilling course of up to 4 weeks.

The DA/LO Cooperation Agreement is enforced by a specialized Coopera-

[205] The Cooperation Agreement between DA and LO, p. 5, https://www.samarbejdsnaevnet.dk/fileadmin/user_upload/Pdf/SA_engelsk.pdf.

[206] The Cooperation Agreement between DA and LO, p. 7.

[207] Jens Kristiansen, *Den kollektive arbejdsret*, 2014, p. 402.

[208] Cooperation Agreement section 3, p. 8.

[209] The Cooperation Agreement between DA and LO, p. 9.

[210] The Cooperation Agreement section 3, p. 9.

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tion Board[211]. If the dispute concerns a breach of the DA/LO Cooperation Agreement, the party to the breach may be held liable to pay a penalty for breach of agreement (*bod*)[212].

The Main Agreement on Cooperation provides a framework for cooperation also concerning new technology. The Cooperation Agreement's main focus is loss of jobs due to automatisation. The Cooperation Agreement does not in itself give further guidelines on algorithmic management tools or the use of AI. One material remedy, that is enforceable, is the duty of the employer to aim for relocating or retraining before dismissals, as well as facilitate upskilling during the notice period.

Also, at Main Agreement level, the LO and DA have concluded an Agreement on Control-measures[213]. The LO/DA Control Agreement promotes more material rights and principles, that can be enforced against the employer. The DA/LO Control Agreement codifies principles for control measures established by the Labour Court as early as 1013 in a case concerning time registration measures[214]. The Main Agreement on Control measures also have inspired similar agreements in other sectors, including the public sectors. The DA/LO Control Agreement in section 1 states, that any control measure must be objectively founded in an objective business reason and must have a reasonable purpose, measures cannot violate the dignity of the employee, they cannot result in losses or notable disadvantages, and there must be a reasonable balance between the purpose and the chosen measure. The employer must notify employees about new control measures at least 6 weeks before activating these, cf. section 2. An employee cannot consent to being subject to control measures – neither in connection with the employment nor at any later time, cf. section 3. In homeworking settings, control measures must not violate the privacy of the employee, cf. section 4. The Control Agreement is enforced by complaints assessed in the industrial dispute resolution system, cf. section 5 and 6, and breaches can be penalised.

The Control Agreement provides a framework for both physical and digital control and surveillance measures. Ample caselaw underlines, that the control agreement is a dynamic tool for assessing the boundaries for both introduction of and ongoing use of digital control and surveillance tools. The Control Agreement, specifically address that control measures must observe the rights of the employee. Caselaw has also underlined, that the control agreement must be interpreted in line with provision limiting the managerial prerogative with regards to control and surveillance in statutory acts, such as camera surveillance[215].

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[211] The Cooperation Agreement between DA and LO, p. 16.

[212] *Ibidem*.

[213] Agreement on control measures, between DA and LO, 2006, https://fho.dk/wp-content/uploads/lo/2017/03/aftaleomkontrolforanstaltninger.pdf.

[214] Case no 103 of the Labour Court. Also M.G. LIND, *Medarbejderes integritetsbeskyttelse i dansk ret,* cit.; J. KRISTIANSEN, *Den Kollektive Arbejdsret*, cit., s. 391.

[215] Labour Court ruling of 2 December 2016, AR 2015.0315 concerning camera surveil-

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The DA/LO Control Agreement has not yet been tested for questions concerning algorithmic management. However, the Control Agreement has been used several times for assessing the limit for GPS-surveillance and camera-surveillance.

Sector Agreements

Metal Industry Collective Agreements

Dansk Metal (Danish Metal) is the trade union for workers in the metal-industry. The collective agreements at sector level covers various forms of metal-work. The overarching agreement is the Industry Agreement 2020-2023[216] which does not specifically address algorithmic management or AI.

Logistics Sector

In a number of sector-agreements, new developments in organizing work is recognized and addressed as an element to be give special attention in the Cooperation Committee at shop level. This is the case for workers organised in different trade unions under the Trade Union Confederation, FH, including Dansk Metal and 3F.

In the 2020 negotiations for renewal of the sector-agreements, a number of sector-agreements in the metal and logistics-sector added a new "Protocol", a joint declaration, addressing the changes in the sector due to green transformation, introduction of new technology, including self-driving vehicles and automated warehouses. This is the case for the Collective Agreement for Metal and Transport between DI and Dansk Metal 2020-2023 for Transport and logistics, Tourist transportation, the Collective Transportation, Railroads and Taxi Companies[217], the Collective Agreement for Transport and Logistics between DI and 3F 2020-2023 for drivers, warehouse- and terminal workers, furniture movers, cross-border transportation and others[218], the Collective Agreement for Warehouse Workers between the Danish Chamber of Commerce (*Dansk Erhverv*) and

lance of brewery-workers with a lawful purpose, but carried out without respecting the duty to inform employees by signage.

[216] Industry Collective Agreement 2020-23, concluded by the employers' association Danish Industry (*Dansk Industri*, DI) and the worker organization the Central Organization of Industrial Employees in Denmark (*CO-industri*): https://www.danskindustri.dk/globalassets/di-dokumenter-kun-til-dokumentsider-i-radgivningsunivers/for-alle-kraver-ikke-login/overenskomst-fx-io/industriens-overenskomst-2020-23.pdf?v=210520.

[217] https://www.danskmetal.dk/Overenskomster/Documents/OK%202020/Overenskomster/Metal-Transportoverenskomsten%202020-2023.pdf.

[218] The Transport- and Logistics Collective Agreement 2020-2023 between DI and 3F 2020-2023, https://www.danskindustri.dk/globalassets/di-dokumenter-kun-til-dokumentsider-i-radgivningsunivers/for-alle-kraver-ikke-login/overenskomst-fx-io/transport--og-logistikoverenskomst-2020-2023.pdf?v=220210.

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3F 2020-2023[219], and a collective agreement between DI and the company FTZ (company producing and distributing auto parts and tools) for their warehouse- and transport-workers 2020-2023[220].

The added "Protocols" are not agreements on material rights, but a shared acknowledgement that new developments invite to further attention. The parties agree, that developments involve changes, the risks involved, and guidelines for how to address this at shop level. The protocols address collaboration at shop level in companies of all sizes, the title does not indicate.

The parties recognize that companies are facing radical changes in connection with the green transition, a changing labor market with the introduction of, among other things, new technology, from self-driving trucks to automation of warehouses, and with subsequent withdrawal.[221] […].

The Protocol points to special attention to ensuring new competencies, and ongoing upskilling, as new technologies result in increased focus on re-training and readiness for change.

The role of the Health and Safety Representatives will be more decisive for the cooperation to ensure a good working environment and productive companies. The Health and Safety Representative must be the hub for systematic work with goals for working environment, working environment assessments and prevention of accidents. The focus then turns to giving guidelines to how to work at shop level with these challenges. The solution is to encourage companies of all sizes to have a forum to discuss these topics, and to involve the health and safety representative specifically:

In smaller companies without employee representation in the form of shop stewards or Health and Safety Representatives, the annual working environment discussion between management and employees is the most natural place to discuss the challenges to health and safety, and to agree on how the cooperation should take place for the next year.

In companies with existing representatives, but without health and safety committees or cooperation committees, the discussion would most naturally take place at dedicated meetings for this purpose, as well as establishing committees or work groups on selected themes. IN these companies, the parties to the agreement recommend, as a pilot-trial, to establish dedicated for a for dialogue between management, health and safety representatives and shop stewards.

In companies with existing health and safety committees or cooperation committees, it is natural, that management and employee representatives regularly discuss the basis for a good working environment, including in connection

[219] The Collective Agreement for Warehouse workers 2020-2023, Appendix no. 32, p. 107: https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/03-overenskomster/overenskomst-2020-2023/lageroverenskomst-2020-2023.pdf.

[220] https://www.danskindustri.dk/DownloadDocument?id=174832&docid=174829.

[221] *Ibidem*, p. 107.

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with […] new technologies. The parties agree to include the health and safety representatives in these questions.

The issue is delegated to discussions at shop level and enveloped in the existing mechanisms for dialogue and cooperation.

The Collective Agreement for Transport between the employer association DTL *(Danish Transport and logistics*) a member of Dansk Erhverv, and 3F[222] adds specific attention on upskilling and retraining in the transport- and logistics-sector in Protocol on future skills needs within transportation and logistics[223].

The parties are aware of some of the challenges in the future and that new strategies must be made so that the industry can be competitive in the future. The parties assess, that skilled drivers and warehouse workers will continue to be core workers in the future. The assessment is based on a shared enquiry into the contours of the future transport – and logistics industry. This enquiry has identified a number of strategic challenges, that connect to the needs for competencies in the future. The challenges are caused inter alia by:

Partially or fully automated warehouses, terminals and harbors.

– Self-driving or heavily technology supported trucks, lorries and buses.

– Digitalisation of companies, where the employees – in addition to their physical work functions – are included in the company's data-feed, must communicate digitally about the performance of work and function effectively as digital end-users.

– Increasingly advanced vehicles and gear.

– Increasingly complicated logistics systems.

– […].

For the duration of this collective agreement (2020-2023), a committee will continue to work on the topic of new strategies for skills within IT, as well as skills in understanding logistics, business, innovation, customer service, etc.[224]. The committee must look at the avenues for ensuring a future-oriented development of skills at company level, involving financial support of the existing Labour Market Foundation for upskilling in the Transport- and Logistics industry, the TLK-foundation.

The concern about increased automatization, including at warehouses, is addressed in the context also of upskilling of employees, that traditionally have not had a need for IT-skills. This reduces the risk of redundancies and aims for adjusting the work-force skills to a new more digital reality.

The new Protocols in the 2020- agreements may be seen in the light of the developments at European level.

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[222] The Collective Agreement for transport, 2020-2023: https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/03-overenskomster/overenskomst-2020-2023/transport overenskomsten-2020---2023.pdf.

[223] The Collective Agreement for transport, 2020-2023., Appendix no. 10, p. 143.

[224] The Collective Agreement for transport, 2020-2023., p. 144.

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The Danish social partners have participated in the negotiations at European level for the European Framework Agreement on Digitalisation[225]. The Framework Agreement addresses both aspects of digitalization mentioned here – the loss of jobs due to automatization, as well as algorithmic management and adherence to existing regulation. The Framework Agreement promotes dialogue and a partnership-approach for devising measures and actions aimed at using the opportunities and dealing with challenges in respect of existing practices and collective agreements. The Framework Agreement provides a process for the social dialogue addressing digitalization, and also highlights specific approaches, actions and measures, that can be used by employers, workers and worker representatives to tackle topics such as skills, work organization and working conditions. For securing employment, the main focus is on digital skills, and the commitment of upskilling and reskilling[226]. For adapting to using digital work devices, a special focus is on the right to disconnect in respect of working time rules[227]. For using AI, to optimise work processes and creating new business models, the agreement provides direction and principles of how and under which circumstances AI is introduced in the world of work as "trustworthy AI". This includes that AI must be lawful, fair, transparent, safe, and secure, complying with all fundamental rights, applicable laws and non-discrimination rules. AI systems should follow the human in control principle, should be safe – including concerning human physical integrity, psychological safety, need to be transparent and explicable with effective oversight. Information must be provided when AI is used in HR procedures, such as recruitment, evaluation, promotion and dismissal, performance analysis. Affected workers should request human intervention and/or contest the decision. And AI systems should be designed to comply with existing law, including GDPR, and guarantee the privacy and dignity of the worker[228]. Finally, the Framework Agreement addresses surveillance and human dignity with remedies for worker representatives, as well as with a principle, that data should be collected only for a specific purpose not for an eventual undefined future purpose[229].

For algorithmic management in particular, the social partners in the Danish insurance sector point refer the joint declaration of the European Social partners in the insurance sector[230]. The joint declaration maps out several points of attention connected particularly to the use of AI in management, including the many

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[225] https://www.businesseurope.eu/sites/buseur/files/media/reports_and_studies/2020-06-22_agreement_on_digitalisation_-_with_signatures.pdf.

[226] European Framework Agreement on Digitalisation, p. 9.

[227] European Framework Agreement on Digitalisation, p. 10.

[228] European Framework Agreement on Digitalisation, pp. 11-12.

[229] European Framework Agreement on Digitalisation, p. 12.

[230] https://www.insuranceeurope.eu/publications/1639/joint-declaration-on-artificial-intelligence/download/Joint+declaration%20on%20artificial%20intelligence.pdf.

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advantages as well as the lack of legal framework promoting responsible development of AI tools in Europe. The joins declaration also underlines the importance of responsible use of AI is addressed first and foremost in the social dialogue at shop – and sector-level. This dialogue could promote principles or responsibility, such as complying with the existing legal framework, promoting high ethical standards for AI, ensuring compliance with existing transparency requirements especially when processing and managing personal data, ensuring compliance with good governance requirements through consistent revive and monitoring of AI mechanisms, ensuring that those concerned are able to challenge the outcomes, decision or recommendation by AI, ensuring a principle of fairness *e.g.* that employees are free from unfair bias and discrimination, preventing health and safety impacts that could arise from the use of AI, and ensuring information and consultation rights for workers and their representatives and for the promotion of responsible AI to be included in social dialogue[231]. The social partners underline, that AI is subject to general applicable ethical and legal framework conditions, meaning, that the results of AI should be able to be challenged, intervened with, ignored and further completed by humans. AI systems also need to be transparent, explicable and with effective oversight. And checks will need to be made to prevent erroneous AI outputs[232]. The social partners address specific fields of action, where AI can offer many opportunities in HR management, while humans should continue to be the driver, and HR functions should be supported by social dialogue at all levels. The specific fields of action include recruitment, where AI can be used for shortlisting applicants, direction and instructions directly from algorithms, compliance processes can be eased by AI, organizing personnel-related tasks such as holidays and working time schedules, shift systems or service times, and finally AI can also be used for training, upskilling and development of employees by tailormade training programmes[233]. Finally, the declaration reiterates, that it is also in the interest of the employees to perform and maintain their own employability by upskilling and learning new qualifications.

The Joint Declaration gives a framework for better understanding the human elements and challenges to existing regulation and its enforcement. So far, the collective agreements in the insurance sector have not been amended. However, the work at the European level functions as a database of knowledge and inspiration for the Danish partners. This is the case not only in the insurance sector, but is relevant across sectors.

Although the agreements and joint declarations at European level have not yet materialized into specific provisions in Danish collective agreements, the Protocol on collaboration in companies of all sizes added to the logistics sector agree-

[231] Joint declaration on artificial intelligence, p. 2.

[232] Joint declaration on artificial intelligence, p. 3.

[233] Joint declaration on artificial intelligence, pp. 3-4.

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ments in 2020, specifically with regards to new forms of organizing work, gives the first framework for national dialogue on the matter. The Framework Agreement may have paved the way for giving special focus to the issue of health and safety at work as a result of algorithms and new technology in the transport and logistics sector, and an increased focus on the tasks of the Health and Safety Representative in interplay with the Cooperation Committee. The measures promoted in the Protocols to be taken at shop level may be informed by the work carried out at European level, and perhaps the European level acknowledgements of certain issues being relevant, may also cultivate the ground for local negotiations. At the same time, the approach in the Danish collective agreements make use of the existing framework for industrial relations, including shop level dialogue where already in place, and promotion of shop level dialogue where it is not yet in place, such as in SMV's.

The focus provided in the instruments at European level gives a good starting point for discussing all aspects in particular related to algorithmic management and labour law. The European instruments supplement the existing focus in the Cooperation Agreement, where the focus is primarily on job-losses and re-skilling employees, and the Control Agreement, that specifically address that control measures must observe the rights of the employee and must observe existing statutory legislation.

The focus in the European Framework Agreement on upskilling for IT-competences in all industries, reflects the focus in the Protocol on upskilling in specifically the Collective Agreement for Transport between the employer association DTL and 3F[234].

6. *Conclusion*

In Denmark, the social partners have taken the front lead in discussing and addressing digitalization of work. This is clear in all the themes addressed in the project, i.e. platform work, smart work, automatization and algorithmic management. The significance of industrial relations has not decreased in step with increased digitalization, although particularly for platform work the avenue for negotiating collective agreements has been somewhat bumpy, and is not yet entirely clarified.

Perhaps because society is already so highly digitalized and at the same time perhaps the tradition of strong unions and strong employer organisations that both negotiate solutions and test and enforce existing regulation also in new forms of work, with a Labour Court that develops binding principles also for the social partner / industrial relations, the choice of dialogue and investigative

[234] The Collective Agreement for transport, 2020-2023: https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/03-overenskomster/overenskomst-2020-2023/transportoverenskomsten-2020---2023.pdf.

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committees could pave the way for new technologies continuing to be a collaborative issue and the material aspects being solved by dispute resolutions. This could be with the purpose of protecting the collaborative environment supported by strong enforcement mechanisms – also for lack of cooperation.

An approach to increased algorithmic management – which is an entirely new tool that has the potential of significantly altering performance of work, working conditions and relationships at work – by way of promoting social dialogue, is responsible, sustainable, aligned with the Danish model, and supports the social partners as the central actors also in addressing new developments in technology.

The Danish approach to digitalization and the role of industrial relations yields a number of specific takeaway points:

First, the drivers in the first wave of platform companies and collective agreements were the platform companies themselves, looking to align their company with the Danish model as well as create a competitive edge to their platform with the customers. The approach to more hostile platform company has not yet been entirely resolved, in part as a result of the administrative decision of the Competition authorities assessing that the collective agreement for cleaners was a breach of competition law. It is expected, that this discrepancy can be resolved, in part due to a strong interest from government and the initiatives at union level, including the EU-Commissions' package for improving the working conditions for platform workers on 9 December 2021 also addresses in the Draft Guidelines[235].

Second, the social partners are closely consulted and involved in all government initiatives addressing digitalisation and new forms of work. The is probably the most influential element This approach corresponds closely to the traditional Danish model, where legislators and social partners inform and inspire initiatives taking an overall societal view as well as taking into consideration the interests of employers and of workers. This involvement gives a balanced and informed approach also to algorithmic management and new business models, as is seen in the policy papers and strategies from government. This cooperation is not based on any legally binding instruments, but is at the free choice of the legislators at any time. This influenced the 2017-reform of the unemployment benefit insurance system, and is currently informing the negotiations for platform work and algorithmic management.

Third, social partners continue to be the primary regulators, also with regards to new developments in the field of work organisation, working conditions, and relationships at shop level. Current provisions, such as in the Control Agreement provides a material framework for assessing the lawfulness of specific managerial decisions. Current dialogue processes, such as in the Cooperation Agreement, provides an existing framework for discussing new technology – already in place with regards to redundancies and upskilling – also in new measures for algorithmic management.

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[235] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6620.

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Fourth, the advantages of efficient and highly specialised dispute resolution mechanisms, also involving dialogue, enables case-to-case development and adjustment of existing principles to new digital tools and opportunities. The Labour Court develops binding principles relating to the social partners in industrial relations, and this is a manner of interpreting and developing the existing provisions to new circumstances. This approach has a rub-off effect on the same assessments in the ordinary court system, as illustrated by the Supreme Court ruling concerning continuous camera-surveillance[236].

Fifth, the industrial relations framework providing level of binding agreements, where main agreements providing the basic principles, sector agreement giving a more specific framework and shop level dialogue as well as shop level agreements, which may give more specific guidelines relevant at the specific workplace, enables adjustments at shop level but guided by the overall principles at sector- or national level. This is already activated in the Protocols in the collective agreements from 2020, envisaging shop level dialogue to address new forms of digital management.

Sixth, the Achilles' heel of the industrial relations system is that negotiations are voluntary, based on the preference or interests of the members of the social partners. If one of the parties do not negotiate or do not acknowledge a matter as important for negotiations, negotiations are brought to a halt. As mentioned, there is no statutory legislation forcing negotiations on matters, the system is voluntary. The demand to negotiate can be strengthened by engaging in industrial action. For platform work, the method of industrial action has not yet been activated. The social partners and the platform companies are in a limbo, looking towards Union-level solutions between DG Employment and DG Competition. For homeworking and for algorithmic management, the measures continue to be dialogue and negotiated solutions at national, sector- or shop level.

Seventh, the Danish social partners have been active in negotiation framework agreements, and joint declarations, at EU-level as a manner of informing and investigating the special issues related to digitalisation of work. The EU-level agreements have paved the way for informing the dialogue at national level, where the remedy in the current collective agreements is formalised dialogue at shop level, as well as an increased focus on the role of the Health and Safety Representative in interaction with industrial relations mechanisms.

Denmark has timely and accurate implementation of EU-law. Concerning the Danish labour market specifically, the Danish legislators aim to maintain the central role of the social partners as the primary rule-makers for the labour market, even though the Danish state is formally responsible for the state of law in Denmark aligning with our responsibilities as an EU Member State[237]. Most direc-

[236] U 2020.1615 H.

[237] J. KRISTIANSEN, *The growing conflict between European uniformity and national flexibility*, 1st edition, DJØF, 2015, p. 184.

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tives are thus sought to be implemented via collective agreements first, through negotiation and agreements between the social partners. The legislators supplement any collective agreements with statutory legislation applicable to all employees. Statutory legislation is most often made semi-dispositive, meaning, that the statutory rights and duties applies only if the person concerned is not covered by a collective agreement implementing (minimum) provisions in the underlying EU directive, This approach has made sure that the social partners, despite a growing number of EU directives, have retained considerable freedom to negotiate and that legislation has not affected the core of the collective bargaining system[238].

As the themes relating to digitalisation of work are general topics of interest for both employers and employees, and at national as well as EU-level, it is natural, that themes are addressed at Union-level. If binding EU-law were to be issued, the Danish government and social partners would treat the topic as any other EU labour law topic, and would engage in negotiations and dialogue with a view to implement EU law by collective agreement, if possible, and supplement with statutory acts. From a Danish perspective, the question is first one of enforcement of existing rules to new complicated phenomena, and second, to develop new rules addressing specifically new – or more prominent – risks to the existing rights of workers.

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[238] *Ibidem*, p. 194.

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ESTONIA

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SUMMARY: 1. Overview of Domestic Industrial Relations System. – 1.1. Legal Basis for Collective Labour Relations. – 1.2. Actors of the Industrial Relations in Estonia. – 1.3. Collective Bargaining. – 1.4. Main Worker Representation. – 1.4.1. Workplace Representation. – 1.4.2. Numbers and Structure. – 1.4.3. Tasks and Rights. – 1.4.4. Election and Term of Service. – 1.4.5. Time off and Other Resources. – 1.4.6. Representation at Group Level. – 2. General Policy Approach to Digitalisation and Work. – 2.1. Webplatform Economy and Industry 4.0 in Estonia. – 2.2. Telework and Smartworking in the Estonian Legislation and Collective Bargaining. – 2.2.1. The Telework and Smartworking Legislations. – 2.2.2. Teleworking and Smartworking in Collective Dimension. – 2.3. Regulatory and Policy Initiatives Undertaken by Social Partners and Relevant Authorities and Stakeholders. – 2.4. Terminology Related to Digital Work. – 3. Platform Work. – 3.1. Extent and Relevance of the Phenomenon. – 3.2. Main Issues for Regulation and Legislative Responses. – 3.3. Covid-19 and Its Influence to Platform Employment Relations. – 3.4. Industrial Relations Practices. – 4. Remote Work. – 4.1. Implementation of 2002 Framework Agreement on Telework. – 4.2. New Regulatory Initiatives and Practices (Government and Social Partners): Contents and Differences With "Old" Telework. – 4.3. Forms of Remote Work Before and During the Pandemic. – 4.4. Post-Covid Perspectives. – 5. Workplace Automation and Social Partners Strategies. – 5.1. Regulatory Levels: Law, Collective Bargaining. – 5.2. Specific Sectors. – 5.2.1. Machine-Building and Electronic Production. – 5.2.2. Transport. – 5.3. Specific Institutional and Contractual Arrangements and Policies. – 5.3.1. Machine-Building and Electronic Production. – 5.3.2. Transport. – 5.4. Main Regulatory Tools: Participation Mechanisms to Ensure Workers Involvement in Organizational Change. – 5.4.1. Machine-Building and Electronic Production. – 5.4.2. Transport. – 5.5. Signs of Conversion with the European Framework Agreement on Digitalisation. – 6. Conclusion. – 6.1. General Remarks. – 6.2. Legal Regulatory Options. – 6.3. Further Developments.

1. *Overview of Domestic Industrial Relations System*

1.1. *Legal Basis for Collective Labour Relations*

The legal basis for collective labour relations has been determined in the Estonian Constitution[1].

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[1] The Constitution of the Republic of Estonia (Eesti Vabariigi põhiseadus) - RT 1992, 26, 349, https://www.riigiteataja.ee/en/eli/530122020003/consolide (Accessed: 15 January 2022).

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According to the Section 29 of the Constitution everyone is free to belong to unions and federations of employees and employers. Unions and federations of employees and employers may assert their rights and lawful interests by means which are not prohibited by law. The conditions and procedure for the exercise of the right to strike are provided by law. The procedure for resolution of labour disputes is provided by law.

In addition, the section 31 of the Constitution determines, that citizens of Estonia have the right to engage in entrepreneurial activity and to form commercial associations and federations. The law may provide conditions and procedures that circumscribe the exercise of this right. Unless otherwise provided by law, citizens of foreign states and stateless persons in Estonian territory enjoy this right equally with citizens of Estonia.

Section 10 of the Constitution also determines, that the rights, freedoms and duties set out in in the constitution do not preclude other rights, freedoms and duties which arise from the spirit of the Constitution or are in accordance therewith, and which are in conformity with the principles of human dignity, social justice and democratic government founded on the rule of law.

In addition to the Constitution there are separate legal acts that determine the legal framework of collective labour relations. The Trade Unions Act, regulates the activity trade unions and also the functions of representation [2]. Employees Trustee Act [3] foresees the possibility to elect the employees' representative among the employees who do not belong to the trade unions. The Employees Trustee Act also foresees the rules on mandatory information and consultation.

The right and procedure to conclude collective agreements has been determined in Collective Agreements Act [4]. Although this act was adopted already in 1993, the act without any amendments is still applicable.

The main power of the representation belongs to the trade unions. The formation and legal framework of the Trade Unions has been established by the Trade Unions Act. Beside of the trade unions there are also employees' representative, elected by the general meeting of the employees, who do not belong to the trade unions.

Right to collective actions (strikes and lockouts) is more concretely determined in Collective Labour Disputes Act [5].

The collective agreements are usually concluded on the company level. The collective agreements act foresees the possibility to conclude collective agreements on

[2] Trade Unions Act (Ametiühingute seadus) – RT I 2000, 57, 372, https://www.riigiteataja.ee/en/eli/518112021001/consolide (Accessed: 15 January 2022).

[3] Employees' Trustee Act (Töötajate usaldusisiku seadus) – RT I 2007, 2, 6, https://www.riigiteataja.ee/en/eli/518112021004/consolide (Accessed: 15 January 2022).

[4] Collective Agreements Act (kollektiivlepingu seadus) – RT I 1993, 20, 353, https://www.riigiteataja.ee/en/eli/518112021002/consolide (Accessed: 15 January 2022).

[5] Collective Labour Disputes Act (kollektiivse töötüli lahendamise seadus) – RT I 1993, 26, 442, https://www.riigiteataja.ee/en/eli/526062018001/consolide (Accessed: 15 January 2022).

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the branch level and also on national level. On national level there do not exist any collective agreements. There exist only agreements on certain issues. The monthly minimum wage will be agreed between central organisations of employees and employers. This agreement is important for all employees and employers, who are acting on the territory of Estonia.

In addition to this agreement the central organisations of employees and employers have agreed on principles of telework.

In Estonia the freedom of association is constitutionally guaranteed. Among the collective agreements in Estonia, the company collective agreement dominates; sectoral collective agreements (especially in the private sector) are of comparatively little importance. Apart from the principle of favourability, there is no legal regulation on possible conflicts of collective agreements.

The collective agreements are concluded between employees and employers are registered within the Ministry of Social Affairs [6].

1.2. *Actors of the Industrial Relations in Estonia*

Trade Unions

Union density is low in Estonia at around 10%. It fell sharply in the 1990s, but it now seems more stable. Most union members are organised in two major confederations, one, EAKL, primarily manual the other, TALO, primarily non-manual.

Based on the sample used by Statistics Estonia, organisations with five or more employees, the proportion of employees belonging to a union around 10%. It is likely to be slightly lower, at around 9,5% if all employees are included as very small organisations are less likely to have a union presence.

Estonia has two trade union confederations, EAKL, which was founded in 1990 as the country was breaking away from the Soviet Union (it became independent in 1991) and TALO, made up of unions which left EAKL in 1992.

EAKL is primarily a manual workers' confederation, while TALO is primarily a confederation of non-manual workers, but this division is not absolute, particularly in the case of EAKL which includes several non-manual unions.

EAKL is the bigger of the two with more than 30,000 members, while TALO has only around 3,000 members. There are also several thousand members in other smaller unions, which are not part of either of the larger confederations, including the teachers' union EHL with around 10,000 members, and a new, much smaller union for financial employees EFL [7]. A union only requires five employees to found it.

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[6] https://klak.sm.ee/leping/filter/23/load.html (Accessed: 15 January 2022).

[7] Financial sector creates its first trade union, by Liina Osila and Ingel Kardarik, Eurofound, January 2014 Available: http://www.eurofound.europa.eu/eiro/2013/11/articles/ee1311019i.htm (Accessed: 15 January 2022).

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The individual union affiliates of both EAKL and TALO are organised on either an industrial or an occupational basis. EAKL's 20 affiliates include ETTA, the road transport workers' union, EKTAL, the light industries' union, EEAÜL, the energy union and EMTAL, the metalworkers' union and ROTAL, the state and local government employees' union. The nine affiliates of TALO include EAL, the journalists' union, the broadcasting union RTAL and the customs officials' union TTAÜ. Trade Unions can decide who will be accepted as the member of the trade union.

EAKL is politically independent but has links with the Estonian social democratic party which resulted from a merger including a left-of-centre political grouping. TALO is also more clearly politically independent.

Both confederations have experienced a loss of members in recent years, with EAKL initially particularly badly hit. In 1996 EAKL had 119,000 members, more than three times the present total, while TALO had 45,000, many more than now. Among the reasons suggested for the decline are the perceived links between the unions and the Communist Party during the period when Estonia was part of the Soviet Union, the fact that unions no longer provide the benefits and services whose distribution had been one of their key functions in the past, and the loss of employment and restructuring that accompanied the economic changes in the 1990s [8].

1.3. *Collective Bargaining*

Collective bargaining does exist in Estonia. The number of collective agreements is quite small, approximately 950. In majority cases the collective agreement is concluded on the company level. The Estonian legislation also foresees possibility to conclude a collective agreement between three parties: employers, employees and local governments. In this case it is not a collective agreement in direct sense, because it is not possible to determine who is an employer and against to whom it would be possible to raise the claims.

The law does not prescribe, what will be the procedure of negotiations in order to conclude a collective agreement. In case the parties to the negotiations do not reach the agreement, they have to turn to the public conciliator [9]. The public conciliator will be appointed by the Government. In case the parties to the collective bargaining do not reach an agreement with help of public conciliator, they will have a right to start with collective labour dispute (strike).

[8] Trade Unions. http://www.worker-participation.eu/layout/set/print/National-Industrial-Relations/Countries/Estonia/Trade-Unions (Accessed: 15 January 2022).

[9] https://www.riikliklepitaja.ee/ (Accessed: 15 January 2022).

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1.4. *Main Worker Representation*

1.4.1. *Workplace Representation*

Employee representation at the workplace is primarily through unions, or does not take place at all. However, legislation, which came into effect in 2007 (Employees Trustee Act), allows for the election of employee representatives both where there is a union and where there is not. If there is no union these representatives can be involved in collective bargaining.

The main form of workplace representation in Estonia is through the unions at the workplace. Until recently the only alternative was the possibility of an "authorised representative" having a role where trade unionists were not present. In practice this possibility was only taken up rarely. However, new legislation was introduced in December 2006, which provides for employees' representatives with significant powers.

In general terms, under the current legislation, employees' representatives can be elected, if either the union or 10% of the employees want this. These employee representatives have a range of rights, particularly in the area of information and consultation. They can also be involved in collective bargaining if there is no union. If union representatives are present, they too enjoy a number of the same information and consultation rights as the elected employee representatives.

1.4.2. *Numbers and Structure*

The numbers and structure of union representation at the workplace depend on the rules of the union.

The 2007 legislation does not lay down the number of employee representatives to be elected. It states that the employees "may elect several representatives" but this depends on "agreement with the employer".

There is no employment threshold for the election of employee representatives, although the time-off arrangements only apply when there are at least five employees, and some information and consultation provisions only apply if the employer has at least 30 employees (see section on tasks and rights).

If there are several employees' representatives they can decide to elect a "chief representative" from among themselves, who then organises the activities of the representatives.

The legislation does not say how frequently the employee representatives should meet.

1.4.3. *Tasks and Rights*

The key task of workplace trade unions is negotiation of collective agreements, and the union also has a role in ensuring that labour legislation is complied with at the workplace.

Workplace unions also have information and consultation rights, and these have been clarified as a result of the legislation which came into force in 2007,

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which gives unions the same rights to information and consultation as other employee representatives.

Where there are at least 30 employees, the employer should inform and consult employee representatives on: possible significant staff changes and decisions likely to produce major changes in work organisation or contracts of employment. They should also be given details of the annual reports.

Where there is a union representative, he or she should also be informed and consulted in the same way, and where there is no employee representative, the information and consultation should be with the whole workforce.

The law also requires employers to consult with employee representatives, either union representatives or elected representatives, in cases of collective redundancy, business transfer or the reduction of pay because of a lack of work.

1.4.4. *Election and Term of Service*

The election and term of office of union representatives depend on the union's rules.

The decision to elect employee representatives must be taken by a general meeting of all employees, and this meeting can be called, either by the trade union, if one has been set up in the organisation, or by a majority of union members, if there is no union body in the organisation, or by 10% of all employees. The general meeting is only quorate – that is it can only take valid decisions – if at least half of all employees participate. The legislation states that the election must be by secret ballot and all employees and the union can present candidates, but other detailed rules for the election are decided by the general meeting.

Employee representatives are elected for three years unless the general meeting has decided otherwise.

1.4.5. *Time off and Other Resources*

Both trade union and employee representatives are entitled to paid time off to carry out their duties. In the case of union representatives, "at least one" should be allowed this time off. In the case of employee representatives, all of those elected at the general meeting would have this right, but the general meeting may only elect more than one employee representatives with the agreement of the employer. The relationship between the amount of time off and the number of individuals involved is the same for both union and employee representatives. However, there is an important difference: in the case of union representatives, the numbers relate to union members, whereas for employee representatives they relate to all employees. The figures are as follows:

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Number of employees (for employee representatives) / Number of union members (for union representatives)	Hours per week
5-100	4
101-300	8
301-500	16
500 plus	40

Trade union representatives are entitled to five days off from work a year to participate in training or other trade union activities. Two days of this are paid.

Employee representatives are entitled to necessary training "to a reasonable extent". This training is in paid time and employers "may agree" to pay the expenses involved.

The employer should also give the trade union representatives a room, if possible, and space to hold a trade union event once a month.

The recent legislation also gives employee representatives the right to involve experts in the consultation process, although it does not state whether their costs are borne by the employer.

1.4.6. *Representation at Group Level*

Union structures may produce representation at group level but the legislation does not provide for this.

2. *General Policy Approach to Digitalisation and Work*

2.1. *Webplatform Economy and Industry 4.0 in Estonia*

In November 2016 the report about the sharing economy and its application in Estonia was published. This report was prepared by Ernst and Young and Technopolis group [10]. In this report it was not analysed how many people are using different platforms, but mainly it was analysed what kind of services are offered using different platforms. The platforms in economic sense were classified into four groups (transportation, accommodation, finance, persons and business services). In 2015 there were approx. 130 persons involved in platform employment.

[10] Jagamispõhimõtete rakendamine Eesti majandus- ja õigusruumis (Principles of sharing – economy in Estonian economic and legal framework). Lõpparuanne, 14. November 2016, available: https://www.mkm.ee/sites/default/files/lopparuanne.pdf (Accessed: 15 January 2022).

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In 2019 there was a survey on platform employment in 13 European countries. Among the data also from Estonia were collected [11]. In an online survey of 2000 Estonians between the ages of 18 and 65, 8,1% claimed to be doing work (via so-called "gig economy" platforms such as Upwork, Uber or Handy) at least once a week, using the broadest definition of this work.

In 2021, there was a survey about the platform work in Estonia. Where there was the possibility, the results of the survey were also compared with previous results that were collected in 2018 [12]. According to the survey 7,0% of the work is done on a weekly basis, which, when expanded to the working age population (aged 18-64), is about 56,000 people. In 2018, the corresponding share was 8,1%. The share of regular platform employees has not increased. However, the share of people working on platforms at least once a month has increased (11,9% vs. 10,3% in 2018). 11,9% of the respondents (about 95,000 people) work on the platform at least once a month, about a fifth (about 161,000 people) at least once a year, and more than a quarter of the working age population (about 208,000 people) have ever done the platform work.

This change still shows that there is a growing tendency for web-platform economy and the people are interested in using of such possibility for economic activity.

The notion industry 4.0 is not widely used in Estonia. At the same time Estonian employers have acknowledged, that the digital skills of employees are a key factor for the industry and for the economy in the whole [13].

In 2017 by the Government Green Paper on Industrial Policy was approved. According to this Green Paper the following was stated [14].

– Estonia will set the goal that Estonia is among the first three countries of the European Union in terms of companies using digital technologies, which has led to an increase in efficiency and an increase in the share of new products and services (by 2030).

– At the same time there are obstacles, that need attention. Companies lack the knowledge and experience of exactly how digitalisation affects production processes and position in the value chain.

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[11] U. Huws, N.H. Spencer, M. Coates, *The platformisation of work in Europe: highlights from research in 13 Europena countries*, FEPS – foundation for European progressive studies, 2019, https://www.feps-europe.eu/resources/publications/686-the-platformisation-of-work-in-europe.html (Accessed: 15 January 2022).

[12] Platform work in Estonia 2021 Survey results (Platvormitöö Eestis 2021 Küsitlusuuringu tulemused) Tallinn, 2021, https://www.riigikogu.ee/wpcms/wp-content/uploads/2021/06/2021_platvormitoo_uuring.pdf (Accessed 15 January 2022).

[13] https://www.employers.ee/uudised/digi-abc-tasuta-koolitus-aitab-tootmistoolistel-arvuti-hirmust-ule-saada/ (Accessed: 15 January 2022).

[14] Green Paper on Industrial Policy (Tööstuspoliitika roheline raamat), https://www.mkm.ee/sites/default/files/toostuspoliitika_roheline_raamat_.pdf (Accessed: 15 January 2022).

– The state does not have an overview of the ability and skills of industrial companies to integrate new technologies with production and products. The main disadvantage of industrial development is the lack of cooperation at all levels.

– The level of product innovation capacity of Estonian industry is very variable.

– Also, if Estonia wants to implement the industry 4.0 approach, the education system must be flexible and change as needed. For example, industry should be encouraged to be involved in curriculum development in even more areas.

In addition to Green Paper in Industrial Policy, the Estonian Government approved strategy for digital society until 2030 [15]. There is a development plan here to implement the vision more specific objectives and planned lines of action in three areas:

– to develop the digital state or the use of digital solutions in the public sector, as there is no general development of the digital state include no other development plan and also public sector is a leader in the development of the Estonian digital society and direction indicator. The main goal is to get public services using the best experience for our way of life would be mighty, as the vision points out. The next leap in digital development is planned and ensure the sustainability of the digital state created so far;

– to develop electronic communication or connectivity, because sufficient connectivity is available for digital solutions basis of use, be it in a person 's daily life or business. The main goal is to get fast communication affordable everywhere in Estonia;

– to develop national cyber security, because if the necessary trust is guaranteed, it can be formulated in a vision move forward with digital development. This area includes ensuring cyber security in both the public and private sectors economy at large. The main goal is to keep Estonia cyberspace reliable and secure. Considering growing risks and the current base, it is in itself already a rather ambitious target.

There is no specific legislation for both – web-platform economy and industry 4.0. The only legislative act that can be mentioned here is Information Society Services Act [16]. This legal act creates a certain legal framework for a web-based economy and activity.

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[15] Estonian Digital Society 2030 (Eesti digiühiskond 2030), https://mkm.ee/sites/default/files/mkm_arengukava_digiuhiskond_26-10-2021.pdf (Accessed: 15 January 2022).

[16] Information Society Services Act (infoühiskonna teenuse seadus) - RT I 2004, 29, 191, available: https://www.riigiteataja.ee/en/eli/530062021010/consolide (Accessed: 15 January 2022).

2.2. *Telework and Smartworking in the Estonian Legislation and Collective Bargaining*

2.2.1. *The Telework and Smartworking Legislations*

In Estonian legislation there is not much regulation about the telework. It has been stated in Employment Contracts Act S 6 (4) – if an employer and employee agree that the employee does work, which is usually done in the employer's enterprise, outside the place of performance of the work, including at the employee's place of residence (teleworking), the employer shall notify the employee that the duties are performed by way of teleworking. The conditions of teleworking have to be agreed between the employee and employer.

In addition to this main legal rule, Ministry of Social Affairs has also issued a guidance on occupational health and safety rules in case on telework [17].

The smart working (platform work) has not been regulated in Estonian legislation. There are no special requirements for platforms or platform holders, also the conditions of platform work have not been regulated. The conditions of platform work will be decided either by the platform on by the mutual consent between the platform worker and the platform. In case there is an employment contract concluded, then whole labour legislation will be applicable.

2.2.2. *Teleworking and Smartworking in Collective Dimension*

Estonian Trade Union Confederation and Employers' Confederation have negotiated and singed the principles of teleworking [18]. This agreement is not a collective agreement. The principles are more recommendations for employers and employees how to organise the telework and what important aspects have to be taken into account.

Smart work (including also platform work) has not been yet discussed widely. Although platform work is not unknown, more attention has been paid to the individual aspects of the of legal regulation. The collective dimension and collective protection of the rights and obligations has not widely discussed yet.

2.3. *Regulatory and Policy Initiatives Undertaken by Social Partners and Relevant Authorities and Stakeholders*

Estonian social partners have not taken any initiatives in order to regulate the platform employment or to regulate collective labour relations in platform economy.

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[17] Occupational health and safety of a teleworkers (kaugtöötaja töötervishoid ja ohutus), https://admin.tooelu.ee/sites/default/files/2021-04/Kaugtootaja%20tootervishoiu%20ja%20-ohutuse%20juhis.pdf (Accessed: 15 January 2022).

[18] Agreement on telework (Kaugtöö kokkulepe), https://www.eakl.ee/kokkulepped/kaugtoo-kokkulepe (Accessed: 15 January 2022).

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Employers' Confederation has stressed that it is important for every employer to pay attention to the digital skills of employees. Whether and how the platform employees have to be protected, it is not the main issue for both – for employers and employees.

For platform workers recently the issue was raised about the language requirements. As many of the platform workers are usually foreign country residents (students), their ability to speak in Estonian is rather low [19]. In service branch there is requirements to speak Estonian language at least on A2 level. These requirements are applied for the employees only, but not for the workers without any employment contract.

2.4. *Terminology Related to Digital Work*

For clarifying the content of the digital work, different notions are used. One speaks about the digital economy (digitaalne majandus), platform work (platvormi töö), but sometimes one speaks about the small pieces (gigs) of work (tööamps). Also taking into account the nature of the digital work, the telework (kaugtöö) is used. There has been different researches analysing the economical and legal aspects of the digital work [20]. All those analyses will mostly concentrate on the individual aspects of the labour relations. So far the collective aspects of the digital work have not been discussed and the position of trade unions has not been analysed. Also it has not been clarified yet whether the platform workers can organise a trade union and organise collective actions.

3. *Platform Work*

3.1. *Extent and Relevance of the Phenomenon*

There are only few definitions of the "platform" and "platform work" in Estonia, because such kind of work is still not as much popular in practice.

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[19] Sick situation in Tallinn: attack on bilingual taxi drivers (Haige olukord Tallinnas: umbkeelsete taksojuhtide pealetung), https://tehnika.postimees.ee/6681315/haige-olukord-tallinnas-umbkeelsete-taksojuhtide-pealetung (Accessed: 15 January 2022); Kadri Kuulpak: once again about «bolt and wolt» (Kadri Kuulpak: veel kord «boltidest ja woltidest»), https://leht.postimees.ee/6784169/kadri-kuulpak-veel-kord-boltidest-ja-woltidest (Accessed:15 January 2022).

[20] H. CHUNG, *Future of work and flexible working in Estonia. The case of employee-friendly flexibility*, 2018, https://www.riigikogu.ee/wpcms/wp-content/uploads/2017/09/Employee-friendly-flexibility.pdf (Accessed: 15 January 2022); K. HOLTS, *Understanding virtual work. Prospects for Estonia in the Digital Economy*, https://www.riigikogu.ee/wpcms/wp-content/uploads/2017/09/Virtual-work-size-and-trends_final1.pdf (Accessed: 15 January 2022); Future Work – New Trends and Developments. Rake, 2017, https://www.riigikantselei.ee/sites/default/files/content-editors/uuringud/tuleviku_too_-_uued_suunad_ja_lahendused_lopparuanne_2017.pdf (Accessed: 15 January 2022).

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The notion of a platform was used in the fact sheet for Estonia prepared by the University of Hertfordshire. For this factsheet the following notion was used: it is reference to paid tasks that are found via website or "app" accessed via a laptop, smartphone or interconnected device. The renting of rooms via AirBNB or similar and buying/selling goods online are excluded.

Sometimes the notion of platform work is used without any further clarification[21].

There is no legal definition of a "platform work". The "platform work" leads to changes for the labour market and industrial relations. The platforms create parallel and sometimes too flexible labour market, where the employment is not dependent on any kind of contract. There are no employment contracts, no labour standards like working time and health and safety at work, minimum wage, no vocational training. In many cases there are no trade unions or any other forms of representation and collective actions for platform workers.

The usage of the phrase "digital platform" has various meanings in the practice. There are digital platforms, which are only inter-mediators for persons who look for jobs and for companies/ employers, who offer jobs-sometimes temporary, sometimes even permanent jobs. Such platforms charge fees for their services, but they don't interfere in the employer-employee relations. They are operating like agencies for recruitment and selection. Workers, who seek for jobs via such platforms are free to negotiate for their relations with the real employers and they could observe the legal standards, which are offered for the jobs[22].

Other platforms are operating like temporary agencies for work and they really offer jobs and play a role of employer, although the real job is offered by other companies. In such cases there are so-called "triangle" relations between real employer/company-platform and employee.

There are also platforms, which are real employers, but their activity is also not regulated by the law. Usually they offer temporary jobs or on-call work and some other forms of atypical work.

Usually the platforms are registered as limited companies (OÜ, this is equal to German GmbH-s). This means there is always a legal body what is operating the platform. The platforms define themselves as offering services for information society and they do not take any responsibility as an employer[23].

The platforms are usually operating in the following way:

– Publishing the project /suggestion for work;

[21] See K. HOLTS, *Understanding virtual work*, cit., pp 21-22; *Future work: new developments and new solutions*, cit.

[22] See e.g. platform GoWorkaBit, General Conditions, https://goworkabit.com/temp-recruitment-terms, (Accessed: 15 January 2022).

[23] General terms, GoWorkABit, https://goworkabit.com/temp-recruitment-terms (Accessed: 15 January 2022); Bolt, General Conditions and Terms, https://ambassador.bolt.eu/tc (Accessed: 15 January 2022).

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– Selection of best suggestions for implementation (time, price etc.);
– Payment only for work the company has accepted.

There are some debates concerning the particular meaning of crowd work and "on call" work, implemented via software application. "Crowd work", usually is done on-line and connects many clients, organisations and businesses, who are on long distances from each other. The "on call work", implemented via software application is made at one place, but is made via digital platforms (for example in transport, services for home, repair services etc.).

In 2019 there was a survey on platform employment in 13 European countries. Among the data also from Estonia was collected (hereinafter Survey 2019)[24]. In an online survey of 2000 Estonians between the ages of 18 and 65, 8,1% claimed to be doing work (via so-called "gig economy" platforms such as Upwork, Uber or Handy) at least once a week, using the broadest definition of this work. 10,2% found such work at least once a month. When the definition was narrowed to those saying that they carried out work that they had found via a website or app and used an 'app' to notify them when work was available the proportion was reduced to 3,6% who both undertook such work at least once a week and were informed of its availability at least once a week.

39,9% said they had tried to find work in this way but not all of them succeeded. The numbers of people seeking work via online platforms greatly exceed those who actually find it. Out of every 4 people looking for this kind of work, only one actually found it on a monthly basis, and even fewer on a weekly basis.

It is often thought the gig economy is used as an occasional income top-up in addition to another main job, or even just for fun, and indeed for over three quarters of platform workers (76,4%) it represents less than half their income. But for a substantial minority of platform workers, it is the only or main source of income with 4,2% of platform workers saying it is their only source of income and 23,6% saying that it represents at least half of their income. A substantial proportion (39,5%) did not know or did not wish to divulge this information. Male platform workers were more likely to respond that platform work was their only source of income. 4,3% of the male platform workers stated that this was their only source of income compared to 4,0% of the female platform workers.

In 2021, there was a survey about the platform work in Estonia. Where there was the possibility, the results of the survey were also compared with previous results that were collected in 2018[25].

According to the survey the following results are important:

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[24] U. Huws, N.H. Spencer, M. Coates, *The platformisation of work in Europe: highlights from research in 13 European countries*, https://www.feps-europe.eu/resources/publications/686-the-platformisation-of-work-in-europe.html (Accessed: 15 January 2022).

[25] Platform work in Estonia 2021 Survey results (Platvormitöö Eestis 2021. Küsitlusuuringu tulemused) Tallinn, 2021, https://www.riigikogu.ee/wpcms/wp-content/uploads/2021/06/2021_platvormitoo_uuring.pdf (Accessed; 15 January 2022).

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– 7,0% of the work is done on a weekly basis, which, when expanded to the working age population (aged 18-64), is about 56,000 people. In 2018, the corresponding share was 8,1%. The share of regular platform employees has not increased. However, the share of people working on platforms at least once a month has increased (11,9% vs. 10,3% in 2018). 11,9% of the respondents (about 95,000 people) work on the platform at least once a month, about a fifth (about 161,000 people) at least once a year, and more than a quarter of the working age population (about 208,000 people) have ever done the platform work.

– Platform work is additional work to other core activities. Almost half of the people who do platform work regularly do platform work for up to 10 hours a week. A quarter of regular platform workers work 11-25 hours, slightly more than a fifth 25 - 40 hours and a small proportion (7,2%) more than 40 hours a week.

– The only source of income is platform work for 4,4% of platform employees (approximately 2,500 people) and it has not increased compared to 2018.

– Platform workers who have done platform work at least once in the last year (20,2% of the working age population, *i.e.* about 161,000 people) earn on average 18,4% of their monthly net income by doing platform work. Thus, the share of revenue generated by platform work is significant.

– During the Covid-19 period, the volume of platform work performed in the digital environment has increased, especially among Estonian-speaking respondents. It follows that the platform's business model is expanding in the professional services sectors.

– Compared to 2018, the share of most types of platform work surveyed has increased. The share of ride sharing has increased the most (+ 7,6%) and the share of web-based work (more complicated + 4%, simpler + 3,4%), but also the share of professional services (+ 3,2%). It has remained at the same level the share of personal care services (-5,5%) and the performance of tasks in the homes of others (-2,6%) have decreased.

– For platform workers working up to 40 hours a week, the share of platform work is 14.5 hours and the average workload of a platform worker does not differ from the workload of a person not working on a platform. People who work more than 40 hours a week in total (about 20% of regular platform workers) also have a significantly higher number of hours of platform work - an average of 26 hours per week. This indicates an unreasonably high total workload, which may be driven by day-to-day problems.

– The average net income of people doing platform work is lower than that of those not doing platform work. The average net income of people who did platform work at least once in their life in March 2021 was 1017 euros. The average net salary in Estonia in the same month was 1255 euros. The largest share (19,3%) of the regular platform employees are those with a net monthly income of only between 400 and 700 euros.

What work are platform workers actually doing? Turning to the work that platform workers actually do in Estonia, one of the most striking features of the Survey

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2019 was the propensity of respondents to name more than one kind of work. This suggests that they were trying to gain an income from as many sources as possible but makes it difficult to gain an accurate picture of the breakdown of the platform workforce. 15,5% of platform workers said that they carried out office work, short tasks or 'click work' on their own computer or other online device at least once a week (an estimated 2,9% of the working age population of Estonia, aged 18-65; 24,100 individuals) and 20,3% of platform workers carried out more high skilled online work (such as design, editing, software development or translation) at least once a week (3,9% of working age population; 31,800 individuals). Slightly fewer (13,6%) had run errands or carried out routine office-type work in other people's premises at least once a week (2,6% of working age population; 21,300 individuals), carried out occasional work in other people's homes, such as plumbing or household repairs at least once a week (12,1% of platform workers; 2,3% of working age population; 18,800 individuals), done regular, scheduled work in other people's homes (such as cleaning, gardening or babysitting) at least once a 5 week (12,1% of platform workers; 2,3% of working age population;18,700 individuals), or professional work (such as legal services, accounting) at least once a week (11,9% of platform workers; 2,3% of working age population; 18,600 individuals). Similar numbers had done taxi work, using an app or website such as Uber at least once a week (11,4% of platform workers; 2,2% of working age population; 17,800 individuals) and personal service work (such as hairdressing or massage) at least once a week (12,4% of platform workers; 2,3% of working age population; 19,200 individuals). When it comes to making deliveries, 7,1% of platform workers used a car or van to deliver meals from a restaurant or takeaway at least once a week (1,4% of working age population; 11,200 individuals) with the figure for using a bicycle, moped or scooter being 9,4% (1,8% of working age population; 14,800 individuals). For delivery of other items at least once a week, 16,0% of platform workers used a car or van (3,0% of working age population; 25,100 individuals) with the figure for using a bicycle, moped or scooter being 9,0% (1,7% of working age population; 14,200 individuals).

Many of the tasks mentioned above have been carried out in the past by casually-employed or self-employed people, both inside and outside the formal economy. It is therefore necessary to ask to what extent these findings represent new developments related to digitalisation and the development of online platforms.

However, it is interesting to note that the more intensive the platform work is, the greater the propensity to use this technology to be notified of the availability of work. Based in Survey 2019, one can observe that 81,1% of those who report platform working at least every week have, at some time, been notified of work via such technology, and for those who say that platform work constitutes at least half of their income, the percentage is 84,7%. Amongst non-platform workers, 25,6% report that they also use such 'apps'/websites to be notified of work availability. Turning to the logging of work via an 'app'/website, one can see that 66,4% of platform workers have, at some time, done so with higher proportions for those who undertake platform work every week (79,9%) and those for whom platform

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work is at least half their income (77,3%). However, this is not restricted just to platform workers with 27,1% of non-platform workers also reporting that they have, at some time, logged work via this technology. Although in percentage terms, the use of 'apps'/websites is lower among non-platform workers, because they represent a much higher proportion of the population this usage is numerically very significant. On the basis of these results, it is estimated that 109,500 platform workers have used such technology but 178,600 non-platform workers have done so. In other words, for every platform worker who has used an 'app'/website to log work, there are 1.6 non-platform workers who have done so. The digital management practices associated with the 'gig economy' are therefore still widespread across the Estonian labour market.

3.2. *Main Issues for Regulation and Legislative Responses*

Estonian legislation does not contain any legal definition of platform work. The attempt to regulate the specific characteristics of platform employment were done in Public Transport Act. The legislator tried to regulate the specific characteristics of ride sharing. According to the Public Transport Act, there is no notion of platform. Instead of platform, in the public transport act the notion of "Information society service" is used[26].

There is no statutory regulation for platform work in Estonia. In the existing labour legislation (Employment Contracts Act)[27] there are some provisions, which could be used for the regulation of the platform work. Some dimensions of platform work need special regulations as well.

Since 2009-2012 there are provisions, which regulate the labour relations in cases of tele-work and temporary agency work, including regulations for labour contracts, working conditions, working time, payment, also the rights for organising, collective bargaining, information and consultations etc. Some of them, could be applicable for the platform work as well (precondition is, that the employment contract does exist). In some cases, also the rules about the fixed-term contracts are important (platform that are haring short-times employment, gigs).

At the moment some of these provisions are not implemented because of too narrow usage of platform work.

The Estonian labour legislation envisaged as well some provisions, concerning the information and consultations rights and workers' participation, which are particularly related to new technology implementation. According to the Employees Trustee Act the employers should inform and consult the employees' repre-

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[26] S 45 (3), Public Transport Act (Ühistranspordiseadus) – RT I, 23.03.2015, 2, https://www.riigiteataja.ee/en/eli/518012019010/consolide (Accessed: 15 January 2022).

[27] For example S 48, On-call time, Employment Contracts Act (Töölepingu seadus) – RT I 2009, 5, 35, https://www.riigiteataja.ee/en/eli/509052019005/consolide (Accessed: 15 January 2022).

sentatives on possible changes in work organisation[28]. Similar provisions are introduced in the European societies[29] and in the Occupational Health and Safety Act[30].

Some of the main issues, which require new regulation via labour law include the *nature* of the platforms, qualification of the platform's role in trilateral relationships, classification and legal status of workers, entitlement to collective rights including organising in trade unions and collective bargaining.

3.3. *Covid-19 and Its Influence to Platform Employment Relations*

On 12 March 2020, the Government of the Republic of Estonia declared the emergency situation to prevent the spread of the Covid-19 disease in Estonia. Initially, the following measures were taken to avoid the spread of the coronavirus:

- all public gatherings were prohibited;
- all educational institutions (primary, basic, secondary, vocational and hobby schools as well as higher education establishments and universities) switched over to remote and home studying;
- all performances, concerts, conferences and sports competitions were prohibited; museums and cinemas were closed.

A few days later, several public leisure facilities, such as sports halls, sports clubs, gyms, spas, swimming pools, water centres, day centres, children's play rooms, casinos and slot machine halls, hookah cafés, recreation and entertainment facilities, were closed.

The implementation of the restrictions has led to a high degree of teleworking and creating so called "home offices". As previously, the main problem when working from home is ensuring the health and safety of employees because their homes are not under the employer's control. In this sense there were also no changes in regulations.

During the emergency situation, many employers used the right to reduce wages under S 37 of the Employment Contracts Act(ECA)). According to ECA S 37 (1), if an employer, due to unforeseen economic circumstances beyond its control, fails to provide an employee with work to the agreed extent, the employer may reduce the wages, if payment of the agreed wages would be unreasonably burdensome for the

[28] S 20 (1) 2) Employees' Trustee Act (Töötajate usaldusisiku seadus) - RT I 2007, 2, 6, https://www.riigiteataja.ee/en/eli/518112021004/consolide (Accessed: 15 January 2022).

[29] E.g. S 34(2), Community-scale Involvement of Employees Act (Töötajate üleühenduselise kaasamise seadus) – RT I 2005, 6, 21, https://www.riigiteataja.ee/en/eli/529122020005/consolide (Accessed: 15 January 2022).

[30] S 18(6) 2), Occupational Health and Safety Act (Töötervishoiu ja tööohutuse seadus) – RT I 1999, 60, 616, https://www.riigiteataja.ee/en/eli/528122021001/consolide (Accessed: 15 January 2022).

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employer. The measures taken due to the spread of the Covid-19 disease can be considered as unforeseen economic factors beyond the employer's control, which may lead to a reduction in the employee's wages. The employer may reduce the wages to a reasonable extent, but not lower than monthly minimum wage. If possible, before reducing wages the employer is required to offer the employee other work. The employer is also obliged to inform and consult with employees' representatives (ECA S 37 (2) and (4)). Pursuant to ECA S 37 (3) and (5), an employee has the right to refuse to perform work in proportion to reduction of the wages. The employee does not have to agree to the reduction of wages; he or she may terminate the employment contract for this reason and is entitled to redundancy benefits.

Due to the restrictions implemented to counteract the spread of the Covid-19 disease, one important measure introduced by the government to protect employees' incomes is the payment of the wage compensation to employees. Wage compensation is paid by the Unemployment Insurance Fund to employees whose employer's operation has been considerably disrupted by extraordinary circumstances for the period from 1 March 2020 to 31 May 2020, but for no more than two calendar months. This compensation was usually paid to employees whom their employer cannot provide with work to the agreed extent and whose wage has been reduced according to the ECA S 37. An employee was entitled to receive compensation of 70% of the employee's average wage but as a gross amount no more than 1000 euros per one calendar month. An employee who is paid wage compensation must be paid gross wage of at least 150 euros by their employer. The compensation paid by the Unemployment Insurance Fund along with the wage paid by the employer must ensure an employee at least the minimum wage. Wage compensation is paid only for those persons, who have concluded an employment contract. In situation where a person was employed under no employment contract, they were excluded for such measures. This also means that platform workers were outside of the wage compensation program.

3.4. *Industrial Relations Practices*

Trade unions are still in the beginning of their activities regarding the platform work. There are no specific trade unions or branches of trade unions that specifically are concentrated to the platform employment or platform workers. There is no statistical data about the representation of the platform workers. There are no specific trade unions to protect interests, rights and obligations of platform workers.

In 2011 the trade union for IT specialists (Telecommunication and Info Technology Workers Trade Union) concluded cooperation agreement with the trade union of the of transport workers. The idea of such cooperation was to protect the rights of workers in better way[31]. The trade union of IT specialists does not specifically protect labour rights of platform workers.

[31] The trade union itself was established already in 2004. See also: https://majandus24.postimees.ee/427821/it-tootajad-astusid-transpordi-ametiuhingu-kaitse-alla (Accessed: 15 January 2022).

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The interests of platform workers at the moment are not represented by any of trade unions. In case the platform workers would protect their rights, they are organising the demonstrations against the platform holders by themselves. Such demonstrations are not viewed as strikes, because strikes can be organised by trade unions or by the employees' trustee. At the moment both possibilities presuppose, that there exists employment contract. The one and the only demonstration as such was organised in 2018 in order to stop the changes in price policies for ridesharing services[32].

There are also many discussions concerning the digitalization, where the issues of platform work are put in. Some of the main issues, which are concerned are related to the working time, health and safety at work, the relations between the working and private life, as well as the representation of such workers.

One of the main issues concerns the alternative labour market and the increasing of non-formal work and non-formal economy. Usually the platform work doesn't envisage labour contract, agreed wage or working time, training, organizing in trade unions etc. The worker usually is self-regulating (self-employed) and his/her own duty is to look for social protection, social insurance etc. Usually such work/employment is neither registered, nor taxes and social insurance contributions are paid.

Another question is whether the platforms use really self - employed persons or most of them are dependent by the platforms, although officially they are self-employed. Do they have the rights to refuse to implement any tasks? Also the discussion is, whether the platform workers can be viewed as individual contractors (independent parties to the contract). In case they are viewed as independent parties to the contract, the questions remain the same – what kind on rights do these people have and what kind of rights could be guaranteed?

Also the question of wage formation is important. In the process of wage calculation, do the companies/platforms have in mind the fact that every worker uses his/her own equipment, the payment of social insurance contributions is their own duty and that they don't have any benefits in case of illness, accident etc.

Law regulates the industrial relations system in Estonia, but some processes are self –regulated. This includes procedure of collective bargaining. Although in some cases the law gives to the trade unions and employers possibility to regulate some issues via a collective agreement, those possibilities are not widely used[33].

However, at the moment the platform work is not covered neither by the law, nor by the self-regulating social partnership.

In Estonia there are no requirements in order to determine the representativeness of a trade union. According to the Trade Unions Act there is only one requirement: there must be at least five employees in order to establish a trade union. In

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[32] See in Estonian: Taxify drivers gathered for a protest (Taxify juhid kogunesid meeleavaldusele) 26.01.2018, https://www.ohtuleht.ee/854557/fotod-ja-video-taxify-juhid-kogunesid-meeleavaldusele (Accessed: 15 January 2022).

[33] For example, S 97 of the Employment Contracts Act allows to determine via a collective agreement the period of notice in case of termination of an employment contract. The period of notice agreed in a collective agreement could be longer than prescribed in ECA or shorter.

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case the trade union has been established, the employer has to bargain with the established trade union and the trade union has a right to demand that employer will start with collective bargaining.

The platform work is a challenge to the workers' and employers' representation. In Estonia both actors are still too traditional. At the same time, there still are no movements, which are focused on the platform workers or employers.

One of the big challenges for platform workers and trade unions is the isolation of platform work. As it was shown above, most of such workers do have only occasional or short-term tasks. Trade unions, even in case they are operating on the local/municipal and regional level could encounter a lot of difficulties even to identify the platform workers and then to organise and represent them.

The industrial relations system is not conflictual, but some employers try to avoid the labour standards and the rights for organising and collective bargaining are not preserved in many companies, especially in the SME-s and in the non-formal economy. However, only the legal regulation could improve some of the issues.

Regarding the new EU policies, some steps have made by the government of the Republic and the social partners, but at the moment they are still in the forms of discussions. More attention is paid on skills improvement, adaptation of workers' education and training, including the digital skills. Also the social protection is among the main subjects of the new programs and discussions. However, the platform work still is not among the priorities.

Some of the most important policies are related to the legal amendments, concerning the platform work, including all the issues of labour and of the workers and employer representation. The most important issues concern standards for minimum payment (payment per hour, day, week and month), social insurance, rights for paid leave, working time regulations, standards for occupational health and safety as well as the rights for organising and representation for workers and employers, dispute resolution and collective bargaining. At the moment it is obvious, that platform-workers need additional regulations and there is need to clarify the applicable labour conditions.

The social partners also have to make their own reforms, for example reform the trade union priorities and especially in their structures and methods of organising. Trade union should improve their policies, with more focus on the individuals. In the law it is necessary to clarify to which extent trade unions can represent platform workers (*i.e.* workers, who do not work under the employment contract). At the time being there is no trade union representation for the platform workers.

Generally speaking, it would be also useful to adopt new law on collective labour relations, as the main legislation is dated from 1993 but the situation on labour market has changed a lot since then.

The self-regulation is not as much developed in the IR system; the self- regulation leads rather to non-existence of industrial relations. In some cases, the usage of tele-work is integrated in the system of industrial relations at the company level, but is rather an exception. One of the ways to organise platform work is at first to

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promote them to organise themselves and then to try to affiliate such organisations to the trade unions.

Estonia could use the experience of other member states in the legal and other regulations and policies regarding the platform work.

4. *Remote Work*

4.1. *Implementation of 2002 Framework Agreement on Telework*

Since 2009 the Employment Contracts Act (ECA) regulates teleworking. The provisions of the ECA on the regulation of telework are general and leave the employee and the employer the opportunity to reach agreements to the extent necessary and appropriate for them. The Estonian Trade Union confederation (EAKL) and the Estonian Employers' confederation (ETKL) have also agreed on the principles of applying telework[34].

Acknowledging the importance and growing popularity of telework and virtual work in Estonia, they concluded a joint agreement on teleworking in June 2017. The agreement was concluded due to several reasons. Firstly, around 20% of employees worked remotely in Estonia in 2015 and this number was expected to rise in the future due to technological developments and new forms of work that are less dependent on specific workplace, but rather access to internet. Secondly, the current legislation did not provide enough regulation of working conditions related to teleworking. Thirdly, the aim was to implement the European level social partners' framework agreement on telework from July 2002. Therefore, on 7 June 2017, to mitigate the risks and fears related to teleworking among employers and employees and to promote this form of work, EAKL and ETKL signed a teleworking agreement.

Although the joint agreement has been concluded, there hasn't been any extra steps taken regarding the regulation or raising awareness about telework and virtual work - largely due to the lack of financial resources. Although these principles are not mandatory (they are not generally a binding collective agreement), they constitute the principles that both employers and employees are expected to follow.

When regulating employment relations, Estonia must consider that public service employment is also relevant in addition to regular employment based on an employment contract. According to the Civil Service Act[35] employees in the public service are divided into two categories: officials and employees on the basis of an employment contract. Officials are appointed by administrative act and are

[34] Agreement on telework (Kaugtöö kokkulepe) 25.05.2017, https://www.eakl.ee/kokkulepped/kaugtoo-kokkulepe (Accessed: 15 January 2022).

[35] Civil Service Act (Avaliku teenistuse seadus), https://www.riigiteataja.ee/en/eli/525032019003/consolide (Accessed: 15 January 2022).

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generally not subject to labour law. According to the Civil Service Act Section 67 (3), the possibility of teleworking is also provided. However, the Civil Service Act does not specify which conditions should be applied in telework. The agreement between the two confederations referred to above is also applicable by analogy in the public service.

The provisions of the ECA on telework are general and leave the employee and the employer considerable freedom in determining their relations. Observing and ensuring compliance with occupational health and safety requirements is imperative concerning teleworking. This is one of the critical issues, the specific solution to which is being sought by many countries, not only in Estonia. Although telework in many countries is regulated by legislation at different levels, occupational health and safety requirements have mostly remained unchanged. The Estonian Occupational Health and Safety Act[36] does not alter the prescribed liability for occupational safety between an employee and an employer. The employer is fully responsible for compliance with occupational health and safety requirements in all work situations, including teleworking. This principle has not been changed, nor has it been altered in the context of Covid-19. When other working conditions in telework are a matter of agreement between the parties, then ensuring occupational health and safety requirements is ultimately the employer's responsibility. The employer is responsible for non-compliance with these requirements.

The application of teleworking has become a new norm since the advent of Covid-19. Countries are left with choices about how and in what forms to do it. Occupational health and safety guidelines were adopted in Estonia even before the wave of the Covid-19 virus, and they should be followed in the performance of telework[37]. These guidelines are not mandatory but set out clear requirements that both the employer and the employee must observe to prevent the employee's health from deteriorating. Still, some of the employers have adopted the internal rules on telework.

In terms of employment law, telework differs from other ways of work because the employee may not be physically located at the employer's workplace, and the employer does not have the opportunity to control whether and how the employee performs his duties. Nevertheless, since work tasks are performed using modern information and communication means, the employer can still control the performance of work tasks if the necessary control mechanisms have been established.

Owing to the Covid-19 restrictions, teleworking has become a standard work option. Indeed, not all activities permit home-based work (e.g., construction or other spheres). In some situations, when the worker is not allowed to go to work,

[36] Occupational Health and Safety Act (Töötervishoiu- ja tööohutuse seadus) https://www.riigiteataja.ee/en/eli/522022021001/consolide (Accessed: 15 January 2022).

[37] Teleworker – occupational health and safety (Kaugtöötaja töötervishoid ja – ohutus), https://www.tooelu.ee/UserFiles/Sisulehtedefailid/Teemad/Paindlikud%20t%C3%B6%C3%B6v%C3%B5imalused/Kaugtootaja%20tootervishoiu%20ja%20-ohutuse%20juhis.pdf (Accessed: 15 January 2022).

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taking into account all potential restrictions on movement, work from home is the only way to continue working. Such changes in the situation have brought along new issues, which so far in teleworking were either not regulated at all or lacked regulation of a sufficient extent and scope.

According to the ECA, if the tasks are performed remotely, the performance of the specified work must be agreed in the employment contract. The ECA does not specify what the working conditions are in the case of telework, nor does it stipulate what the rights and obligations are and what means of employment must be guaranteed by the employer to the employee. These obligations are left to the agreement of the parties.

As mentioned above, certain principles for organizing telework were agreed upon between the Estonian Trade Union confederation and the Estonian Employers' Confederation in 2017. This agreement is of an indicative nature. Although the aforementioned agreement referred to teleworking on a voluntary basis and on the basis of an agreement between the parties, under the conditions that changed due to Covid-19, the transition to teleworking was compulsory rather than agreement-based. Especially in the spring of 2020, when the first wave of the Covid-19 and the restrictions stepped in unexpectedly. Employers had no choice but to arrange for employees to work remotely where it was feasible, and the nature of the work allowed to do so. There was relatively little time left to agree on which conditions would be applicable to telework.

Estonian labour legislation addresses the question of agreement of the parties as to whether and under what conditions organizing of telework is realizable. The law does not specify the rights and obligations of employees and employers.

A more significant aspect of teleworking is ensuring compliance with the working and rest time prescribed by law and agreeing expressly on the time from which the employee must be available to the employer to perform work-related tasks. There is also a need to agree on how and to what extent the costs related to the resources required for carrying out the work should be covered.

In the case of teleworking, compliance with occupational health and safety requirements remains of major importance. The current legal regulation of occupational health and safety is aimed at achieving that the employer is generally responsible for compliance with the requirements related to occupational health and safety. Although the employee is also obliged to comply with occupational health and safety requirements, the employer is ultimately responsible for meeting these requirements.

The Estonian Occupational Health and Safety Act stipulates the same principle – the employer is responsible for compliance with occupational health and safety requirements. The employer must instruct the employee and explain to them the risks associated with teleworking. Still, the employer will not be excused from liability should the employee's health deteriorate during teleworking.

In Estonia, the Chamber of Commerce and Industry proposed that the employee be responsible for safe working conditions if the employer has informed the

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employee about the risks of teleworking. It should therefore imply a division of responsibilities between the employee and the employer[38].

In Estonia, there are regulations for labour contracts, working conditions, working time, payment, also the rights for organising, collective bargaining, information and consultations etc. concerning the additional requirements for teleworking. The idea is that the rules and requirements in question are relevant to new forms of work. They should also be applied equal manner for telework. According to the legal provisions, teleworking is a form of organising work carried out under an employment contract, which previously was or could have been performed on the employer's premises, away from those premises through the use of information technology. Teleworking could be implemented voluntary or could be implemented partially under the contract, notably the employer and the employee, may change the mode of work. The content of an individual teleworking employment contract is identical to that of a standard employment contract. This applies to the working hours, rest- times and leave periods, remuneration etc. In practice, the contracts in question do not provide greater flexibility in terms of the conditions of employment per se. They merely allow the worker or employee to carry their work away from the premises of the employer*, i.e.* at their home or another location of their choice. Workers, who are employed partially or fully on such regime, have the same individual and collective rights as their colleagues working from the employer's premises, including the right to organise in trade unions, to participate in the collective bargaining and to be covered by the collective agreements, to be covered by settlement of collective labour disputes, to participate in strikes and other collective actions. They also could participate in the general assembly of the workers and employees of the enterprise, be involved in the election of workers' representatives (employees trustee) and be elected as representatives (representatives for information and consultations, members of the Health and Safety committees etc.).

The Estonian labour legislation envisages as well some provisions, concerning the information and consultations rights and workers' participation, which are particularly related to new technology implementation. According to the Employees Trustee Act[39] the employers should inform and consult the employees' representatives on information and consultation concerning: possible changes in work organisation, introduction of new technologies, including also implementation of home work and telework.

Telework is not too often mentioned in the collective agreements at sectoral level, although it is used in some company level agreements and in some companies by recommendations of the management teams. the digitalization issues, including

[38] Regulations concerning employment must be more flexible (Töötamisega seotud regulatsioone tuleb muuta paindlikumaks), https://www.koda.ee/et/uudised/tootamisega-seotud-regulatsioone-tuleb-muuta-paindlikumaks (Accessed: 15 January 2022).

[39] Employees' Trustee Act (Töötajate usaldusisiku seadus), https://www.riigiteataja.ee/en/eli/518112021004/consolide (Accessed: 15 January 2022).

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restructuring, vocational training and remote work, including some measures to ensure work-life balance are discussed in the process of autonomous social dialogue and collective bargaining.

In 2019 there was a study about the decent and productive virtual work. It was analysed how the social dialogue and collective bargain in general can contribute to the virtual work in Estonia[40].

In this study three sectors were analysed: health care sector; financial sector and IT sector.

In health care sector the virtual work was not regulated through collective agreements and social dialogue. In everyday work organisation, the virtual work (telework) is used as much as possible.

In financial sector there has not occurred any sector-level social dialogue around virtual work. As virtual work is not widespread, there are no sector-level social dialogue partners on the employers' side and the relationship between trade unions and employers is complicated, there have not been any virtual work-related social partners' debates and discussions in the sector.

Although the IT sector is seen to be the forerunner of virtual work/home-based office and flexible working conditions in Estonia, the regulation of virtual work through collective bargaining in the sector is rather non-existent.

4.2. *New Regulatory Initiatives and Practices (Government and Social Partners): Contents and Differences With "Old" Telework*

There are not many innovative forms of remote /mobile work emerged in recent years, except the ICT based mobile work, in cases when the employees could work from any place they prefer, not only from home. However, in many cases, especially services, provided at homes and offices the remote/mobile work is not new, it has been only improved via implementation of ICT equipment for assignments and communication with the central offices of the companies and with clients.

In the finances and banking the ICT based mobile work and home office (telework) are used, which gives to many workers chances for flexible working time. This also leads to better flexibility of work, or working time and improves the relations with clients. However, in most cases such work is a voluntary choice of the workers, as this also leads to abolishing the borders between the working and personal life.

The telework and ICT based mobile work are used in some other sectors, like telecommunications, commerce, out sourced services, the universities.

There are still no provisions concerning the innovative forms of remote/mobile work. There are some discussions, which started mainly because of the pandemic. The discussions concern mainly the Health and Safety at work as well as control

[40] Decent and Productive Virtual Work in Estonia, 2019, http://www.praxis.ee/wp-content/uploads/2018/07/DeepView-Estonian-report.pdf (Accessed: 15 January 2022).

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and data protection, and less the working time regulations, mobility, wage – setting criteria etc. In general, most of the worker's rights for the workers, who work in such regime haven't been changed, with exception of some particular provisions concerning health and safety at work.

The telework and ICT based mobile work are still not as much implemented and most of workers do telework only partially, not having particular labour contract for full-time telework or ICT based mobile work. At the moment such circumstances could not have a real impact on the industrial relations practices. According to the law the workers have the same rights for collective representation, as the other workers.

At the moment the impact of the industrial relations on the remote/mobile work is still weak, because of its' restricted implementation. The regimes of telework or ICT based mobile work could be negotiated in the sectoral collective bargaining and mostly on the company level. It seems at the moment there are only some company agreements, also in some cases the employers-initiated consultations with trade unions or other workers' representatives concerning the implementation of telework.

4.3. *Forms of Remote Work Before and During the Pandemic*

In general, the digital work- mainly home based telework, increased during the quarantine and even sectors and organisations, which haven't implemented it before were forced to do this. In many sectors and companies, the telework has been implemented since the beginning of March 2020 or the number of persons, involved in telework has increased. According to Estonian statistics in 2020 almost 30% of all employees did telework [41]. This trend also continued at the beginning of 2021.

This concerns various sectors like IT-s, telecommunications, commerce, water supply, finances, also for the first time, education (schools and universities), the research institutes, partially -in the Government and local administration. Also many companies for services at homes and offices continue and increase the remote work. In most of cases the telework is implemented via shifts-some employees are working from home for a week, for example and some are in the offices, and then they change for another week. In many cases the new regimes are consulted or even negotiated with trade union representatives or consulted with other workers' representatives.

In most cases the telework was used till May 2020 and such regimes started again in October 2020, because of the increasing of the pandemic. The exception are some sectors and companies, where the telework and ICT based mobile work has been used before pandemic.

[41] During a year more than 40000 teleworkers added (Aastaga lisandus üle 40 000 kaugtöö tegija) https://www.stat.ee/et/uudised/aastaga-lisandus-ule-40-000-kaugtoo-tegija (Accessed: 15 January 2022).

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4.4. *Post-Covid Perspectives*

In conclusion, the remote /mobile work is a new challenge for the working conditions and industrial relations in Estonia. The pandemic only provoked the processes to happen faster, even in case where strong resistance concerning telework existed –mainly by the employers' side and sometimes by the workers' side. Working conditions of virtual and traditional workers are rather similar than different.

Sectoral industrial relations, trade union membership and collective bargaining coverage in Estonia are one of the lowest in Europe. In some sectors, including financial activities and computer programming sectors, social partners and collective bargaining is practically non-existent. At the same time, in health care, sectoral collective agreement has been concluded to mostly regulate remuneration and working time, but not explicitly virtual work.

In Estonia there has been discussions about the right to be disconnected, but at the moment there is no concrete draft of a law to regulate this topic. Also there is no concrete plan to regulate more detailed way the rights and obligations employees and employers in order to regulate telework.

5. *Workplace Automation and Social Partners Strategies*

5.1. *Regulatory Levels: Law, Collective Bargaining*

Although the Estonian Government has not prepared any clear strategy for industry 4.0, the industrial innovations are being implemented. Those innovations are used and applied quite positively comparing to the average in the EU. The indicator DESI 2021 for Estonia is 59.4 (comparing to 50.7 for the EU on average) [42]. Estonia has especially paid attention to the development of the digital public services. Although the ranking is high, there is still open questions on strategy industry 4.0.

Estonia has neither developed an industry 4.0 strategy, nor do the social partners or the Government of the Republic have a single vision of whether and how industry 4.0 should be developed and what it entails for companies.

However, the concept of industry 4.0 is not unknown. Various programs are provided for the companies for this purpose. These programs are mainly aimed at increasing the digital competences of employees in companies [43].

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[42] Estonia in the Digital Economy and Society Index, https://digital-strategy.ec.europa.eu/en/policies/desi-estonia (Accessed: 15 November 2021); See also: Estonia – a European and global leader in the digitalisation of public services, 15 November 2021, see: https://e-estonia.com/estonia-a-european-and-global-leader-in-the-digitalisation-of-public-services/ (Accessed: 15 January 2022).

[43] See: Enterprise Estonia, Services, https://www.eas.ee/teenused/ (Accessed: 15 January 2022).

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So far, robotisation has not had a significant impact on workers. There have been no major restructuring of the companies and no major redundancies. As far as automation and the use of robots in Estonian industry have been modest so far, it is also not possible to talk about the impact on employees.

The use and automation of robots raises a number of issues regarding employee data protection and employee privacy.

Since 2019, the Enterprise Estonia Foundation has conducted a survey among Estonian companies entitled "Digitization of Production Process Management in Industry". Among other things, this survey researches how Estonian companies understand industry 4.0 and what their plans for digitizing and automating industry and production are.

It has been stated that although industry 4.0 is also talked about in Estonia, the reality is still with industry 3.0. At present, many companies are introducing the tools of the third industrial revolution in their own production, and with the emergence of new industrial revolutions, the general level of development of manufacturing companies must be considered. Nevertheless, there are more and more successful examples of companies that have managed to take a step towards the introduction of the fourth industrial revolution, Industry 4.0[44].

The level of digitalization in the Estonian manufacturing industry's companies is lower when comparing to European Union, and companies have to seriously consider starting digitalization in order to remain competitive. The main obstacles of digitalizing supply chain are the lack of a competent workforce in the company and the lack of ability to invest in digitalization. These are two very important prerequisites for digitalization, and for a successful digitalization, the company needs to overcome both obstacles. While previous barriers are affecting the digitalization of the entire company, the greatest constraints have been the insufficient readiness of suppliers/customers and the lack of a long-term supply chain strategy.

It has been stated that some other dimensions like implementing robots, machines and equipment with digital programs and others could be observed mainly in big companies from particular sectors. According to the different opinions, the digitalization of Estonian industry should be enforced, as the companies have to be competitive according to the XXI century standards[45].

In general, there are more advanced sectors in regards to the digitalization. In the manufacturing the metal sector (especially electronic production, some branches of machine building), some companies, producing building materials and some of the companies, producing electricity are the most advanced in the digitalization and implementing new technologies. In services, the most advanced are the

[44] Estonia could become e-industry state (Eestist võiks saada e-tööstusriik), https://finesta.ee/eestist-voiks-saada-e-toostusriik/ (Accessed: 15 January 2022).

[45] What can offer smart production *i.e.* industry 4.0 to wooden and furniture industry? (Mida pakub tark tootmine ehk tööstus 4.0 puidu- ja mööblitööstusele?), https://www.metsamajandusuudised.ee/uudised/2019/12/03/mida-pakub-tark-tootmine-ehk-toostus-40-puidu-ja-mooblitoostusele (Accessed: 15 January 2022).

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IT services, but also telecommunication, finance and banking. Some of the barriers to the digitalization are related to the lack of investments, especially for some old companies.

Another problem is also the shortage of qualified personnel, both of high qualified workers, technicians, engineers, as well as of IT professionals. This concerns mostly the manufacturing, but also some of the services.

The consequences of digitalization are still difficult to be observed, as the process is not as much deepen in most of the companies. In some big companies, where the industry 4.0 is more advanced, the technological change brought to the implementation of new production systems, new management systems and new work organization.

One problem is also the increasing of inequalities at work, especially in some old companies, which are under restructuring and digital technologies are partially implemented. Such process caused appearance of groups of high qualified and well-paid professionals, on the one hand, and groups of all the others, whose jobs will be changed later or will not be changed at all, on the other. This could still increase the differences in the working conditions and wages among various groups and these could provoke tensions and conflicts.

Although it is known, that in the process of recruitment many employers also investigate the social networks and profiles of the applicants for jobs, to identify their personnel peculiarities, character, relations and even personnel life, which means too much interference in the areas, which are rather reserved to the private areas, it is usually complicated to prove it. Such observations are made also concerning the already employed persons in the companies. At the same time, in some cases workers should be very careful what kind of information they comment and share with their friends in the social networks, even in cases this information doesn't concern the closed data of the companies.

5.2. *Specific Sectors*

5.2.1. *Machine-Building and Electronic Production*

Industry 4.0 was implemented in many companies, but not all companies could cover the requirements. It depends on the size, market peculiarities, work force, whether the enterprise is main producer or sub-contractor.

Employers from machine building and electronic production have stated, that smart production includes implementation of new models of organisation of production processes, mainly in the manufacturing. This causes changes in collecting and using the necessary information, supply departments and units, maintenance units, etc.

The shortages of qualified workforce on the labour market are among the main barriers for the digitalization for the companies in the machine building. The average age of workers is comparatively high. Some of the problems with the personnel in machine-building concern the fact that many of the professions are difficult

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and require long time learning, but the level of payment not always is according to the expectation of the employees. There are strong shortages of some technicians and high-qualified workers like operators of machines with digital programming. There is also shortage of engineers. The reasons are similar- requirements of long-term education and not always acceptable level of payment. Many engineers work abroad and the average age of employed is relatively high.

5.2.2. *Transport*

The digitalization is implemented in some of the operations of all the transport sectors, especially in the marketing, sale of tickets, reservations, management of the traffic, monitoring, etc. These are mostly advanced in the air transport, but also in the sea transport and other branches, many operations have been digitalized.

Most of the jobs in transport require particular qualification and system of special schools, colleges and universities provide education for the transport branches and companies. At the same time, in the transport also lack of qualified personnel, especially in the context of the further digital transformation could be observed.

It is still difficult to evaluate the working conditions in transport, as far as the industry 4.0 is still not advanced. In fact, in the transport there are particular working conditions and working time, which make the work-life balance more difficult to be reached. Shift work, night work, working on weekends is a rule for most of the employees in the transport sector. As the digital transformation could improve the physical environment, especially reducing dangerous operations and manual operations, it is under discussion to what extend it could improve the work organization and working time arrangements. This is possible for some jobs, which could be implemented with telework and ICT based mobile work, but in many cases, the human labour could not be abolished. These also requires improvement of work organization and better regimes of rest and holidays for the employees in the transport.

Further improvement of new technologies, especially automatization and digitalization of some of the operations could improve the work and work satisfaction in such companies.

Also in some branches and companies, especially road transport the wages are still too low. As far as the digital transformation could lead to increasing of productivity, this also should be supported by increasing of wages.

5.3. *Specific Institutional and Contractual Arrangements and Policies*

The social partners at national level initiated some programs and events, including common projects. The future of work and digitalization are subject bi-partite and discussions. Still there is no national framework agreement. Framework of national, sectoral and company level agreements for partnership regarding improving the skills, and working conditions should also be prepared.

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5.3.1. *Machine-Building and Electronic Production*

In the machine-building the social partnership has long traditions and the dialogue is acceptable. In Estonia, important trade union that represents workers in metal manufactures is Estonian Industrial and Metal Workers Union. There is no concrete employers' union.

There is still one organisation existing – Federation of Estonian Engineering Industry[46], but according to the statue it does not constitute as a union of employers. Still this organisation represents interests of its members, when it is associated with developments with engineering and industry in general.

The second organisation on the employers' side that can be mentioned here is Estonian Electronics Industries Association[47]. According to the statue, this association also has a goal to represents the interests of their members in bipartite of tripartite relation with employees and with state agencies.

For both the employers' organisations and trade unions the maintenance of the qualified personnel is among the main goals.

The collective agreements concluded between employers and trade unions contain clauses on working time, wage and other related issues. The issues of qualification of workers or issues of the developments in general are usually not touched upon.

Among the main issues is also the level of wages, which is discussed annually. Except traditional points, currently the wages and the social benefits are discussed in the context of the digitalization and the needs of qualified personnel. In addition, the issues of health and safety at work are among the main issues in the collective bargaining negotiations, including the consequences from the digital transformation.

In many new manufacturing companies with new technologies, trade unions are not presented. In most of them, there are no other forms of representation, except health and safety committees, which are obligatory. It is difficult to organise work force from new companies, especially in cases of high-qualified work-force, because of individualistic values and differing values of new generations. In the existing companies with trade unions, in cases of innovations, the industrial relations have not been changed too much, despite the decreasing trade union density.

In the electronic production currently, there is collective bargaining only at the company level.

The social partners of machine building pay a lot of attention to the improvement of skills and increasing the level of qualification of workers. For the last several years, the social partners made many efforts for the improvement of the level of qualification of the work force, to diminish the existing shortages and to support the adaptation of the employees to the process of digital transformation. Social partners prepared and addressed common suggestions on the structures and

[46] Federation of Estonian Engineering Industry, https://www.emliit.ee/page/homepage.

[47] https://www.estonianelectronics.eu/ (Accessed: 15 January 2022).

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content of the education and qualification programmes to the survey about the future trends in education and training (so called OSKA report[48]). Estonian Electronics Industries Association has also prepared vision for development of the electronics industry until 2035[49]. In this vision, also the importance of digitisation and automatization has been stressed.

5.3.2. *Transport*

In the transport, there is a well-developed social dialogue. There is social dialogue on a branch level and on companies' level.

On the employers' side, the main organisations are Estonian Ship-owners' Association and Association of Vehicles Companies. They both also belong to the Estonian Employers´' confederation.

Important trade union is Estonian Transportation and Road Workers Union. This union covers more than 2000 employees form different transportation sectors, also road workers are covered. In addition, the Estonian Seamen's Independent Union will play important role. This Union covers more than 3000 workers. It does not only cover seamen but also other employees affiliated to the sea transport. Both trade unions are also members of the Estonian Trade Union Confederation.

In the railways, there are two other trade unions – Union of the Railway Workers and Locomotive Drivers Trade Union.

In many medium sized and small companies, especially on-road transport, and sea transport, usually there are no trade unions and no social dialogue exists.

The social dialogue exists at the national level. There is national collective agreement for the whole road transport sector. It covers also companies from branches, where no branch collective bargaining exists.

For the railways, the social dialogue and collective bargaining are mainly at the level of companies with national scope.

For the maritime transport, there is social partnership and collective bargaining in the biggest company – Tallink. The collective agreement is prepared according to the standards of the ITF and covers all the units of the company, including all the operating ships.

In most of the companies from other branches, where trade unions exist, there is social partnership and collective bargaining at the company level.

The social partners in the transport still started their steps regarding digitalization and its' consequences. In the sectoral collective agreement for the transport in

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[48] *Looking ahead to labour and skills needs: the metal and machinery industries* (Tulevikuvaade tööjõu- ja oskuste vajadusele: metalli- ja masinatööstus), 2016.

https://oska.kutsekoda.ee/wp-content/uploads/2016/04/MMTtervik.pdf (Accessed: 15 January 2022); see also in addition about the Covid-19 impact to metal industry: https://oska.kutsekoda.ee/wp-content/uploads/2016/04/Eriuuring_Metalli-ja-masinatoostus-mootorsoidukite-remont-ja-hooldus.pdf.

[49] Estonian Electronics Industries Association, https://www.estonianelectronics.eu/EETL%20Visioon%202035_.pdf (Accessed: 15 January 2022).

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total some common activities regarding restructuring, changes in the workforce, qualification were envisaged.

5.4. *Main Regulatory Tools: Participation Mechanisms to Ensure Workers Involvement in Organizational Change*

In most of the sectors in Estonia, there are still no substantial changes of industrial relations at the company level, even in cases of implementing new technologies and digitalization. The information and consultation procedures exist in many companies, but mainly the company trade unions often implement them. In some companies, mainly in big companies also special representatives – employees' trustees are elected as well as EWC representatives are elected in the multinational companies' subsidiaries.

5.4.1. *Machine-Building and Electronic Production*

In most of the big companies of machine-building industry, the trade unions usually agree to support the managers regarding the rules at work, especially the rules under new digital working environment.

In most of the collective agreements at company level, it is envisaged active engagement of trade unions in the education and qualification activities, like needs' assessment, preparation of qualification programs, as well as in the organization, implementation and control and evaluation of the education and qualification courses and on-the job training. Trade unions also participate in the support of new employees, take responsibility, and support the employers in cases of projects for financing the education and qualification activities.

Also the measures for the health and safety at work already are advanced. The social partners considered the appearance of new jobs and changes of the conditions of some already existing jobs and they envisaged special health and safety conditions regarding the workers (for example, for working with displays etc.).

5.4.2. *Transport*

In most of the transport companies, the issues of digitalization are still not priority, but the situation is going to be changed. In some of the transport companies, there are also procedures of information and consultations and in some cases the workers are directly represented by trade unions, in some other-by especially elected representatives (employees' trustee).

In some of the big companies, there is tradition of partnership, regarding qualification, gender equality, work-life balance, health, and safety at work. The positions of trade unions could help them and the other workers' representatives to participate successfully in the organisational change.

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5.5. *Signs of Conversion with the European Framework Agreement on Digitalisation*

At the moment there are no initiatives in order to implement European Framework on Digitalisation. There is initiative on side of social partners and on side of the Government.

6. *Conclusion*

6.1. *General Remarks*

The digitalisation of industrial relations is an important and necessary change in both production and human relations. Digitalisation helps to speed up production processes, which in turn promotes competition between the companies. Estonia has gained recognition in the European Union, above all, as a country where digitalisation has continued to be at a high level and where Estonia has been viewed as best example for promotion of digitalisation. Above all, Estonia has made efforts to improve digital communication between the citizen and the state. Different digital services have made it easier for Estonian residents to use different services and to transmit different data to ensure the functioning of the state.

At the same time, it has been acknowledged that digitalisation in companies has not taken place at a comparable level to the development of state-owned services. Although industry 4.0 has been talked about in Estonia for a long time, in reality Estonia is still in industry 3.0. Although there are various companies where robotisation has taken place, it is still a smaller part of the total number of Estonian companies.

The legal regulation of digitalised labour relations and production processes in Estonia is limited. The Employment Contracts Act mentions the possibility of teleworking. There is still no single definition in Estonian labour law on the employment status of the platform workers, nor on the legal status of the platform workers or their rights and obligations. There is no need for separate legal regulation in Industry 4.0, but at the same time it is not clearly defined in Estonia which areas of employment could be affected by such a change. Also, what rights and obligations of employees could be most affected by such a change.

The introduction of digital working methods raises new issues in legal regulation that have not been addressed yet. First of all, the protection of personal data will be important. For example, when performing remote work or performing platform work, the processing of certain personal data is essential. Therefore, the question of when an employer can process an employee's personal data without the employee's consent (legitimate interest) and when an employee's personal data can only be processed with the employee's consent definitely needs to be regulated. Another important legal issue, that remains, is the creation of a safe working environment (compliance with occupational health and safety requirements). Safe

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occupational health requirements may be associated with new risks, such as psychosocial risks.

The situation of Covid-19 as a whole has highlighted the needs, opportunities and threats of the digitalisation of industrial relations. Contactless communication between the employee and the employer, as well as with customers, can take place using digital tools. Under Covid-19, teleworking was in many cases the only way to work (e.g. educational and research institutions).

For all these possibilities (teleworking, platform-based work, implementation of industry 4.0), the individual and his or her digital skills play an important role. Estonia has highlighted that investing in an employee's digital skills is important. Employees, better-than-usual digital skills contribute to the development of both production and industrial relations. At the same time, it is important that each company is able to map out what digital skills its employees need.

Enabling a stable internet penetration and ensuring its good quality is also an important precondition for the development of digital industrial relations. Neither digital labour relations nor digital production relations can be developed without sufficient internet speed or internet penetration.

6.2. *Legal Regulatory Options*

With regard to Estonian law, it can be observed that legal regulation has lagged behind digital development as a whole. Regulation has not had a proactive effect, but rather an ex-post regulation of employment relationships requiring digital solutions. Some ways of working, such as the work of the platform, have not yet been legally addressed in various laws but also in case law even in collective agreements. If the legislator has not reacted quickly enough to the change, another option is to address these new developments and regulate them through collective bargaining (collective agreements or other similar collective instruments). In order for such collective agreements to take place, there must be an interest in concluding such collective agreements on the one hand, and the need to regulate certain problems (the rights and obligations of the employer and the employee) on the other. At the same time, there must be parties - representatives of employers and employees - who can and would like to conclude such agreements. Regulating new aspects of the employment relationship through collective agreements is certainly an important and quickest way to find a solution in the employee-employer relationship. To the extent that the legislature does not prohibit or restrict employees and employers from concluding collective agreements, it would be entirely expedient to enter into such agreements, rather than leaving the regulation of new ways of working to the subject of an individual employment contract. The issue of speed and effectiveness is also important – who will be able to regulate new circumstances faster – either through different legislation or through different collective agreements between the parties to a collective labour relationship.

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In Estonia, the share of collective agreements is modest. It cannot be said that collective agreements do not exist at all, but collective agreements traditionally regulate pay, working and rest time and other social protection issues.

The regulation of telework has not yet been significantly addressed in collective agreements. In the case of platform work, neither the status of the platform worker is clear, nor is there a well-established trade union to protect the interests of platform workers. Industry 4.0 issues have also not reached collective agreements, although employers have recognized that developing employees' digital skills is essential if they would remain competitive.

In Estonia, there is significant development potential in the legal regulation of digital ways of working through collective agreements. To the extent that the legislator does not regulate all important issues, these problems and the necessary innovations can be regulated by employees and employers through collective agreement. The fact that the trade union is not the only employee representative in Estonia must be emphasized here. Non-union employees can also elect a representative (employees' trustee) who is also competent to conclude collective agreements or other collective agreements.

In the case of platform operators, the conclusion of collective agreements may be viewed AS difficult, as this may raise the question of the compatibility of such agreements in a competitive market. The current Estonian legislation would treat such agreements as agreements that could restrict free competition in the market [50].

6.3. *Further Developments*

No preparations have been made in Estonia for the implementation of the framework agreement on digitalisation concluded at the level of the European Union or for the implementation of the principles referred to therein. It is probably not expected that the aspects of the agreement mentioned in the near future will be specified in Estonia. At the same time, it is important that the principles referred to in this agreement are known to both employees and employers, and that they have the opportunity to implement some of the principles, at least at company level.

At European Union level, the main issues have been agreed through this agreement, and it is now up to the representative organizations of the Member States to either implement these principles directly or to agree on more specific principles for implementing national rules.

Estonia needs to solve several legal problems. First of all, the legal status of the platform's employees and their mutual rights and obligations (whether it is an employment contract or another civil contract) need to be clarified. Situations of

[50] G. TAVITS, *Specifics of Collective Labour Relations in the Digital Economy: Case of Estonian Law*, in G. BACHMANN, S. GRUNDMANN, A. MENGEL, K. KROLOP (eds.), *Festschrift für Christine Windbichler zum 70*, Geburtstag, De Gruyter, 2021, https://www.degruyter.com/document/doi/10.1515/9783110619805-025/html (Accessed: 15 January 2022).

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teleworking also need more specific regulation (e.g. whether and under what conditions an employer can or must allow teleworking).

The issue of digital skills of employees has been quite clearly understood by Estonian employers and employees, and the state has also offered various measures to employers in this regard.

In relations between the Estonian Government and the citizens, Estonia has a very good reputation as a digital state. Although digitalisation is necessary and important in employment, the development here has been modest. The role of trade unions and employers' organizations in regulating new production and employment relations has been even more modest.

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GERMANY

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SUMMARY: 1. Introduction. – 2. Industrial Relations in Germany: System and Relevance. – 2.1. Two Channels of Employee Representation and the Role of the State. – 2.1.1. Trade Unions and Collective Bargaining. – 2.1.2. Works Councils and Participation Rights. – 2.2. Empirical Situation. – 2.2.1. Trade Unions and Density of Membership. – 2.2.2. Works Councils. – 3. General Policy Approaches to Digitalisation and Work. – 4. Workplace Automation and Social Partners Strategies ("Industry 4.0"). – 4.1. Workplaces in Transition. – 4.1.1. Matrix-Structures and Algorithmic Management. – 4.1.2. Human-Machine-Interface. – 4.1.3. The Protection of Employee Data. – 4.2. Industrial Relations Practices. – 4.2.1. Role of Works Councils – 4.2.2. Trade Unions Strategies. – 5. Remote Work. – 5.1. European Framework Agreement on Telework. – 5.2. Legal Framework in Germany. – 5.2.1. Introduction of Remote Work. – 5.2.2. Working Time Regulation ("Always On"). – 5.3. Industrial Relations Practices. – 5.3.1. Company Level. – 5.3.2. Sectoral Level. – 6. Platform Work. – 6.1. Empirical Aspects of Digital Labour Platforms. – 6.2. Legal Status of Platform Workers. – 6.3. Right of Platform Workers to Collective Bargaining. – 6.4. Social Partners Activities. – 7. Concluding Remarks.

1. *Introduction*

The digital transformation of the economy is a multifaceted dynamic process with far-reaching effects on the labour market and the world of work. Even if the digital information and communication technology (ICT) is not a new phenomenon and its implications for work and society have been discussed in Germany for decades[1], the speed of the change has increased in recent years. As the European Social Partners Framework Agreement on Digitalisation of June 2020, concluded by ETUC, BusinessEurope, CEEP and SMEunited, rightly points out, this trend of accelerated ICT penetration in working life brings clear benefits for employers and employees, but also challenges and risks for workers and enterprises. Since the benefits of digitalisation regarding the world of work do

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[1] Cf. Enquete-Commission of the German Parliament "Germany's Path to the Information Society" ("Deutschlands Weg in die Informationsgesellschaft"), Bundestags-Drucksache 13/11004 of 22 June 1998, pp. 48-61.

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not materialise by themselves, a "smart mix" of regulations at the various levels at which working conditions are shaped is required. At the national level ("macro level"), the legislator must create legal provisions which meet two functions: firstly, to establish a floor of protective rights for the workers and, secondly, to provide an appropriate framework for effective self-regulation by the social partners. At the sectoral level ("meso level"), the social partners have to create regulations for labour-related issues caused by the digital transformation that are relevant for the entire sector. At the company level ("micro level"), it is finally the task of the social partners to regulate the concrete problems resulting from the digitalisation of work on the ground. This concept of a mandate to shape working conditions distributed over several levels, as expressed in the European Social Partners Framework Agreement on Digitalisation, corresponds to the sociological finding that there is no "technological determinism" but rather scope for a multi-level labour policy to influence the digital transformation in the interest of employees [2].

This chapter attempts to provide an overview of the digitalisation of the world of work and the role of labour policy and industrial relations in Germany in this process. Considering the boundlessness of the subject, it shall be limited to three fields of the digital transformation of work, namely "Industry 4.0", here understood as an umbrella term for different changes in the world of work on the one hand (4) and the more concrete fields of remote work (5) and platform work (6) on the other [3]. To better understand these main parts, a brief overview of the system and relevance of industrial relations in Germany (2) and of general policy approaches to digitalisation and work at the national level (3) will precede.

2. *Industrial Relations in Germany: System and Relevance*

2.1. *Two Channels of Employee Representation and the Role of the State*

The main feature of the German industrial relations system is the traditional existence of two pillars of employee representation: on the one hand, representation by trade unions and, on the other hand, representation by institutional forms of employee involvement, that is (in the private sector) works councils (mainly at the company level) and employee representatives on supervisory boards (limited

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[2] *Baethge-Kinsky/Kuhlmann/Tullius*, Arbeits– und Industriesoziologische Studien 11 (2018), pp. 91-106 [99-102]; *Haipeter/Hoose/Rosenbohm*, IAQ-Report 2021/09. More detailed in *Haipeter/Hoose/Rosenbohm* (Eds.), Arbeitspolitik in digitalen Zeiten. Entwicklungslinien einer nachhaltigen Regulierung und Gestaltung von Arbeit (2021). On the general concept of the development and implementation of technology as a social process, see also *Raehlmann*, Z. Arb. Wiss. 71 (2017), pp. 120-127.

[3] For further areas, see *Krause*, Digitalisierung der Arbeitswelt – Herausforderungen und Regelungsbedarf (2016).

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to large companies)[4]. Since the digitalisation of work is taking place primarily at the shop-floor level (albeit frequently planned at the top management level) and because there is no research on the specific role of workers' representatives on the supervisory board in the context of the digitisation strategies of large companies, this chapter will focus on the role of trade unions and works councils.

Regarding the general role of the State concerning the shaping of working conditions, roughly speaking, Germany follows a threefold approach. Firstly, the State is setting a number of substantive minimum standards in various areas of employment law (increasingly triggered by European law). Secondly, the State has established a general framework for trade union activities and collective bargaining leaving much space for the social partners' autonomous determination of working conditions by collective agreements. And thirdly, the State has created a system for worker participation at the plant level with finely graded participation rights, that limit the employer's ability to act unilaterally, but also with the opportunity for the social partners at the workplace level to bilaterally determine concrete working conditions for the workforce of the plant through works agreements. In addition, there are numerous discussion formats and fields of cooperation between the Government and the Parliament on the one hand and the umbrella organisations of the employers and the trade unions on the other, which give the social partners a considerable influence on the social policy in Germany. The German system can therefore be broadly described as a tripartite social partnership ("coordinated capitalism").

2.1.1. *Trade Unions and Collective Bargaining*

Trade unions as the first pillar of employee representation, existing in Germany since the 19th century, are nowadays comprehensively protected by the German Constitution of 1949. The main legal basis is the fundamental right of freedom of association enshrined in the German Constitution in Article 9 para. 3 Basic Law (Grundgesetz = GG). This fundamental right guarantees not only the individual right to establish, join and leave a coalition but, beyond its wording, also the collective right of the coalitions themselves to pursue the interests of their members, in particular through collective bargaining. Regarding the collective bargaining mechanism, there is a legal framework (Collective Agreements Act = Tarifvertragsgesetz = TVG), which vests the social partners with the necessary legal infrastructure for effective collective bargaining ("enabling law"). Hereby, the TVG prescribes the potential content of collective agreements only in an abstract manner and does not mention any specific content, especially not about the management of the consequences of the digital transformation for the employees or even the management of the transformation process itself.

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[4] For more details, see *Weiss/Schmidt/Hlava*, Labour Law and Industrial Relations in Germany, 5th Ed. (2020), pp. 173-237 and 238-278.

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According to the TVG, only trade unions on the one side and employer associations or single employers on the other can conclude collective agreements. Generally, a collective agreement has a normative effect, but only binds the members of the concluding association (trade union and employer association) or the single employer. Non-members are regularly not bound by the collective agreement. In exceptional cases, a collective agreement on issues affecting the whole enterprise applies to the whole workforce, even if the collective agreement is only binding on the employer. More important is the fact that employers who are bound by a collective agreement regularly refer to the respective collective agreement in the individual employment contract with outsiders (non-union members), on the one hand for practical reasons (equal treatment of the entire workforce, although there is no legal obligation to do so) and on the other hand in order not to provide an incentive to join a union. Moreover, it is possible to declare a collective agreement as generally binding by a decision of the Federal Ministry of Labour and Social Affairs. This so-called "Allgemeinverbindlicherklärung" has the legal effect that within its scope, the collective agreement also applies to those employers and employees who are not yet bound by the respective collective agreement. However, this possibility is not of practical importance for collective agreements on "digital" topics.

2.1.2. *Works Councils and Participation Rights*

The second pillar, the institutional representation of employees by works councils, has existed (following some front-runners) on a legal basis since 1920 (interrupted between 1933 and 1945). In 1952 the legislator enacted the so-called Works Constitution Act (Betriebsverfassungsgesetz = BetrVG). Twenty years later, in 1972, the BetrVG was fundamentally revised. Minor reforms followed in 2001 and 2021. Thus, not only trade unions but also worker participation belongs, as it were, to the "DNA" of German industrial relations.

Works councils can be elected in every establishment with at least five employees by the entire workforce regardless of trade union affiliation, and thus represent the entire staff. Works councils are vested with numerous participation rights, ranging from mere information rights to full co-determination rights with the legal effect that the employer must not act unilaterally without the consent of the works council. For instance, the latter is the case regarding working time schedules, the introduction of work shortage and the structure of the wage (in contrast to the absolute amount of the wage). If the employer and the works council do not agree on a matter subject to co-determination, each side is entitled to call for a decision of a so-called conciliation board (consisting of representatives of the employer and the works council as well as a neutral chairperson that both sides must agree on or who is appointed by the labour court). The decision of the conciliation board on the organisation of working conditions is binding on both sides, i.e. the employer must abide by this decision in the management of the enterprise, while the works council can enforce it.

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One of the most crucial co-determination rights in the realm of the digital transformation concerns the introduction and use of technical devices designed to monitor the behaviour or performance of the employees[5]. Already introduced into the BetrVG in 1972 and interpreted by the Federal Labour Court from the very beginning in a broad sense, this right is currently a powerful tool in the hands of works councils who are willing and able to use this instrument, because nowadays nearly every digital application allows for the surveillance of employees[6]. Thus, it comes with no surprise that some (employer-oriented) authors criticise that right (or at least its broad interpretation by the Federal Labour Court) as no longer up to date, arguing that it impedes a quick and efficient implementation of digital-based work processes endangering the competitiveness of German enterprises[7]. However, there is no clear evidence for that claim and thus neither the Federal Labour Court nor even the legislator has yet followed the proposition to limit that specific co-determination right.

Additionally, the employer and the works council are in principle entitled to conclude works agreements on every kind of working conditions, having the same effect as collective agreements, i.e. normative effect vis-à-vis the workforce of the establishment. However, according to the BetrVG, existing collective agreements are not only superior to works agreements but works agreements are principally barred in matters, which are normally regulated by collective agreements even if the works agreement is more favourable for the employees, unless the parties to the respective collective agreement allow for additional works agreements by a so-called opening clause. Furthermore, unlike trade unions, works councils are not entitled to call the employees to strike to enforce their demands and consequently are not allowed to threaten to strike.

Therefore, in matters where the works council has no right to co-determination, the employer cannot be forced to conclude a works agreement on working conditions related to the digital transformation (e.g. organisation of work processes, training measures, etc.). Instead of relying on formal (institutional) power, works councils must rely on arguments and informal (structural) power on these issues, which varies widely, from a weak position at many SMEs to a strong position at car manufacturers and other large companies. The concrete extent of co-determination rights is therefore an important factor for the industrial relations at the company level. From this point of view, the European Social Partners Framework Agreement on Digitalisation sounds quite optimistic because it supposes that the social partners will automatically create win-win situations when it comes to the digitalisation of the companies. However, this is not always the case, and in constellations with opposing interests, it certainly depends

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[5] For more details, see *Krause*, in: Gräfl et al. (Eds.), 100 Jahre Betriebsverfassungsrecht (2020), pp. 353-368.

[6] Cf. *Pfeiffer*, Industrielle Beziehungen 26 (2019), pp. 232-249 [241].

[7] See *Krülls*, RdA 2021, pp. 279-287 (with many references).

on whether one side, namely the employer side, has managerial prerogatives and can ultimately prevail.

2.2. *Empirical Situation*

2.2.1. *Trade Unions and Density of Membership*

The German trade unions are organised mainly on a sectoral basis ("one sector, one trade union"). After several mergers in the 1990s and 2000s, there are now eight sectoral trade unions that are unified in the umbrella organisation German Confederation of Trade Unions (Deutscher Gewerkschaftsbund = DGB, founded in 1949 by back then 16 sectoral trade unions): IG Metall (metalworkers: 2.169 million members), ver.di (services: 1.894 million members), IG BCE (mining, chemical industry, energy: 591,000 members), GWE (education and science: 276,000 members), IG BAU (construction, agriculture, environment: 222,000 members), GdP (police: 202,000 members), NGG (nutrition, hotel and catering: 189,000 members), EVG (railways and traffic: 186,000 members), totalling 5.729 million members (all figures of 2021) [8]. The density of trade union membership has dramatically dropped since the beginning of the 1990s (after the German reunification, the DGB-affiliated trade unions had nearly 12 million members for a moment). In recent years trade union density has stabilised at a low level (the lowest since 1949), with differences between the trade unions.

Collective agreements are concluded only by the sectoral trade unions, not by the umbrella organisation. The DGB solely has general tasks like lobbying or pursuing overarching trade union policies. In addition to the sectoral unions, some smaller but strong professional unions exist for pilots, engine drivers, and physicians, which are not affiliated with the DGB.

The organisational structure on the employer side is even more complex. At the top is the umbrella organisation Federal Confederation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände = BDA), representing the interests of enterprises in the field of labour and social policy (in contrast to the Federal Confederation of German Industry (Bundesverband der Deutschen Industrie = BDI), which represents the interests of industrial enterprises in other policy fields). The BDA has more than 700 affiliated employer organisations, ranging from large and powerful organisations (like Gesamtmetall) to relatively small and weak organisations. Sometimes there are several levels of employer organisations (at the regional level, at the Bundesland level and at the federal level). The level at which collective agreements are concluded differs from sector to sector and from region to region. Sometimes collective agreements are concluded only by the employer associations at the regional level or only at the federal level, sometimes it depends on the content of the col-

[8] Cf. https://www.dgb.de/uber-uns/dgb-heute/mitgliederzahlen/2020-2029.

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lective agreement (for instance: in the chemical industry, collective agreements on wages are concluded at the level of the Bundesländer whereas collective agreements on general matters are concluded at the federal level). The density of membership in employer associations has also dropped over time, particularly in Eastern Germany (official figures are not published). Moreover, the employer associations started in the 1990s to provide a specific kind of membership, the so-called "OT"-membership (= "Ohne Tarifbindung"; i.e. without being bound by collective agreements), which has been challenged by the trade unions but has been qualified as lawful by the Federal Labour Court and conforming with the Constitution by the Federal Constitutional Court.

Currently (2020), in Western Germany, 45% of the total workforce is covered by a sectoral collective agreement plus 8% by a company collective agreement [9]. In Eastern Germany, sectoral collective agreements cover 32% and company collective agreements cover 11% of the entire workforce. In detail, there are many differences in the coverage by collective agreements regarding the sector, the size of the establishment and the region within Germany. Briefly said, the coverage of collective agreements is high in the public sector (98%), in the finance and insurance sector (71%), in the energy sector (76%) and in the construction sector (58%), but low in the field of car repairing (30%), in the retailing sector (29%) and in the information and communication sector (13%). Moreover, there is a correlation between the size of the establishment and the coverage by collective agreements (for instance: in establishments with 500 or more employees, 68% (Western Germany) and 49% (Eastern Germany) of the workforce is covered by a collective agreement. Generally, there is a tendency that the coverage by collective agreements is dropping. For comparison, in 1996 the share was still 70% (Western Germany) and 56% (Eastern Germany).

2.2.2. *Works Councils*

Despite the low requirements for the election of a works council and the long tradition of worker participation at the plant level in Germany, works councils only exist in 8% (Western Germany) and 9% (Eastern Germany) of all establishments with more than five employees, in which 42% (Western Germany) and 35% (Eastern Germany) of all employees are working (all figures of 2021) [10]. Again, the spread of works councils correlates with the size of the establishment. For instance, works councils exist only in 5% (Western Germany) and 5% (Eastern Germany) of all establishments with 5 to 50 employees. On the other side, there are works councils in 85% (Western Germany) and 91% (Eastern Germany) of all establishments with more than 500 employees in which 90% (Western Germany) and 86% (Eastern Germany) of all affected employees are working. Works councils, and thus the actual application of the BetrVG with its co-

[9] Cf. *Ellguth/Kohaut*, WSI Mitteilungen 74 (2021), pp. 306-314 [307-310].

[10] Cf. *Ellguth/Kohaut*, WSI Mitteilungen 74 (2021), pp. 306-314 [311].

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determination rights and the possibility of concluding bilateral works agreements on the working conditions of the workforce, instead of these being determined unilaterally by the employer, therefore exist mainly in larger companies.

3. *General Policy Approaches to Digitalisation and Work*

For more than ten years, both the State and the social partners have increasingly focused on the changes in the world of work due to digitalisation. As regards the activities of the State the debate is often embedded in more comprehensive strategies. A striking example is the Enquete-Commission of the German Parliament "Internet and digital Society" ("Internet und digitale Gesellschaft") (2010-2013) that dealt, inter alia, with "work in a digitally connected world"[11]. The same is true for several policy approaches of the German Government like the "Digital Agenda 2014-2017"[12], the "Digital Strategy" (2018)[13] including the implementation strategy "Shaping Digitalization" (as of 2021)[14] and particularly the annually "Digital Summit" (from 2006 to 2016 initially called "National IT Summit")[15] that directly focuses on the digitised world of work in its "Platform 5"[16]. As regards the specific topic of the impact of artificial intelligence on the working world, the Enquete-Commission of the German Parliament "Artificial Intelligence" ("Künstliche Intelligenz") (2018-2020)[17] and the "Artificial Intelligence Strategy" of the German Government (2018, updated 2020)[18] dealt with that issue. Even a so-called Data Ethic Commission (2018-2019) that has been set up by the Government to develop ethical standards by handling data, algorithms and AI touched work-related topics[19].

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[11] See the interim report regarding Economy, Work and Green IT, Bundestags-Drucksache 17/12505 of 13 March 2013, pp. 44-76.

[12] https://www.bmwi.de/Redaktion/DE/Publikationen/Digitale-Welt/digitale-agenda.pdf?__blob=publicationFile&v=3; final report at https://www.bmwi.de/Redaktion/DE/Publikationen/Digitale-Welt/digitale-agenda-legislaturbericht.pdf?__blob=publicationFile&v=20.

[13] https://www.bundesregierung.de/breg-de/themen/digitalisierung/die-digitalstrategie-der-bundesregierung-1549554.

[14] https://www.bundesregierung.de/breg-de/themen/digitalisierung/die-digitalstrategie-der-bundesregierung-1549554.

[15] www.digital-gipfel.de.

[16] https://www.de.digital/DIGITAL/Redaktion/DE/Standardartikel/Digital-Gipfel/digital-gipfel-plattform-05.html wwwdigital-gipfel.de.

[17] Bundestags-Drucksache 19/23700 of 28 October 2020, pp. 281-355.

[18] https://www.ki-strategie-deutschland.de/files/downloads/Fortschreibung_KI-Strategie_engl.pdf.

[19] https://www.bmi.bund.de/SharedDocs/downloads/DE/publikationen/themen/it-digitalpolitik/gutachten-datenethikkommission.pdf; jsessionid=48EEFCCB3A8EDDD61AC398E548CB1EDF.1_cid364?__blob=publicationFile&v=6.

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With a particular focus on current developments in the world of work and its digital transformation, the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales = BMAS) has published numerous studies in recent years [20]. Moreover, in 2015 the BMAS launched the debate "Arbeiten 4.0" ("Work 4.0"), starting with the Green Paper "Work 4.0" ("Grünbuch Arbeiten 4.0") [21], followed by many workshops with representatives of the employer side and the trade unions as well as experts on different issues of "new labour" and ending with the White Paper "Work 4.0" ("Weißbuch Arbeiten 4.0") in 2016 [22]. As regards the specific issue of employee data protection, an increasingly important topic in the age of digitalisation, the BMAS charged a group of experts in 2020 that has delivered its final report with policy recommendations in this field in 2022 [23]. Additionally, the Enquete-Commission of the German Parliament "Vocational Training in the digital World of Work" ("Berufliche Bildung in der digitalen Arbeitswelt") (2018-2021) [24] as well as the "National Skills Strategy" ("Nationale Weiterbildungsstrategie") brought into being in 2019 by the BMAS and the BMBF (Bundesministerium für Bildung und Forschung = Federal Ministry for Education and Research) [25] should be mentioned here.

The coalition agreement of the new governing parties of 2021 announces some future projects which are also relevant in this context. Employees shall be equipped with a right to home office if the work fits to that and there are no compelling reasons for the employer to refuse. Trade unions shall be granted a right to digitally access the employees at the enterprise. Finally, online elections of works councils shall be made lawful, at least in a pilot project [26].

The social partners are also trying to influence the general policy debate on digitalisation and work. On the one side, the employer associations have published several position papers and studies in recent years arguing for deregulation, especially of working time law and participation rights, in order to better manage the digital transformation, starting with a BDA-paper of 2015 [27] and

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[20] https://www.bmas.de/DE/Service/Publikationen/Forschungsberichte/forschungsbericht e.html.

[21] https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/arbeiten-4-0-green-paper.pdf?__blob=publicationFile&v=1.

[22] https://www.bmas.de/SharedDocs/Downloads/EN/PDF-Publikationen/a883-white-paper.pdf?__blob=publicationFile&v=1.

[23] https://www.denkfabrik-bmas.de/fileadmin/Downloads/Publikationen/Bericht_des_unabhaengigen_interdisziplinaeren_Beirats_zum_Beschaeftigtendatenschutz.pdf.

[24] Bundestags-Drucksache 19/30950 of 22 June 2021.

[25] https://www.bmbf.de/bmbf/shareddocs/downloads/files/nws_strategiepapier_barrierefrei_de.pdf?__blob=publicationFile&v=1.

[26] See https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/koalitionsvertrag-2021-1990800, pp. 69, 71 and 72.

[27] https://arbeitgeber.de/wp-content/uploads/2021/01/bda-arbeitgeber-positionspapier-chancen_der_digitalisierung_nutzen-2015_05.pdf.

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followed, among others, by the BDA-study "Germany Reloaded" of 2018[28]. On the other side, the trade unions regularly reject these claims and conversely demand new protective regulations and participation rights, e.g. in a DGB-paper of 2015[29]. Moreover, the DGB has set up a commission of experts that published a report on the future of labour ("Arbeit der Zukunft") in 2017[30], containing manifold ideas and concepts on the shaping of the future working world in various sectors of the economy and going far beyond the impact of digitalisation.

4. Workplace Automation and Social Partner Strategies ("Industry 4.0")

On April 1, 2021, the concept of "Industry 4.0" as a pivotal element of the digitalisation of the economy celebrated its 10th birthday[31]. The central idea of "Industry 4.0", which was drafted in a seminal article by three representatives of the economy, politics and research in the run-up to the Hanover Fair in 2011[32] and which was later fletched out in several studies[33] and a memorandum[34], is about the linking of the entire chain of industrial value creation through ICT, from product development to manufacturing and the assembly of components to sales, services and recycling. The core principle is merging the industrial production and cyberspace into so-called "cyber-physical systems"[35]. Specifically, all machines, robots, equipment, transport and storage systems, work pieces, assistance systems etc. associated with industrial production should collect and process data largely autonomously and exchange it with each other in real-time to make production more flexible, faster and more efficient. "Industry 4.0", accom-

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[28] BDA, Germany Reloaded (2018).

[29] https://www.dgb.de/themen/++co++49569078-262c-11e5-a4fc-52540023ef1a.

[30] Hoffmann/Bogedan (Eds.), Arbeit der Zukunft (2017).

[31] Cf. *Kagermann/Wahlster*, Frankfurter Allgemeine Zeitung 2021 No. 74 of 29 March 2021, p. 18.

[32] Cf. *Wahlster/Kagermann/Lukas*, VDI nachrichten 13/2011 of 1 April 2011, p. 2.

[33] Forschungsunion/acatech (Eds.), Umsetzungsempfehlungen für das Zukunftsprojekt Industrie 4.0 (2013), https://www.acatech.de/publikation/umsetzungsempfehlungen-fuer-das-zukunftsprojekt-industrie-4-0-abschlussbericht-des-arbeitskreises-industrie-4-0/download-pdf/?lang=de; BITKOM/VDMA/ZVEI (Eds.), Umsetzungsstrategie 4.0 (2015), https://www.bitkom.org/sites/default/files/file/import/150410-Umsetzungsstrategie-0.pdf.

[34] Memorandum der Plattform Industrie 4.0 (2015), https://www.bmwi.de/Redaktion/DE/Publikationen/Industrie/memorandum-plattform-industrie-4-0.pdf%3F__blob%3DpublicationFile%26v%3D13.

[35] For a description from an industrial sociological view, see *Hirsch-Kreinsen*, WSI Mitteilungen 67 (2014), pp. 421-429. More detailed in *Hirsch-Kreinsen/Ittermann/Niehaus* (Eds.), Digitalisierung industrieller Arbeit. Die Vision Industrie 4.0 und ihre sozialen Herausforderungen, 2nd Ed. (2018).

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panied and concretised by buzzwords like Internet of Things (IoT), big data, cloud computing, 5G, augmented reality and artificial intelligence, is being heralded as nothing less than the "Fourth Industrial Revolution".

Due to the relevance of the industrial sector for the German economy, the term and concept of "Industry 4.0" dominated the public debate for a couple of years, probably culminating in the World Economic Forum annual meeting 2016[36] and inducing both utopian and dystopian prophecies. For some, this debate has much of a fashion theme, while others hold out the prospect of economic growth and better quality of work, while still others foresee job losses and a deterioration of the remaining work ("Hype, Hope, Harm")[37]. In this respect, one can observe a remarkable repetition of arguments in the discussion about the impact of automation on industrial work since the 1950s[38]. However, a sober look at the actual development in the industrial sector reveals that the changes in work processes and work organisation are incremental instead of "disruptive"[39]. It appears that the digital transformation of industrial work is a slow process with many obstacles when it comes to the implementation at the shop-floor level beyond lofty concepts and strategies[40]. In other words: there is a strong path dependency of digitised industrial work[41].

Although primarily an engineering concept (or only a strategic campaign with the goal to reboot the "old" industrial sector in the aftermath of the financial crisis of 2007/2008)[42], "Industry 4.0" has in the long run much impact on the work organisation, the work content, the work environment and the required skills of the workers. Furthermore, the term "Industry 4.0" does not only refer to changes in the industrial sector but is also often used for the general changes in the economy and the world of work due to digitalisation.

Basically, the risks caused by the digital transformation of the working world can be divided into two groups. Firstly, the risk of the elimination of jobs through the growing automation of routine activities, making human activities

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[36] The motto of the WEF annual meeting 2016 was "Mastering the Fourth Industrial Revolution", https://www3.weforum.org/docs/WEF_AM16_Report.pdf.

[37] *Heßler*, Aus Politik und Zeitgeschichte 66 (18-19/2016), pp. 17-24.

[38] Cf. *Wilkesmann/Steden/Schulz*, Arbeit 27 (2018), pp. 129-150.

[39] *Kirchner/Matiaske*, Industrielle Beziehungen 26 (2019), pp. 125-129. Same assessment for the financial services sector by *Tullius*, WSI Mitteilungen 74 (2021), pp. 274-283.

[40] *Kirner et al.*, WSI Mitteilungen 75 (2022), pp. 107-118 [111-114]; *Pfeiffer/Huchler*, WSI Mitteilungen 71 (2018), pp. 167-173. This assessment is in line with the acatech Study "Industrie 4.0 Maturity Index" (2020), p. 11: "There are limited examples of transformational change either within individual enterprises or at the level of the economy as a whole", https://www.acatech.de/publikation/industrie-4-0-maturity-index-update-2020/download-pdf/?lang=en.

[41] *Hirsch-Kreinsen*, Arbeit 27 (2018), pp. 239-259.

[42] In that sense the lucid analysis of *Pfeiffer*, Nanoethics 11 (2017), pp. 107-121.

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increasingly dispensable ("substitution risk")[43]. Secondly, every negative impact of digital technologies on the employees during work ("interaction risk"). The latter risk encompasses every directly perceptible interaction of humans and machines or any other digital-based devices as well as the invisible effects on the workforce through algorithmic management and the growing options for performance measuring and surveillance of employees. The following remarks will address these issues in two steps: First, the actual changes in work organisation and workplaces as well as the current legal framework are described. Second, the strategies of the social partners, including the participation rights of works councils, with which they try to influence the development in the interest of the employees are highlighted.

4.1. *Workplaces in Transition*

4.1.1. *Matrix-Structures and Algorithmic Management*

A characteristic feature of "Industry 4.0"-applications concerns new forms of the organisation of work and the coordination of the workforce. In that respect, two significant developments can be observed. On the one hand, instructions to the employees are no longer given only by the contractual employer but via ICT by superiors who are allocated in other affiliates of the group of companies, sometimes abroad, or even by suppliers or customers throughout the whole value chain. On the other hand, instructions to the workers are increasingly given by algorithmic management systems[44], particularly in the logistics sector[45].

Since instructions are key for the steering of workers, the legal system should provide a feasible framework for new organisational structures and leave this issue not only to practice. Regarding therefore the legal assessment, the normative basis for the employer's right to instruct an employee is Section 106 Trade, Commerce and Industry Code (Gewerbeordnung = GewO). Of course, the employer does not have to exercise the right to issue instructions personally but may be represented by other employees of the enterprise acting as superiors. However, according to Section 613 Sentence 2 German Civil Code (Bürgerliches Gesetzbuch = BGB), the employee must not be put under someone else's authority

[43] According to the much-cited study of *Frey/Osborne*, The Future of Employment (2013), almost half of all jobs in the economy (47%) are at risk because both repetitive and some more advanced tasks are taken over by intelligent machines. Much less negative on the impact of automation on the German labour market is the study of *Bonin/Gregory/Zierahn*, Übertragung der Studie von Frey/Osborne (2013) auf Deutschland (2015): only 12% of jobs are at risk of being replaced.

[44] For the different aspects of algorithmic management, see *De Stefano/Taes*, Algorithmic management and collective bargaining, ETUI Foresight Brief #10 (May 2021); see also *Christl*, Digitale Überwachung und Kontrolle am Arbeitsplatz (2021).

[45] Cf. *Bienzeisler/Zanker*, Zustellarbeit 4.0 – eine 360-Grad-Analyse (2020).

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without his or her consent. Thus, the employer must not, in principle, assign the work performance to another natural or legal person without further ado. Therefore, instructions to workers by third parties are only lawful if they can be traced back to the employer as a party to the employment contract. Indeed, such legitimacy is possible by applying the usual rules of representation[46].

As regards instructions by algorithmic management systems, it should be distinguished between employment law and data protection law. From an employment law perspective, the issuing of a work instruction to the employee by an algorithmic system has, in principle, to be considered lawful, no matter whether the automated instruction is directly attributed to the employer, or the representation principles apply – in every case it remains an instruction of the employer. Concerning the legal requirement of "reasonable discretion"[47] it is questionable whether an algorithmic system is capable to make the necessary comprehensive assessment of the interests of both sides. But even if one argues that only a human can balance the interests at stake, the practical significance of that requirement is limited, because – according to case law – only the result and not the balancing process as such is decisive[48]. Moreover, the employee is entitled to ignore any inadequate instruction[49].

From a data protection law perspective, Article 22 GDPR is relevant since an algorithmic management system's instruction can be classified as an automated individual decision because the instruction concretises the employee's abstract contractual duty to perform work[50]. Thus, automated instructions would be prima facie unlawful. However, it is arguable that Article 22(2) lit. a GDPR applies, stating that an automated decision is lawful if it is necessary for the performance of a contract. But even in this case, according to Article 22(3) GDPR, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express the affected person's point of view and to contest the decision ("human in control principle").

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[46] For the intricate legal details, see *Krause*, in: Frenz (Ed.), Handbook Industry4.0 (2022), pp. 1021-1040 [1027}.

[47] The exercise of reasonable discretion requires that the interests of both parties are appropriately considered, cf. BAG 28.11.1984 – 5 AZR 123/83 – BAGE 47, 238 [249]; BAG 20.12.1984 – 2 AZR 436/83 – BAGE 47, 363 [375]; BAG 28.5.1997 – 5 AZR 125/96 – BAGE 86, 61 [73]; BAG 24.10.2018 – 10 AZR 19/18 – AP GewO § 106 No. 40 [para. 26]; BAG 15.5.2019 – 7 AZR 396/17 – AP BetrVG 1972 § 37 No. 174 [para. 23].

[48] BAG 30.11.2016 – 10 AZR 11/16 – AP GewO § 106 No. 32 [para. 28].

[49] The employer cannot impose sanctions for the employee's failure to comply with an inadequate instruction, cf. BAG 18.10.2017 – 10 AZR 330/16 – BAGE 160, 296 [para. 63].

[50] Cf. *Krause*, in: Frenz (Ed.), Handbook Industry 4.0 (2022), pp. 1021-1040 [1028-1029]; *Schwarze*, in: Ebers/Heinze/Krügel/Steinrötter (Eds.), Künstliche Intelligenz und Robotik (2020), § 8 [paras. 30 and 34].

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4.1.2. *Human-Machine-Interface*

"Industry 4.0"-applications often lead to a direct interaction of workers with cyber-physical systems like robots which "leave their cages". This development has an ambivalent character: On the one hand, automation processes can reduce physical loads through relief from physically burdensome activities or through an individual ergonomic work design. On the other hand, new machines can create new physical risks. Moreover, the increasing digitalisation of work processes can increase mental stress[51]. Therefore, "Industry 4.0" is also about occupational safety and health, an issue that requires state regulations supplemented by further regulations at lower levels.

Regarding product safety, the Machinery Directive 89/392/EEC[52] establishes a legal framework at the European level that is implemented into German law by the so-called Machinery Ordinance[53]. Section 2 No. 12 of this Ordinance refers to the design principles of the Annex to the updated Machinery Directive 2006/42/EC[54]. In addition, the Act on Safety and Health at Work (Arbeitsschutzgesetz = ArbSchG) applies to all "Industry 4.0"-work environments. This Act is supplemented by the Ordinance on Industrial Safety and Health (Betriebssicherheitsverordnung = BetrSichV) because assisting robots are qualified as work equipment in terms of Section 2(1) BetrSichV. This ordinance provides, inter alia, that the employer must carry out a risk assessment and implement necessary and suitable protective measures at the level of the concrete workplace according to this assessment, Section 3(1) BetrSichV. Since a reform of the ArbSchG in 2013 the risk assessment expressly covers mental stress[55]. However, the trade unions' lobbying for a specific legal regulation on mental stress has not been successful so far.

4.1.3. *The Protection of Employee Data*

The pivotal component of the "Industry 4.0"-concept is data. Many data solely concern the proper functioning of machines and technical operations. But many technical data, e.g. the defectiveness of a product, are connected or at least can be connected with employee data, e.g. which specific worker manufactured the defect product. Moreover, as more and more work processes are digitised it is

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[51] Cf. *Diebig/Müller/Angerer*, ASU Arbeitsmed Sozialmed Umweltmed 52 (2017), pp. 832-839.

[52] Council Directive of 14 June 1989 on the approximation of the laws of the Member States relating to machinery, Official Journal of the European Communities 1989, L 183/9.

[53] Ninth ordinance to the Product Safety Act (Neunte Verordnung zum Produktsicherheitsgesetz = 9. ProdSV).

[54] Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006, Official Journal of the European Union 2006, L 157/24.

[55] Recent description of the risk assessment concerning mental risks by *Dahl/Oppolzer*, BB 2022, pp. 628-634.

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possible to comprehensively monitor workers' performance and conduct ("360°-view"). Finally, employees and applicants increasingly are the direct object of analytical procedures ("people analytics") to identify the best applicant or employee for a particular job or to identify personal risks in advance. In many cases, the employer has a legitimate interest in monitoring the value creation process and the contractually owed performance and behaviour of the employees – the tricky question is when the line is crossed to an unjustified interference with the employees' right to privacy.

It is well known that employee data (as the most important component of their right to privacy) is protected at the European level by the General Data Protection Regulation (GDPR) and Article 7 and 8 of the Charter of Fundamental Rights, supplemented by international law (Article 8 European Human Rights Convention). It is also well known that Article 88 GDPR provides an opening clause for Member States for more specific rules by law or by collective agreements regarding the processing of personal data in the context of employment. Germany has used this option and has enacted Section 26 Federal Data Protection Act (Bundesdatenschutzgesetz = BDSG) as a more specific rule in that sense. According to Section 26 BDSG employee data processing is lawful if it is necessary for the formation, performance or termination of an employment contract. Moreover, according to settled case law, the courts apply a full proportionality test and carry out a comprehensive balancing of interests between the employer's interest in processing employee data and the employees' right to privacy. The Federal Labour Court has defined the outer limits and, for example, has judged permanent surveillance to be principally disproportionate, thus prohibiting total surveillance[56]. However, due to the vagueness of the provisions, there is a lot of legal uncertainty and particularly much room for manoeuvre for the employer to claim that a specific processing of employee data is lawful by pretending the existence of a legitimate interest and the proportionality of the data processing. Therefore, following the – already mentioned[57] – final report of the group of experts on employee data protection, the current Government is planning more specific provisions on employee data protection law with the goal to enhance legal certainty and an effective protection of workers privacy[58].

4.2. *Industrial Relations Practices*

Implementing "Industry 4.0"-processes poses many new challenges for the collective representation of employee interests. Since the digitalisation takes place mainly at the plant level it is first and foremost the works councils which have the

[56] BAG 27.7.2017 – 2 AZR 681/16 – BAGE 159, 380 [391].

[57] See supra sub 3.

[58] See https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/koalitionsvertrag-2021-1990800, p. 17.

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task to pursue the interests of the staff. In fact, according to a survey conducted by IG Metall in 2019, in which more than 2,000 establishments with around 1.7 million employees took part, as many as 67% of works councils consider the digitalisation of products and processes to be a future focus of the transformation[59]. However, when dealing with digital issues the works councils – and often also the employers – are facing a significant uncertainty because the route to "Industry 4.0" is anything but clear[60]. For trade unions, the situation is complex as well, because shaping "Industry 4.0"-processes means to a large part shaping specific working conditions at the shop-floor level, which is regularly more difficult for trade unions than agreeing on more general working conditions at the sectoral level.

4.2.1. *Role of Works Councils*

As recent empirical research indicates, employees generally welcome the digital transformation of their workplaces and firms[61]. However, they want to be sufficiently informed and involved in the transformation process and not just treated as objects[62]. Moreover, transparency and active involvement are beneficial for the employees and the employer because the digital transformation will only succeed if the workforces accept the changes and support them[63]. Conversely, a lack of transparency and communication in the process of digitalisation leads to an increase of mental diseases of the staff[64] which affects the productivity and thus the economic success of the enterprise.

The most important and effective mechanism for a transparent transition in which the interests of employees are considered is the institutional participation of works councils. In fact, in many enterprises, the employer and the works council have concluded works agreements on the different aspects of the digital transformation. Although works agreements are regularly not published there are some studies which describe the various topics regulated in those agreements[65] like the implementation and usage of new ICT, reskilling, health issues and the protection of employee privacy against unlimited monitoring of the performance and conduct. Especially, there are works agreements in the industrial sector regu-

[59] Cf. *Gerst*, WSI Mitteilungen 73 (2020), pp. 295-299 [296-297].

[60] Cf. *Matuschek/Kleemann*, Industrielle Beziehungen 26 (2019), pp. 189-206.

[61] *Härtwig/Sapronova*, Z. Arb. Wiss. 75 (2021), pp. 58-73; see also the nuanced assessment by *Schneider/Sting*, Academy of Management Discoveries 6 (2020), pp. 406-435.

[62] Cf. *Backhaus*, Z. Arb. Wiss. 73 (2019), pp. 2-22 (in the context of electronic monitoring).

[63] *Evers/Overbeck*, Deutsche Rentenversicherung 72 (2017), pp. 61-71 [66-69].

[64] *Stamer*, Z. Arb. Wiss. 75 (2021), pp. 105-116.

[65] Cf. *Maschke/Werner*, Arbeiten 4.0, HBS-Report No. 14 (2015); *Maschke/Mierich/Werner*, Arbeiten 4.0, HBS-Mitbestimmungsreport No. 41 (2018); *Kluge/Maschke/Mierich/Siebertz/Werner*. Digitalisierung – Zukunft wird jetzt ausgehandelt, I.M.U.-Mitbestimmungs report No. 54 (2019.

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lating the managing of specific digital transformation processes, for example through early detailed project descriptions, mandatory meetings with the affected employees and even by establishing a procedure of assessing whether the introduction of certain digital devices fits the culture and the values of the company[66]. Furthermore, in a small but increasing number of firms, works councils deal not only with single transformation processes but try to influence the general strategy of the enterprise and the development of new business models with the aim to safeguard the future of the company and thus to secure employment and good working conditions[67].

It can be observed that the bargaining between the employers (management) and the works councils is not unitary but differs substantially according to the general tradition of social partnership in the respective establishment. A trustful and resilient social partnership at the establishment level is undoubtedly the best precondition for the conclusion of works agreements on the digital transformation. Nevertheless, the legal framework of the BetrVG plays a considerable role in the background because it attributes the works councils with the institutional power required for successful bargaining at the plant level. Therefore, some main features of the legal framework shall be described here.

As previously mentioned[68], the works council has a co-determination right according to Section 87(1) No. 6 BetrVG when it comes to the introducing and using of technical devices in the workplace designed to monitor the performance or the behaviour of the employees. This provision has always been interpreted broadly by the federal Labour Court and is (despite its narrow wording) applicable irrespective of any intent of the employer to monitor the workers. In practice, this right to co-determination often proves to be an effective instrument to protect workers from excessive surveillance. Thus, works agreements on this issue often regulate in a detailed manner which employee data may be used for which purposes or – conversely – for which purposes the use of such data is not permitted (e.g. a control of quality of products but not a control of performance) and who has access to the data. Another important co-determination right is Section 87(1) No. 7 BetrVG concerning arrangements for the protection of health of the employees within the framework of safety regulations. Since the risk assessment prescribed in Section 5 ArbSchG falls under this provision and "health" means not only physical but also mental health, works councils can take care of effective measures against digital stress, which is primarily a question of work organisation (time sovereignty, sufficient resources, etc.) and not the ICT used per se[69].

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[66] Cf. *Harbecke/Mühge*, Digitalisierungsstrategien im Porträt, I.M.U.-Mitbestimmungspraxis No. 34 (2020).

[67] *Gerst*, WSI Mitteilungen 73 (2020), pp. 295-299 {297-299].

[68] See supra sub 2.1.2.

[69] For more details, see *Gerlmaier*, IAQ-Report 2019/07.

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Concerning the managing of the job-destroying potential of the digitalisation ("substitution risk"), works councils have no right to directly influence the "if" of the employer's decision to engage in a comprehensive digital transformation. However, works councils can safeguard employee interests in the concrete shaping of this process or its direct consequences. In this respect, the BetrVG provides two instruments: the "reconciliation of interests" and the "social compensation plan" (Section 112 BetrVG). While the former relates to the operational change itself, but cannot be enforced, the latter is in principle object of an mandatory right to co-determination and offers the chance of full or partial compensation for disadvantages suffered by employees as a result of the operational change[70]. The spectrum of compensation ranges from severance payments to – in the implementation of "Industry 4.0" often preferable – further vocational training and qualification of the affected workers. An incentive to agree on training measures is the granting of financial subsidies of the labour administration provided in the Social Security Code (Sozialgesetzbuch = SGB) if the employer organises such measures within existing employment relationships (Section 82(3)-(5) SGB III) or within the framework of a so-called transferring social compensation plan, if the aim is to retrain employees to integrate them into the labour market outside of the previous company (Section 110 and Section 111 SGB III).

It is undisputed that, in the age of the digital transformation of work, qualification and further vocational training is important both for securing employment and for promoting employability when looking for a new job[71]. Therefore, it is not without reason that the European Social Partners Framework Agreement on Digitalisation deals broadly with digital skills and puts this issue even at the first place. Correspondingly, works councils consider qualification and further training to be very important (69%)[72] and consequently often deal with this topic in works agreements[73]. The BetrVG also pays attention to this field and structures the participation rights as follows[74]: First of all, the works council has the right to consult with the employer and make proposals on vocational training matters (Section 96(1) Sentences 2 and 3 BetrVG). To make these rights more effective, the employer must determine the need for vocational training of the staff at the request of the works council (Section 96(1) Sentence 2 BetrVG). As regards the modalities of vocational training programmes the employer has decided to im-

[70] According to its legal definition in Section 112(1) Sentence 2 BetrVG, the social compensation plan is an agreement between the employer and the works council on the compensation or mitigation of the economic disadvantages that arise for the employee as a result of a change in operations.

[71] See only *Keller/Seifert*, Industrielle Beziehungen 27 (2020), pp. 227-249 [232-234].

[72] *Ahlers*, WSI-Report No. 40 (2018), p. 18.

[73] Cf. *Heidemann*, Trendbericht: Betriebliche Weiterbildung, I.M.U.-Mitbestimmungspraxis No. 24 (2019).

[74] For more details, see *Krause*, in: Festschrift für Ingrid Schmidt (2021), pp. 231-248; *Krause*, NZA 2022, pp. 737-743.

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plement, the works council has a right to co-determination (Section 98(1) BetrVG). In contrast, regarding the introduction of vocational training programmes, the works council has principally only a right to consultation (Section 97(1) BetrVG). Thus, in general, the employer remains free in the decision to provide further vocational training. However, the works council has exceptionally a right to co-determination on the introduction of vocational training programmes in the establishment if the employer plans or implements measures that result in a change in the activities of the employees concerned and their existing vocational skills are no longer sufficient for the performance of their future duties (Section 97(2) BetrVG). Through this right, the works council can ensure that the employees obtain the missing skills caused by the digital transformation.

Although the current relevance of artificial intelligence (AI) at the plant level should not be overestimated[75], the German legislator updated the BetrVG with the "Betriebsrätemodernisierungsgesetz" (Works Councils Modernisation Act) of 2021[76] in a future-oriented manner and for the first time explicitly included AI-related matters in the Act[77]. Firstly, the employer must inform the works council in due time of any planning concerning working procedures and operations including the use of AI (Section 90(1) no. 3 BetrVG). Secondly, the participation rights concerning the selection of employees for recruitment, transfer, regrading and dismissal shall also apply if AI is used when drafting the guidelines (Section 95(2a) BetrVG). Thirdly, the legislator addresses the problem that works councils often lack sufficient expertise when it comes to complex technical problems in connection with AI. Therefore, the general right of the works council to call on the advice of experts as far as the proper discharge of its duties so requires is facilitated. Now it is deemed necessary to consult an expert in so far as the works council must assess the introduction or application of AI in order to carry out its tasks. Unfortunately, the legislator has not defined the term "artificial intelligence". It is therefore to be expected that there will be legal disputes in future about the question of which kind of software can be subsumed under this term.

In some companies, the social partners even go far beyond the new AI-related participation rights. At IBM Germany, for example, management and the works council have taken the European Commission's AI approach as a blueprint and concluded in 2021 a works agreement on the introduction and use of AI by developing a classification of possible applications from 1 (low risk) to 5 (high risk). Furthermore, the power to make an ultimate decision on relevant issues shall remain with humans. Finally, as an innovative element, the social partners have set

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[75] Cf. BMWi, Einsatz von Künstlicher Intelligenz in der Deutschen Wirtschaft, 2020, https://www.bmwk.de/Redaktion/DE/Publikationen/Wirtschaft/einsatz-von-ki-deutsche-wirtschaft.pdf?__blob=publicationFile&v=8; *Giering*, Z. Arb. Wiss. 76 (2022), pp. 50-64.

[76] Bundesgesetzblatt (Federal Law Gazette) I 2021, p. 1762.

[77] For details, see *Frank/Heine*, NZA 2021, pp. 1448-1452. For an overview on AI as a challenge for works councils, see *Klebe*, SR 2019, pp. 128-137 [130-134]; see in this context also *Holthausen*, RdA 2021, pp. 19-32 [27-30].

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up an "AI Ethics Council" consisting of experts and representatives from both sides, who meet regularly and assess the AI systems used in the enterprise that have an impact on workers[78].

4.2.2. *Trade Unions Strategies*

For many years, the trade unions have considered qualification and further training as key to securing employment and employability. Therefore, starting with a collective agreement on this topic as early as 2002 IG Metall concluded in 2015 a new and extended collective agreement with comprehensive provisions on personal reskilling for workers. In 2021, ver.di followed with the conclusion of a "digitalisation collective agreement" ("Digitalisierungstarifvertrag") for the public sector, which focuses in particular on the issue of qualification and for the first time provides for an individual right of employees to further training.

Furthermore, the fact that the digital transformation happens mainly at the level of individual companies and plants has solicited the industrial trade unions (IG Metall and IG BCE) to develop strategies that are more company-level oriented. The overall goal is to conclude so-called "future agreements" in which the employer on the one side and the trade union and the works council on the other agree on specific measures with the goal to safeguard the competitiveness of the company and thus secure employment and good working conditions.

In the first phase, this strategy was used only in a reactive manner. If a company had fallen into an economic crisis and the workforce had to accept wage cuts to avoid an insolvency of the company, the trade union demanded investments and qualification measures for the staff as quid pro quo for its consent with the worsening of working conditions.

The second phase was the development of a proactive collective bargaining policy. In the so-called project "Arbeit 2020 in NRW" ("Work 2020 in North Rhine-Westphalia"), the trade unions try to initiate a structured process even in situations in which an enterprise has not yet fallen into economic problems. The overall goal is to initiate a participation-oriented approach involving not only the works council as a representative of the staff but also the employees themselves. The first step of the process is the assessment of the "digital status quo" of the plant and to develop a "company map". The second step is the development of a company-focused future strategy which shall, at best, lead as a third step to the conclusion of an individual "future agreement" with provisions on vocational training, strategic HR-planning and other issues[79].

The third phase consists of the conclusion a sectoral framework agreement to trigger and facilitate company-focused "future agreements" and a "future dia-

[78] Cf. *Knödl*, Mitbestimmung 1/2022, pp. 32-33.

[79] For more details, see *Bosch/Schmitz/Haipeter/Spallek*, Arbeit 29 (2020), pp. 3-23; *Haipeter/Bosch/Schmitz-Kießler/Spallek*, Industrielle Beziehungen 26 (2019), pp. 130-149; *Haipeter/Korflür/Schilling*, WSI Mitteilungen 71 (2018), pp. 219-226. For a legal assessment, see *Röder/Günther/Gerigk*, DB 2021, pp. 1741-1744.

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logue" at the company level between the employer and the works council on topics like qualification, change management, competitiveness of the company etc. As the employer side is generally very reluctant when it comes to any impairment of managerial prerogatives, there is no agreement regarding any kind on binding conflict resolution. However, in a collective agreement of 2021 the IG Metall created an incentive for employers to enter in the "future dialogue" and "future agreements" by facilitating deviations from the regularly binding collective agreement on hours and wages.

5. *Remote Work*

Remote work in terms of working by means of ICT from home (or mobile) has existed in Germany, initially under the term "telework", since the 1980s but has played only a marginal role for decades, although with an increasing tendency. The first social partners' agreements which became publicly known, date from the 1990s [80]. A study of 2000 identified 68 social partners agreements [81], 26 of them stemming from the public sector. Later surveys from 2014 to 2018 cite a share of remote work between 11% and almost 25% [82]. Since spring 2020, due to the corona pandemic the situation has fundamentally changed. According to surveys the share jumped quickly in the first wave of the pandemic to 36% (July/August 2020) [83] or even close to 45% (April 2020) [84] of employees who worked entirely or at least partially in their home office, resulting in a "digital divide" between different groups of workers (between those whose work allows telework and those who do not) [85]. Another recent survey cites lower figures, but also with a significant increase from 2017 (8%) to 2021 (23%) [86]. The following remarks deal with the general regulation of remote work and the social partners' approaches to this phenomenon with particular attention to developments since the outbreak of the corona pandemic.

[80] Cf. the works agreement at IBM Germany of 1991 ("e-place-concept") and the collective agreement at Deutsche Telekom of 1995, the latter is published in NZA 1996, 189.

[81] *Kamp*, Telearbeit (2000), p. 11.

[82] Cf. BMAS, Forschungsbericht No. 549 (2020), pp. 18-22.

[83] See BMAS, Forschungsbericht No. 549 (2020), p. 100.

[84] See *Ahlers/Mierich/Zucco*, WSI-Report No. 65 (2021), pp. 3-4.

[85] For details, see *Vogl/Carstensen*, WSI Mitteilungen 74 (2021), pp. 192-198.

[86] https://www.destatis.de/DE/Presse/Pressemitteilungen/Zahl-der-Woche/2022/PD22_24_p002.html.

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5.1. *European Framework Agreement on Telework*

The Framework Agreement on Telework of 2002, concluded by the European social partners ETUC, UNICE, CEEP and UEAPME, marks the beginning of the regulation of remote work at the European level[87]. Unlike other European countries (Czech Republic, Hungary, Poland, Portugal, Slovakia and Slovenia)[88], Germany has not implemented this – non-binding – agreement through national legislation. Rather, there are numerous collective agreements, mainly works agreements (company-level agreements)[89]. However, the social partners at the company level regularly do not refer to the European Framework Agreement. Thus, the assessment of Eurofound that the Framework Agreement on Telework is implemented through collective agreements in Germany[90] appears quite euphemistic. Nevertheless, many aspects mentioned in the Framework Agreement (e.g. data protection, employee privacy, equipment, safety and health) are also often regulated in German social partners agreements. This illustrates the future-oriented character of the European Framework Agreement as early as 2002.

5.2. *Legal Framework in Germany*

Considering the fact that there is still no comprehensive legal framework for remote work in German law, the current situation is characterised by a mixture of fragmented legislation and case law. The following remarks focus on the introduction of remote work and the specific issue of working time regulation, while works constitution law will be described later.

5.2.1. *Introduction of Remote Work*

In line with Section 3 of the European Framework Agreement on Telework, German law follows the principle of bilateral voluntariness regarding remote work. This means that neither the employer nor the employee in principle is entitled to unilaterally order or demand home office[91]. Rather, the introduction of remote work requires an individual agreement between the employer and the employee[92] or a social partners agreement (collective agreement or works agreement). In particular, the employer's right to give instructions does not provide a

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[87] See in this context also the Joint declaration on Telework by the European social partners in the insurance sector of 2015, https://www.agv-vers.de/fileadmin/doc/broschueren/brochure_telework_english.pdf.

[88] Cf. Eurofound, Telework in Europe (2010), pp. 9-10.

[89] Cf. BMAS, Forschungsbericht No. 549 (2020), pp. 67-88.

[90] Eurofound, Telework in Europe (2010), pp. 11-12.

[91] *Bayreuther*, NZA 2021, pp. 1593-1598 [1594].

[92] For more details, see *Krieger/Rudnik/Povedano Peramato*, NZA 2020, pp. 473-480 [474-478].

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sufficient legal basis[93]. Conversely, the employee has no right to work from home[94]. There are only a few exceptions in statutory law[95]: According to Section 16(1) Sentence 2 Federal Equality Act (Bundesgleichstellungsgesetz = BGleiG), workers in the federal public service are entitled to a fair decision by the employer on their request for a home office[96]. Moreover, disabled employees have a right to work at home under Section 164(4) Sentence 4 SGB IX, which the employer can only avoid if the introduction of remote work is unreasonable or involves disproportionate costs.

During the corona pandemic the legal situation temporarily changed. An amendment of the Infection Protection Act (Infektionsschutzgesetz = IfSG) of April 2021 imposed an obligation on employers to offer employees the option of working from home in case of office work or similar activities, as long as there are no compelling operational obstacles. Likewise, employees were obliged to accept this offer if no substantial reasons on their part prevented them from doing so (Section 28b(7) IfSG)[97]. This provision initially expired in June 2021 (Section 28b(10) IfSG). In November 2021, the provision was reactived (now as Section 28b(4) IfSG)[98] and expired once again in March 2022, clearly demonstrating its pandemic-related character. The draft of a general "Mobile Work Act" of January 2021 included a right of the employee to demand regularly mobile work via ICT but with a counter right of the employer to reject the request for any non-discriminatory cause,[99] failed in the past legislative period. The coalition agreement of the new governing parties of November 2021 now announces the political project to establish a right of the employee to demand remote work, but with a limited counter right of the employer who shall be entitled to reject the request only in the case of operational obstacles[100].

5.2.2. *Working Time Regulation ("Always On")*

With remote work, there is the particular risk that working time regulations are disregarded. On the one hand, employees tend to work beyond the limits of working time law, e.g. when processing operational data, preparing presentations

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[93] Explicitly LAG Berlin-Brandenburg 14.11.2018 – 17 Sa 562/18 – NZA-RR 2019, 287.

[94] Explicitly ArbG Augsburg 7.5.2020 – 3 Ga 9/20 – NZA-RR 2020, 417.

[95] For more details, see *Picker*, ZFA 2019, pp. 269-290 [275-276].

[96] However, this provision does not give the employee a strict legal entitlement, cf. BVerwG 31.1.2008 – 2 C 31/06 – BVerwGE 130, 201 [para. 23].

[97] Bundesgesetzblatt (Federal Law Gazette) I 2021, p. 802 [805].

[98] Bundesgesetzblatt (Federal Law Gazette) I 2021, p. 4906 [4908].

[99] https://www.bmas.de/SharedDocs/Downloads/DE/Gesetze/Referentenentwuerfe/ref-mobile-arbeit-gesetz.pdf; jsessionid=2A9D66FF5780F2ACB27A56396903FC79.delivery2-master?__blob=publicationFile&v=1.

[100] See https://www.bundesregierung.de/breg-de/service/gesetzesvorhaben/koalitionsvertrag-2021-1990800, p. 69.

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or checking work-related emails. On the other hand, the option for superiors, work colleagues or customers to contact employees beyond their regular working time via ICT has expanded considerably. In short: there is the risk of the "Always-On"-phenomenon resulting in mental stress and problems with the work-life-balance[101].

At the outset, there is no doubt that working time regulations, i.e. the Working Time Directive 2033/88/EC and the German Working Time Act (Arbeitszeitgesetz = ArbZG), also apply when employees are doing remote work[102]. Home office is not a "working time law free zone". Thus, the limits of working time law, in particular a minimum of breaks, a daily rest period and a weekly rest period, are also applicable to remote work. From this point of view, two aspects require further consideration: the classification of "voluntary" extra work and the classification of permanent availability including the issue of a "right to disconnect" as an instrument to counter extensive availability.

Regarding "voluntary" work, it is most convincing to classify each work-related activity of the employee as "work" in terms of working time regulation. Thus, it is basically the task of the employer to organise the work in a manner that the employee complies with the limits of working time law and has no incentive to disregard them. In this context there is only one caveat: if the employer does not know that the employee is working beyond the regular working times and his or her lack of knowledge is not based on negligence, he or she cannot be sanctioned with a fine for the violation of working time regulations if the conduct of the employee is revealed afterwards[103].

Regarding "permanent availability", it is necessary to distinguish. If the employee carries out a job-related activity, irrespective of where the activity is carried out, then the time of the activity constitutes working time. If the employee does not carry out an activity but is only performing an on-call duty, this time is principally solely part of the rest period unless the constraints imposed on the worker during this period affect, objectively and significantly, the latter's ability freely to manage the time during which his or her professional services are not required and to devote that time to his or her own interests[104]. As the boundaries

[101] Cf. *Kraus/Grzech-Sukalo/Rieder*, Z. Arb. Wiss. 74 (2020), pp. 167-177. According to a recent study, 9.8% of all working people in Germany (employed and self-employed persons) are prone to addictive work behaviour, remarkably with a lower percentage in plants with works councils (8.7%), see *van Berk/Ebner/Rohrbach-Schmidt*, Arbeit 31 (2022), pp. 257-282.

[102] For the following, see generally *Krause*, in: Hanau/Matiaske (Eds.), Entgrenzung von Arbeitsverhältnissen. Arbeitsrechtliche und sozialwissenschaftliche Perspektiven (2019), pp. 151-181.

[103] For more details, see *Krause*, in: Ales et al. (Eds.), Working in Digital and Smart Organizations (2018), pp. 223-248 [233-235].

[104] For more details, see *Krause*, in: Ales et al. (Eds.), Working in Digital and Smart Organizations (2018), pp. 223-248 [235-237]. As to the distinction between working time and rest time, see also the case law of the CJEU 21.2.2018 – C-518/15 – ECLI:EU:C:2018:82 (*Matzak*); CJEU 9.3.2021 – C-344/19 – ECLI:EU:C:2021:182 (*Radiotelevizija Slovenija*); CJEU

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are often blurring, the question of a "right to disconnect" as a tool to fix clear limits regarding the availability of employees for work-related matters becomes increasingly important. However, in contrast to the legal situation in some other European countries (France, Belgium, Italy and Spain)[105], German labour law does not provide for such a specific right thus far. Instead, there is only the general principle that, of course, no employee is obliged to work beyond the agreed working time and particularly not beyond the limits of working time regulations. However, this principle as such does not solve the problem of regarding working time limitations because general principles are regularly too vague to influence the work practices on the ground to comply with working time law. Therefore, more concrete regulations that precisely distinguish between work periods and leisure periods are required.

5.3. *Industrial Relations Practices*

Remote work is not only a challenge for employers and employees but also for the social partners, who address this topic at two levels. On the one hand, there are many works agreements and single-employer collective agreements, which regulate remote work in a detailed manner. On the other hand, some sectoral collective agreements additionally provide a more general framework for mobile work.

5.3.1. *Company Level*

As already mentioned, there are numerous works agreements as well as collective agreements at the company level or for an entire group of companies, e.g. at Deutsche Bahn or Deutsche Telekom[106], on remote work, often also referred to as home office[107]. Remarkably, remote work not only occurs in large firms but also in SMEs, however in the latter case often based on guidelines unilaterally created by the employer (if no works council exists) and then bilaterally agreed on between employer and employee[108]. During the corona pandemic, many additional works agreements on mobile work/home office were concluded[109]. Typical

9.3.2021 – C-580/19 – ECLI:EU:C:2021:183 (*Stadt Offenbach*); CJEU 11.11.2021 – C-214/20 – ECLI:EU:C:2021:909 (*Dublin City Council*).

[105] Cf. Eurofound, Right to disconnect in the 27 EU Member States (2020), pp. 41-55.

[106] On the model at Deutsche Telekom, see *Zanker*, WSI Mitteilungen 70 (2017), pp. 456-459.

[107] *Vogl/Nies*, Mobile Arbeit (2013).

[108] Cf. BMAS, Forschungsbericht No. 549 (2020), pp. 67-88, with examples of various branches (software provider, touristic, engineering office, health sector, tax consulting, care sector, finance sector, textile manufacturing).

[109] Cf. *Armeli et al.*, Transformation in Zeiten der Corona-Pandemie, I.M.U.-Mitbestimmungsreport No. 63 (2020), pp. 9-10; *Hay/Mierich/Werner*, Mitbestimmung als Konstante in der Pandemie, I.M.U.-Mitbestimmungsreport No. 69 (2021), pp. 7-10.

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issues in social partners' agreements are criteria for those work activities which are suited for remote work, equipment with technical work tools, ergonomic prerequisites, working time schedules, accessibility times, capacity building for the self-organisation of remote workers, data protection and liability regulations [110].

As regards participation rights, the BetrVG provides a lot of instruments for works councils to regulate remote work since the Act also applies to employees who perform their work outside of the company's premises by explicitly mentioning telework (Section 5(1) Sentence 1 BetrVG. When it comes, for instance, to trust-based working time schedules, Section 87(1) No. 2 BetrVG attributes a right to the works council to co-determine a regulatory framework for this specific working time model. Furthermore, the works council has a co-determination right according to Section 87(1) No. 6 BetrVG when remote work is connected with the introduction and use of technical devices designed to monitor the behaviour or performance of the employees. Moreover, Section 87(1) No. 7 BetrVG grants a co-determination right regarding arrangements on remote work, inter alia, for the protection of health of the employees within the framework of safety regulations. Additionally, in 2021 the legislator introduced a specific co-determination right on the shaping of mobile work ("how") performed using ICT with the new Section 87(1) No. 14 BetrVG as a further part of the previously mentioned "Betriebsrätemodernisierungsgesetz" (Works Councils Modernisation Act) [111]. However, the principal decision to introduce mobile work ("if") remains in the prerogative of the employer [112]. Thus, works council have no institutional right to enforce the introduction of remote work in a company [113].

5.3.2. *Sectoral Level*

At the sectoral level, the most prominent collective agreement on mobile work has been concluded by the social partners of the metal industry (initially in 2018, extended in the following years) [114]. This collective agreement provides a general framework for agreements at the plant level. It contains, for instance, the provision that mobile work during leave time is prohibited. Moreover, the collective agreement contains a checklist for voluntary works agreements. Remarkably, the collective agreement worsens the situation of workers in return for the worker's greater autonomy in determining working hours in two respects: Firstly, employees have no right to late-time and night-time surcharges. Secondly, the collective agreement reduces the rest period from 11 to 9 consecutive hours, taking ad-

[110] Cf. *Mierich*, Orts– und zeitflexibles Arbeiten, HBS-Study No. 446 (2020).

[111] For more details, see *Eylert*, AuR 2022, pp. 292-299.

[112] Cf. Bundestags-Drucksache 19/28899 of 22 April 2021, p. 23.

[113] For more details, see *Bayreuther*, NZA 2021, pp. 839-841.

[114] https://www.bw.igm.de/downloads/artikel/files//ARTID_86699_2LBVws?name=2021_11_11_MuE_TV_Mobiles_Arbeiten.pdf.

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vantage of an opening clause in the ArbZG. A similar collective agreement was concluded in the insurance sector in 2019[115].

6. *Platform Work*

Platform work is located at the intersection of two megatrends: the digitalisation of work on the one hand and the "platform revolution", i.e. the emergence of a growing number of platforms in various fields of the economy and society[116] on the other. Although platform work does not seem to play a major role in the German labour market yet, this new form of work has been intensively discussed since mid 2010s[117].

German law does not provide any legal definition of platform work. However, there is a general consensus that digital labour platforms comprise every form of the coordination of supply and demand of waged labour through an online platform if the platform operator is organising the work performed by a natural person to a recipient of the service (client) to a certain extent, irrespective whether the work itself is performed offline (often referred to as gig-work) or online (often referred to as crowdwork or cloudwork)[118]. Thus, platform work is characterised by a triangular relationship between the platform worker, the client and the platform operator. The operator acts as an intermediary, not only by providing merely a marketplace but by steering and controlling the manner the service is performed[119].

6.1. *Empirical Aspects of Digital Labour Platforms*

Regarding the empirical situation, there are no official statistics on the spread of platform work in Germany. Therefore, the following figures[120] should be in-

[115] https://www.agv-vers.de/fileadmin/doc/tarifvertraege_downloads/TV_MobA_ab_01_07_2019.pdf.

[116] Cf. *Kenney/Zysman*, Issues in Science and Technology 32 No. 3 (2016), pp. 61-69: "Rise of the Platform Economy". The connection to the so-called "Sharing Economy" is highlighted by *Krause*, in: Dörr/Goldschmidt/Schorkopf (Eds.), Share Economy (2018), pp. 147-170.

[117] Cf. the early articles (with a legal background) of *Däubler/Klebe*, NZA 2015, pp. 1033-1041; *Klebe*, AuR 2016, pp. 277-281; *Kocher/Hensel*, NZA 2016, pp. 984-990; *Lingemann/Otte*, NZA 2015, pp. 1042-1047.

[118] See in this context also the definition in the European Commission's proposal for a Directive on improving working conditions regarding platform work, COM(2021) 762 final, p. 33. For an in-depth analysis, see *Krause*, NZA 2022, pp. 521-533 [524-526].

[119] The following remarks are limited to external platform work (i.e. outside of the company), although internal platform work meanwhile plays a considerable role in the value creation process, particularly in the industrial sector.

[120] See in this context also *Krause*, in: Carinci/Dorssemont (Eds.), Platform Work in Europe (2021), pp. 29-55 [32-35], with references to further German and international studies.

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terpreted with caution, not at least due to different understandings of platform work. In a study charged by the BMAS of 2018, it is estimated that 4,8% of the total German population above 18 years (equivalent to 2.9 million persons) performs platform work[121]. Even if only a share of about 25% receives its main income through crowdwork[122], this would mean that more than 700,000 persons would be living from platform work in Germany. However, there are also studies that show significantly lower figures. A study of 2017 estimates only 0.27% of all adults in Germany (equivalent to less than 200,000 persons) perform platform work[123]. Similarly, others count for 100,000 to 300,000 crowdworkers (including gigworkers)[124] respectively nearly 300,000 active crowdworkers in 2017 working on 32 platforms located in Germany[125]. Since it is undisputed that platform work is only a secondary occupation for the vast majority, this would mean that for only a few tens of thousands of people this type of work is their main source of income. The character of platform work as a mere side job for (full-time or half-time) employees (in sum 28%), students (19%) and some retirees as well (2%)[126] is confirmed by the remuneration workers earn through platform work: The majority (56%) only makes up to 400 Euros per month, while only a small minority (7%) earns more than 1,500 Euros per month[127]. An examination of companies in the production sector in 2018 reveals a similar picture: Only 2% of the companies surveyed currently use external platform work and further 1.2% intend to make use of it[128]. When asked about their wishes to improve their situation, platform workers call mainly for social security, the regulation of price competition (e.g. by some kind of a minimum wage) and the establishment of a fair representation of their interests[129].

Summarising these statistics, platform work currently appears as a marginal phenomenon on the German labour market and the assumption of a precarious situation of all platform workers in Germany would not be tenable. However, there are exceptions, primarily in the delivery sector, in which the “riders” (often migrants) are frequently facing bad working conditions[130]. Moreover, the corona

[121] *Serfling*, Crowdworking Monitor No. 1 (2018), p. 16. In this study, crowdwork is understood broadly, containing online and offline work.

[122] Cf. *Serfling*, Crowdworking Monitor No. 2 (2019), p. 13.

[123] *Bonin/Rinne*, IZA Research Report No. 80 (2017), p. 11.

[124] *Pongratz/Bormann*, Arbeits– und Industriesoziologische Studien 10 (2017), pp. 158-181 [164].

[125] *Mrass/Peters*, Crowdworking-Plattformen in Deutschland, University of Kassel, Working Paper Series No. 16 (2017), pp. 10 and 19-20.

[126] Cf. *Leimeister/Durward/Zogaj*, Crowdwork in Deutschland (2016), p. 40.

[127] *Baethge et al.*, Plattformarbeit in Deutschland (2019), p. 22.

[128] *Erdsiek/Ohnemus/Viete*, Crowdworking in Deutschland 2018 (2018), p. 7.

[129] *Baethge et al.*, Plattformarbeit in Deutschland (2019), p. 29.

[130] Cf. *Ewen*, Berliner Debatte Initial 32 (2021), pp. 65-77.

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pandemic has fuelled the gig economy [131]. Finally, due to their very existence, digital labour platforms have the potential to put pressure on regular employment relationships and existing labour standards. Nevertheless, it would be exaggerated to assume that the German world of work develops towards a complete "platformisation". Sober research should refrain from such narratives that are no more than "imagined futures" [132].

6.2. *Legal Status of Platform Workers*

In the context of platform work, the most debated legal issue is undoubtedly whether platform workers can be classified as employees, as the status is the gateway to important rights like statutory minimum wage, continued remuneration in the event of illness and protection against dismissal.

Unlike other European countries (France, Italy, Spain), Germany lacks any specific regulation on platform work. Rather, at the political level, there are only two position papers thus far. In 2019, the BMAS and the trade union NGG published a joint paper specifically on working conditions of food riders in the platform economy [133], followed by the publication of key points on the general regulation of platform work, like a rebuttable legal presumption for the existence of an employment relationship as well as a mandatory notice in case of a termination of the worker's platform account ("digital cold dismissal") for self-employed platform workers, by the BMAS in 2020 [134]. However, the BMAS failed even to draft an act on platform work for political reasons. Thus, it is up to the labour courts to apply the general provisions and principles of German labour law to platform work.

Regarding the issue of the legal qualification of platform workers, German law follows at first glance a binary approach with a dualism of employees on the one side and self-employed persons on the other. However, in addition to this distinction, there is a third category, the so-called employee-like persons. Thus, it is also conceivable that platform workers are classified as employee-like persons or as homeworkers (a special type of employee-like persons), to whom some protective provisions – though not the whole body of labour law – apply [135].

According to Section 611a BGB an employee is everyone who is contractually obliged to perform services in a situation of personal dependence. Personal de-

[131] *Herrmann*, Gesellschaftsforschung 2/2020, pp. 2-3.

[132] Cf. *Kirchner/Matiaske*, Industrielle Beziehungen 27 (2020), pp. 105-119 [113].

[133] https://www.ngg.net/fileadmin-ngg.net/medien/2019/PDF/190206_Gemeinsames_Papier_NGG_BMAS_final.pdf.

[134] https://www.bmas.de/SharedDocs/Downloads/DE/Pressemitteilungen/2020/eckpunkte-faire-plattformarbeit.pdf?__blob=publicationFile&v=1.

[135] For more details, see *Waas*, in: Waas et al., Crowdwowk – A Comparative Law Perspective (2017), pp. 141-171.

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pendence exists when the worker must follow the instructions of the other person regarding the content, mode, time and location of the services to be performed. In turn, everyone who is essentially free to organise his or her work and determine his or her working hours is not bound by the right of the other part to give instructions. In unclear cases the real situation matters and not the label the parties have given to the contract ("primacy of facts").

Thus far, despite intense debate among legal scholars[136], there has only been one judgment of the Federal Labour Court on the qualification of a crowdworker. The case involved a worker who took on individual assignments via a smartphone app, which consisted of checking the proper presentation of branded articles in retail stores or gas stations. The worker carried out this activity for around 14 months and achieved average monthly earnings of 1,750 Euros with a weekly working time of around 20 hours. When the platform operator wanted to terminate the legal relationship, the worker sued it for the existence of an employment relationship. At the second level of jurisdiction, the worker was still unsuccessful before the state Labour Court of Munich, which emphasised that the framework agreement between the platform operator and the platform worker contained for the latter no obligation to perform any work[137]. Regarding the individual assignments, the worker failed to file an action for invalidity of a fixed-term employment contract in time, which is legally required[138]. In contrast, the Federal Labour Court ruled differently by jointly considering the framework agreement and the individual assignments and thus analysing the organisational structure of the platform work as a whole. According to this approach, the platform operator created an incentive system that induced the worker to continuously take on single tasks, with the tasks being steered in terms of place, time and content in such a manner that the worker is not essentially free when fulfilling the tasks[139]. The judgement of the Federal Labour Court is undoubtedly an important milestone, but the classification of platform workers remains controversial, and several legal scholars emphasise that the qualification depends heavily on the individual case. It should be mentioned, however, that in practice in Germany many platform workers in the delivery sector and in domestic services are explicitly hired as employees, but this does not necessarily make the working conditions seem fair[140].

Another option German law provides, is the classification of a worker as an employee-like person, resulting in the applicability of some protective provisions, e.g. the General Equal Treatment Act, the Federal Leave Act, and the Collective

[136] For references, see *Krause*, in: Carinci/Dorssemont (Eds.), Platform Work in Europe (2021), pp. 29-55 [38-39].

[137] LAG Munich 4.12.2019 – 8 Sa 146/19 – NZA 2020, 314 [paras. 121-138].

[138] LAG Munich 4.12.2019 – 8 Sa 146/19 – NZA 2020, 314 [paras. 123-125].

[139] BAG 1.12.2020 – 9 AZR 102/20 – NZA 2021, 552 [paras. 28-54].

[140] *Bertolini et al.*, Z. Arb. Wiss. 75 (2021), pp. 187-192 [189].

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Agreements Act, but not the Minimum Wage Act, the Continued Remuneration Act (concerning sickness) and the Protection Against Unfair Dismissal Act. Roughly speaking employee-like persons are workers who are not personally dependent but economically dependent and in need of social protection comparable to that of an employee [141]. A demand for protection equivalent to that of an employee can be assumed because platform workers have a similar weak bargaining power towards the platform operators and accordingly have only little influence on the terms of remuneration. Thus, in cases where the worker is economically dependent on one platform operator, a classification as an employee-like person is appropriate. In other cases, particularly in situations where the platform worker is working for different platform operators, the worker will not be economically dependent on one single platform and therefore cannot be classified as an employee-like person.

Finally, a classification as homeworker in a technical sense comes into consideration, resulting in the applicability of some employment and labour law regulations, but not of the Minimum Wage Act or the Protection Against Unfair Dismissal Act. According to Section 2 (1) Sentence 1 Homeworking Act (Heimarbeitsgesetz = HAG) a homeworker is a person who works in his or her home or self-chosen premises alone or with family members on behalf of tradesmen or intermediate entrepreneurs and delivers the results of the work to the tradesman or entrepreneur. In a decision of 2016, the Federal Labour Court clarified that not only manual work (e.g. drawing candles), but also digitally performed activities could fall into the scope of the HAG [142]. However, as the classification of the worker as a homeworker requires economic dependence on a single entrepreneur, the same problems arise as described when the platform worker performs his or her activities on several platforms.

6.3. *Right of Platform Workers to Collective Bargaining*

One of the most important tools for improving the working conditions of platform workers is collective bargaining with the goal to compensate the lack of individual bargaining power by collectivisation. If platform workers are classified as employees, there are no further legal problems regarding collective bargaining because, according to the settled case law of the CJEU, traditional forms of bargaining collectively do not violate European competition law (Article 101 TFEU) [143]. In these situations, the problems arise only at the factual level: how to organise platform workers who are working, at least in mere online situations, separately and regularly do not know each other [144]?

[141] Cf. BAG 2.10.1990 – 4 AZR 106/90 – BAGE 66, 95 [104].

[142] BAG 14.6.2016 – 9 AZR 305/15 – BAGE 155, 264.

[143] CJEU 21.9.1999 – C-67/96 – ECLI:EU:C:1999:430 (*Albany*).

[144] Cf. in this context also Eurofound, Employment and working conditions of selected

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If platform workers are solo self-employed persons (= independent contractors), there are additional legal problems because there is a tension with European competition law that principally prohibits all agreements between undertakings that have as their object or effect the prevention, restriction or distortion of competition within the internal market. It is well-known that the CJEU has dealt with that issue in the FNV Kunsten case [145], and it is also well-known that there is an abundant controversial debate on the interpretation of that judgement that shall not be reiterated here [146]. What is decisive in this context is that, due to the primacy of European law, German law as such cannot add any significant aspects to the general discussion on the legality of collective agreements of solo self-employed persons [147]. It is true that European competition law is not applicable in situations where the internal market is not affected. However, according to a communis opinio the relevant German competition law provisions must be interpreted in line with European competition law, even if the latter is not applicable. Thus, there is no room for a deviating legal development. For this reason, the recent proposal of the European Commission for a communication on guidelines on the application of EU competition law to collective agreements regarding the working conditions of solo self-employed persons [148] is of utmost interest because the outcomes of this process will directly affect the entire legal situation in Germany as well.

6.4. *Social Partners Activities*

Because of the new and dynamic development of platform work, the situation is more complex and confusing than in settled areas of industrial relations, particularly in the industrial sector where the concept of social partnership is most advanced. Rather, the conventional forms of representation of workers' interests through trade unions and works councils encounter specific problems due to the regularly lack of a clearly defined establishment as a central place for the regulation of concrete working conditions and recruiting new union members in the platform economy [149].

types of platform work (2019), p. 53: "Furthermore, platform workers typically do not share a common identity, may not consider themselves workers, are not physically present at a single workplace, may frequently enter and exit employment, and may fear retaliation if they join a union. The global nature of some platforms and the diversity in the types of platform work further complicate organisation and representation".

[145] CJEU 4.12.2014 – C-413/13 – ECLI:EU:C:2014:2411 (*FNV Kunsten*).

[146] For references, see *Krause*, in: Festschrift für Michael Kittner (2021), pp. 241-248.

[147] For a comprehensive analysis, see recently *Seifert*, Kollektivverträge für wirtschaftlich abhängige Selbständige und unionsrechtliches Kartellverbot (2022).

[148] C(2021) 8838 final. For an analysis, see *Krause*, NZA 2022, pp. 521-533 [532-533].

[149] Cf. *Greef/Schroeder/Sperling*, Industrielle Beziehungen 27 (2020), pp. 205-226 [216-220].

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First, it comes with no surprise that the umbrella organisations BDA (employers) and DGB (trade unions) take opposite positions on the issue of regulating platform work. While the BDA emphasises the opportunities of platform work as an instrument to enhance flexible self-employment [150], the DGB stresses the risks connected with this new kind of the organisation of work for the affected workers and postulates new regulations [151].

A closer look at the development of the regulation of platform work in Germany reveals that the platform operators themselves made the first step. In 2015, the German platform operator testbirds initiated the creation of a Code of Conduct which was further developed in 2017 and is eventually signed by nine crowdworking companies operating in Germany and supported by the German Crowdsourcing Association [152]. The undersigned members commit themselves inter alia to fair payment, respectful interaction with the platform workers, clearly defined tasks and reasonable timing, constructive feedback and open communication, regulated acceptance and rework processes and, last but not least, data protection and privacy. However, the general shortcomings of codes of conduct are obvious: Firstly, they are merely unilateral regulations and not agreed with the crowdworkers' representatives. Secondly, they are soft law and, as such, not legally binding. Thirdly, many principles are vague and leave considerable room to manoeuvre for the crowdworking company in case of a dispute.

For about ten years, the German trade unions, mainly the IG Metall, the ver.di and the NGG are increasingly aware of the risks of platform work, try to draw attention to this novel phenomenon and develop counter-strategies [153]. A first important step is the amendment of the trade unions statutes. For example, since 2016 not only employees, but also self-employed persons, can become a member of the IG Metall [154]. The same is true regarding the ver.di [155] and the NGG [156].

The IG Metall, which is the largest and most powerful trade union in Germany, initiated in the past few years several activities with the purpose to improve

[150] BDA, Germany Reloaded (2018), pp. 6, 50-57. See also the position paper of BDA as a reaction on two initiatives of the (left) politial party DIE LINKE to legally regulate gigwork and crowdwork, Bundestags-Drucksachen 19/16886 of 29 January 2020 and 19/22122 of 8 September 2020.

[151] DGB discussion paper on platform work (2019), https://www.dgb.de/themen/++co++ca368f38-f961-11e9-8aa8-52540088cada; DGB position paper on platform work (2021), https://www.dgb.de/downloadcenter/++co++233706ee-a1ea-11eb-a42d-001a4a160123. See also the early "Berlin Crowdsourcing-Crowdworking Paper" by ver.di (2012).

[152] https://crowdsourcing-code.com.

[153] For more details, see *Krause*, in: Carinci/Dorssemont (Eds.), Platform Work in Europe (2021), pp. 29-55 [48-52].

[154] Cf. Section 3 No. 1 para. 5 statutes of IG Metall.

[155] Cf. Section 6 No. 1 lit. b statutes of ver.di.

[156] Cf. Section 4 No. 1 para. 2 statutes of NGG.

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the situation for platform workers[157]. A milestone is the so-called "Frankfurt Paper on Platform-based Work" of 2016, which was developed by IG Metall in collaboration with the Austrian Chamber of Labour (Arbeiterkammer), the Austrian Trade Union Federation (ÖGB), the Danish Union of Commercial and Clerical Workers (HK), the Swedish trade union Unionen and the U.S./Canadian trade unions International Brotherhood of Teamsters Local 117 and Service Employees International Union[158]. This declaration contains numerous demands relating to respect for national law and international principles, verification of the employment relationship, the right of association, pay, social security and issues of arbitration and transparency.

Another result of the activities of the IG Metall is the participation in the process of the revision of the aforementioned Code of Conduct of the platform operators in 2017. By contrast, the IG Metall failed in concluding a collective agreement with individual platform operators or the German Crowdsourcing Association thus far for unknown reasons.

Moreover, the IG Metall established the platform "Fair Crowd Work" that went online already in 2015 with the target to enable crowdworkers to effectively safeguard their own work-related interests[159]. A central tool of this website is the option for crowdworkers to evaluate the platform operators and thus reduce information asymmetry and gain more transparency regarding their conduct by organising crowdworking processes[160]. However, it is unclear whether this mechanism really constitutes an incentive for platform operators to improve the working conditions in order to stay attractive for high-profile crowdworkers and to avoid the "markets for lemons"-phenomenon.

Another instrument is the creation of an Ombuds Office for the settlement of individual disputes between crowdworkers and the platform operators who have signed the aforementioned Code of Conduct[161]. The Ombuds Office started its activities in 2017, initially dealing with seven cases, where in 2018 a total of 23 cases and in 2019 a total of 14 cases were referred. However, since 2020, there have been no hints of any further activities of the Ombuds Office.

Finally, in 2019 the IG Metall started a collaboration with the YouTubers Union, an Internet movement founded in 2018, under the title "Fair Tube" in order to achieve better working conditions in this specific field. In 2020 the association FairTube e.V. was founded with the main goal to promote fairness, transparency,

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[157] For a short description of the activities of IG Metall, see *Barth/Fuß*, Z. Arb. Wiss. 75 (2021), pp. 182-186.

[158] https://www.igmetall.de/download/20161214_Frankfurt_Paper_on_Platform_Based_Work_EN_b939ef89f7e5f3a639cd6a1a930feffd8f55cecb.pdf.

[159] http://faircrowd.work/.

[160] This approach aligns with the "Fairwork"- concept of ratings; cf. Fairwork Germany Ratings 2021: Labour Standards in the Platform Economy (2022), pp. 16-19. For more details, see *Bertolini et al.*, Z. Arb. Wiss. 75 (2021), pp. 187-192.

[161] https://ombudsstelle.crowdwork-igmetall.de/rules.html.

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accountability, freedom from discrimination and democratic participation for all platform workers. In 2021 FairTube e.V. went online [162].

Beyond the activities of established trade unions there are several attempts of self-empowerment of platform workers in the delivery sector. Due to the often precarious and unfair working conditions at companies like Deliveroo, Foodora and Gorillas (a German start-up founded in Berlin in 2020), several informal labour conflicts occurred in the past few years in Germany [163]. The conflict at Gorillas gained so much attention in the media that in 2021 even the Federal Minister for Labour and Social Affairs got involved and declared his solidarity with the "riders" [164]. Remarkably, Deliveroo and Foodora riders at the Berlin site did not turn to the established trade union ver.di, but to the grassroots association Free Workers'Union (Freie Arbeiter*innen Union = FAU) [165] to represent their interests. This has resulted in labour struggles and negotiations with Foodora, but apparently not in any kind of collective agreement. At several sites of delivery service companies, the riders tried to elect a works council, sometimes successful, sometimes unsuccessful [166], often hindered by the platform operators, who tried to torpedo the establishment of a works council via interim injunctions [167]. In one case, a rider even entered the supervisory board of a company (Delivery Hero) according to German co-determination law [168], however for unknown reasons only temporarily [169]. Another remarkable development is the foundation of a cooperative of Riders in Berlin after the complete retreat of Deliveroo from the German market in 2019 [170]. Regarding online-crowdworking, apparently no practiced forms of participation exist beyond individual and direct communication [171].

[162] https://fairtube.info/en/.

[163] Cf. *Degner/Kocher*, Kritische Justiz 51 (2018), 247-265 [248-253]; *Palmer*, Blätter für deutsche und internationale Politik 62(7) (2017), 29-32; see also *Ewen*, Berliner Debatte Initial 32 (2021), pp. 65-77.

[164] https://www.spiegel.de/wirtschaft/soziales/hubertus-heil-besucht-gorillas-im-dschungel-der-widersprueche-a-00f98090-3528-44e6-95eb-616d2aab9ef6.

[165] https://www.fau.org/gewerkschaft/prinzipien-und-grundlagen-der-fau.

[166] For more details, see *Haipeter/Hoose*, IAQ-Report 2019/05, pp. 14-18.

[167] LAG Berlin 23.11.2021 – 3 TaBVGa 1534/21 – NZA-RR 2022, 136.

[168] Cf. LG Berlin 9.3.2018 – 102 O 72/17 AktG – ZIP 2018, 1692.

[169] For more details, see *Krause*, in: Carinci/Dorssemont (Eds.), Platform Work in Europe (2021), pp. 29-55 [53].

[170] Cf. *Greef/Schroeder/Sperling*, Industrielle Beziehungen 27 (2020), pp. 205-226 [218].

[171] Cf. *Gegenhuber/Ellmer/Scheba*, Partizipation von CrowdworkerInnen auf Crowdsourcing-Plattformen, HBS-Study No. 391 (2018).

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7. Concluding Remarks

The digitalisation of the economy and the world of work constitutes a further chapter in the multifaceted history of the influence of new technologies on human work[172]. However, the current situation is more than ever characterised by high complexity and diversity. The digitalisation does not occur in a uniform manner but in a different way in every company. This situation makes it difficult for the legislator and social partners to develop any adequate regulatory framework and shape the process appropriately. Since the digitalisation mainly happens at the plant level, it requires a "division of labour" where each regulatory agent has its specific task: It is up to the legislator to establish a modern and adequate legal framework, considering that it is not necessary to invent employment and labour law newly from scratch because the needs for protection of workers have not fundamentally changed as a result of "Industry 4.0", remote work or platform work. Furthermore, it is up to the social partners to establish additional semi-abstract regulations at the sectoral level and concrete regulations at the plant level.

Regarding the content of regulations, it can be observed that the main elements of the European Social Partners Framework Agreement on Digitalisation that is (i) the improvement of digital skills of the workforce and securing employment, (ii) modalities of connecting and disconnecting, (iii) AI and guaranteeing the human in control principle and (iv) respect of human dignity and surveillance, are considered in many social partners agreements in Germany. A closer look leads to the conclusion that most of the numerous aspects are regulated in works agreements (or company-oriented collective agreements), whereas fewer issues are regulated at the sectoral level or at the legislative level. A certain exemption concerns topics dealing protecting the personality-related rights of workers, like safety and health or employee data privacy. These issues are more likely to be regulated by legislation with the aim to provide a floor of protective rights for the workers irrespective of any additional social partners agreements. In contrast, the regulation of the transformation process as such, taking into consideration the concrete situation of the company, is evidently not possible at the legislative level. Moreover, it seems that collective agreements at the sectoral level play only a minor role in the process of the digital transformation in Germany. Regarding the European Social Partners Framework Agreement on Digitalisation, there are no hints that the social partners in Germany refer directly to this agreement when dealing with the process of the digitalisation. This fact might be explained by the distance between the European level on the one side and the national social partners at the sectoral or the plant level on the other. Thus, despite its valuable content, it is hard to assess whether and to which extent the Europe-

[172] On this relationship, see *Böhle*, Soziale Welt 49 (1998), pp. 233-252. See also *Cherry*, International Labour Review 159 (2020), pp. 1-23.

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an Social Partners Framework Agreement on Digitalisation inspires the national social partners at the sectoral level or even at the company level when they conclude agreements on topics related to the digital transformation.

Furthermore, it can be observed that the occurrence of social partners agreements on digital issues depends much on the branch and the size of the company. The employee side has the most influence in the industrial sector, where the workers are often represented both by trade unions and works councils. However, it should not be overlooked that in large parts of the German economy, the interests of workers are not represented by any trade union or works council, not to mention platform work. Thus, only employment and labour law apply in these companies. This is even more regrettable, not only from the standpoint of the workers but also from an overarching standpoint, because there are hints that companies with institutional representation of workers are economically more successful in the long run.

However, even in companies with works councils and trade unions, the situation is not easy due to the high speed of the changes as well as the complexity and uncertainty of the development, not only for the employees and their representatives but also for the management. Therefore, it appears most promising, if the employer side and the employee side continuously negotiate at the company level on the best way for each company to reconcile economic and social demands in the process of the digital transformation. Obviously, there exists no "one size fits all-solution". In all three fields of the digitalisation of work considered, however, there is no real alternative to "smart", i.e. trusting and resilient industrial relations as the basis for successfully managing the digital transformation in the interest of all stakeholders.

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SUMMARY: Introduction. – 1. General Overview of Domestic Industrial Relations System. – 1.1. Collective Labour Law and Industrial Relations' Idea After the "New Hungarian Labour Code". – 1.2. The Main Actors and Institutions of Industrial Relations and the Role of Social Partners. – 1.2.1. National Level Social Dialogue. – 1.2.2. Workers' Representatives. – 1.2.3. Employers' Representatives. – 1.2.4. Collective Bargaining. – 2. General Policy Approach to Digitalisation and Work: an Overview. – 2.1. Industry 4.0. – 2.2. Digital Workforce Program. – 2.3. Artificial Intelligence Coalition. – 3. Platform Work. – 3.1. Definition of Platform Work and Statistical Data. – 3.2. Legal Background and Some Theoretical Issues. – 3.3. Industrial Relations Practices. – 4. Remote Work. – 4.1. Definition of Telework and Statistical Data. – 4.2. Implementation of 2002 Framework Agreement on Telework. – 4.3. Special Forms of Remote Work in Hungary – "Home Office". – 4.4. The Covid-19 Pandemic's Effect on Telework and Social Dialogue. – 4.4.1. Derogation from the Labour Code During the Emergency. – 4.4.2. OHS Rules During the Emergency. – 4.4.3. Supporting Working from Home During the Emergency. – 4.4.4. Post-Covid Perspectives – Modification of the HLC and OHS Rules. – 5. Workplace Automation, Industry 4.0 and Social Partners' Strategies. – 5.1. Social Partners' Strategies, Especially in the Metal Working Sector. – 5.2. Information and Consultation Legislation. – 5.3. Education and Training. – 5.3.1. Vocational Education and Training 4.0. – 5.3.2. Training and Labour Law. – 5.3.3. Individual Learning Account. – 5.4. Occupational Transitions. – 5.5. Some Other Labour Law-Related Aspects of Industry 4.0. – 6. Summary, Conclusion.

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Introduction

The overall "digital transformation" of our times deeply influences the world of work as well. Industrial relations, employment patterns are changing, and the ability of social partners to keep pace with these new challenges is often limited, especially in post-socialist countries (such as Hungary) with rather deficient social dialogue and collective bargaining practices. The paper (after briefly sketching the basic features of the industrial relations system of Hungary) deals with three such digital transformation "case-studies" – Platform Work, Remote Work, Industry 4.0 – that hold complex interplays with labour law and industrial relations. The paper aims to describe and critically examine Hungarian labour law developments and industrial relations practices that attempt to respond to the new challenges related to the above-mentioned digital transformation scenarios (while taking into consideration also the existing initiatives at the EU level).

1. *General Overview of Domestic Industrial Relations System*

1.1. *Collective Labour Law and Industrial Relations' Idea After the "New Hungarian Labour Code"*

Re-regulation of collective labour law and the structure of industrial relations was one of the core objectives – among other purposes – at the creation of the new Labour Code (Act I of 2012, hereinafter also referred to as HLC, or LC) in 2011-2012. The most significant changes related to the re-regulation of the rights of trade unions and to the slightly increased − and restructured − rights of works councils (and to the moving of some trade union prerogatives to works councils). Since 1992 Hungary has a dual channel workplace representation scheme with parallel works councils and unions at company level.

The majority of the related rules are "dispositive", so collective agreements may derogate from the law. Thus, in principle, collective agreements may still provide for, for example, extended protection available to trade union representatives, pecuniary compensation for unused time-off etc. However, in practice, it is very difficult for trade unions to achieve such agreements.

As collective bargaining is highly decentralised in Hungary (and the coverage of sectoral/industry agreements is quite limited), the legal position of company level union branches is a crucial issue. It must be mentioned that the first proposal of the new Labour Code (July 2011) would have diminished and restricted the rights of trade unions even more radically, but the government signed a special "last minute" agreement with a few of the national trade union associations just before the adoption of the Act (December 2011). As a consequence, the changes were finally not as radical as originally planned by the Government. However, the cutbacks in trade unions' rights and the corrosion of unions' operating conditions are still considerable − especially in the interpretation of trade

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unions – and they might have a negative impact on unions' functionality (for instance, trade unions' bargaining position might be undermined, there might be a drop in union services provided for members etc.). According to some opinions, the changes might imply a drive towards further individualisation of labour relations.

As we have already mentioned, the HLC significantly extends the role of collective agreements for the advancement of a more flexible, more reflexive, more autonomous system of employment regulation. In the new system, collective agreements may differ from the general rules implied in the Code (Part Two and Three), also for the detriment of employees (in other word, this is the fully dispositive, absolute permissive character of the Code, as a main rule; the Act lists only the cases in which such a deviation is not allowed).[5] As a consequence, there are less so-called cogent and/or relatively dispositive rules in the Code. As such, the Code intends to strengthen the parties' collective contractual freedom, reducing the regulatory role of the state.[6] According to Gyulavári, the 2012 reform seems to be a failure. He notes that "the decline in an otherwise moderate level of collective bargaining may be explained above all by the general strategy of 'flexibilizing' labour standards in fields like working time and rest periods. At the same time, the strengthening of the hardly existing sector-level bargaining was not even mentioned in the legislative strategy. (….) Certainly, the reformed hierarchy of labour law sources did not manage to strengthen collective bargaining, (but it gives some more freedom to the agreement of the employer and the employee).[7]

The new Code introduced the new right of elected works councils (WCs) to conclude normatively binding works agreements (as a form of non-union bargaining). The works council can now, under Section 268 of the Code, conclude agreements with the employer to regulate the terms and conditions of employment with the exception of wages and remuneration. As such, these agreements can take over the roles of collective agreements. According to some academics, this legal possibility may undermine the effectiveness and the very idea of collective bargaining, mainly because of the following reasons: the presumed loyalty of "cooperative" WCs; the impartial status of WCs; the weak bargaining capacity of WCs (e.g. lacking labour law protection of members;[8] lacking autonomous legal

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[5] The structure of the Act is very difficult because of this complex system of derogations and because of the extensive use of cross-references.

[6] A. KUN, *Hungary: Collective Bargaining in Labour Law Regimes*, in L. ULLA (ed.), *Collective Bargaining in Labour Law Regimes*, Cham, Springer International Publishing, 2019, pp. 333-356.

[7] T. GYULAVÁRI, *The Hungarian Experiment to Promote Collective Bargaining: Farewell to 'Principle of Favour'*, in T. GYULAVÁRI, E. MENEGATTI (eds.), *The Sources of Labour Law*, Kluwer Law International BV, The Netherlands, 2020, p. 259.

[8] Only the chairman of the works council enjoys labour law protection (against termination of employment). See art. 260, sec. (3)-(5) of the Labour Code.

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personality of the council as being part of the employers' organizational structure; excluded right to organise strike etc.) and lack of strong co-determination rights to meaningfully pressure employers. On the other hand, this new possibility might also catalyze some form of industrial relations at non-unionized workplaces, SMEs.

The changes in collective labour law introduced by the new Code were sharply criticised by all the Hungarian trade union confederations.[9] The trade unions primarily talked about – probably with some exaggeration – the withdrawal[10] and curbing[11] of their rights, ultimately about the marginalisation[12] of their role.

It is especially typical of post-communist countries that the legal (statutory) regulation of the trade unions is strongly demonstrative regarding the legal policy judgment of trade unions. The general regulation of the legal status of trade unions in the area of labour law has basically not changed after the HLC in 2012, although, in the opinions presented above, the Code worsens the very basics of the workplace presence of trade unions. This is very important, as Hungarian

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[9] Examples from the policy statements of the trade union confederations operating in the competitive sector from the past few years:

1. Position taken by the LIGA Trade Unions: "*On the other hand, the change in the area of collective rights appears in the systematic removal of the safeguards for the enforcement of the rights.*" – excerpt from the preface of the study written by the trade unions. In E. Dabis, G. Feleky, J. Lőrinczi, B. Rossu, K. Ruzs Molnár, *Elemző tanulmány – az új Munka Törvénykönyvének hatásvizsgálata (Analytical Study – Impact Analysis of the New Hungarian Labour Code)* (Független Szakszervezetek Demokratikus Ligája, Democratic League of Independent Trade Unions, TÁMOP-2.5.3.C-13/1-2013-0001) – 03.2015. For more detail, see: Az új Mt. története (2011) (History of the New Hungarian Labour Code): http://www.liganet.hu/page/88/art/6296/akt/0/html/az-uj-mt-tortenete.html (Downloaded: 26.12.2019).

2. Opinion of the National Federation of Workers' Councils on the draft Hungarian Labour Code (2011): "*it substantially restricts the workplace rights of trade unions*". http://www.vpdsz.hu/2011pdffajl/pdf_08/Mt_MOSZ_velemeny_110804.pdf (Downloaded: 26.12.2019)

3. The Hungarian Trade Union Confederation (2018) puts it like this in the so-called White Book: *"the tendency that shows in the regulation is clear: the goal is to weaken the influence of the trade unions, thus to restrict the interests of the employees to the minimum level required by international standards, or even below these, in certain cases…"* https://www.pvdsz.hu/uploads/Feher_konyv.pdf (Download: 26.12.2019).

[10] See the termination of the right to the so-called trade union "objection", related to which the trade unions indicated that in parallel to the termination of this right, the suspension of the execution of the employer's decision should at least be ensured in the judicial procedure, at the well-founded proposal of the trade union.

[11] For example, the reduction of the extent of the time off for trade union duties and activities, the elimination of the practice of the redemption of the "untaken leave hours" as required by law from the part of the employer, limitation of the number of protected officials, etc.

[12] In some trade union opinions, the fact that the provisions on trade unions were placed at the end of the Labour Code conveyed a symbolic message in itself, what is more, this chapter was placed after the regulation of the works council with employer's participation.

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trade unions are traditionally and basically organized at the workplace-level. The regulation related to the labour relations beyond the employer's level has not been a coherent system since the change of the political regime, it is contradictory at several points, it reflects expressly weak quality, uncreative, and ad hoc legislative solutions. The high number (multitude) of the players makes the system non-transparent, which is very well illustrated by the fact that there is no other EU member state where there are as many as six national (cross-sectoral) trade union confederations (and there are not less than nine organizations on the employers' side, not considering the ever increasing policy-influence of the Hungarian Chamber of Commerce and Industry. This is especially strange if projected on the number of organised employees or even the number of the working age population.

1.2. *The Main Actors and Institutions of Industrial Relations and the Role of Social Partners*

1.2.1. *National Level Social Dialogue*

In 2011, just during the preliminary works of the new Labour Code, the National Interest Reconciliation Council (Országos Érdekegyeztető TanÁcs, OÉT), the former standing cross-sectoral tripartite body[13] was disbanded. Instead of OÉT, a new, larger (multi-partite) and merely consultative body, the National Economic and Social Council (NGTT) was created.[14] The NGTT is a consultative, proposal-making and advisory body independent from the Parliament and the Government, established to discuss comprehensive matters affecting the development of the economy and society, and national strategies across government cycles. It is the most extensive and diverse consultative forum for social dialogue between the advocacy groups of employers and employees, business chambers, NGOs, Hungarian representatives of academia both in and outside Hungary, and churches.

Due to the pressure from certain social partners and international forums, the Government has started to accept that the re-establishment of some form of genuine tripartite social dialogue in the private sector is necessary. As of February 2012, the newly set up Standing Consultative Forum of the Industry and the

[13] In 2009 (based on a ruling of the Hungarian Constitutional Court questioning the codetermination rights granted to national and sectoral social dialogue structures), the Parliament adopted two acts – Act LXXIII on the National Interest Reconciliation Council (Országos Érdekegyeztető Tanács, OÉT) and Act LXXIV on sectoral social dialogue committees (Ágazati Párbeszéd Bizottságok, ÁPB) – revising the powers of these structures and setting representation criteria for the organisations involved. The new system came into force in October 2009. These acts amended the extent of social dialogue by reducing their role, which used to be quite significant. In 2011, just during the preliminary works of the new Labour Code, the OÉT (the standing tripartite body) was disbanded.

[14] Act XCIII of 2011 on the National Economic and Social Council.

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Government (Versenyszféra és a Kormány Állandó Konzultációs Fóruma, VKF) is intended to fulfil, to some extent, the previous role of OÉT, but it is rather unclear how meaningful is the impact of the VKF. VKF is independent from the NGTT. The VKF is only a rather "informal" forum without institutionalized legislative background, without transparent criteria for representativeness and fixed rights of real participation.

OKÉT is the National Public Service Interest Reconciliation Council (Országos Közszolgálati Érdekegyeztető TanÁcs). OKÉT is the high-level tripartite social dialogue forum of the whole public sector. It represents all the employees who are engaged in public sector, including public servants, civil servants, policemen, defence force officers, members of the armed forces etc.

1.2.2. *Workers' Representatives*

A) Workplace-level Representation

As mentioned above, workplace-level representation in Hungary is provided by both local trade unions and elected Works Councils with the balance between the two varying over time. Under the 2012 Labour Code, unions have bargaining rights but have lost their legally mandated monitoring powers and their prescribed right to be consulted. Works Councils exercise the most of legally-mandated information and consultation rights but in practice often find it difficult to influence company decisions. In theory, according to the Labour Code, Works Councils (with more than one member) should operate at establishment with at least 50 employees. However, according to the Labour Force Survey in 2015 just 30 per cent of respondents knew about a Works Council at his/her workplace at firms with more than 50 employees. The actual penetration rate was slightly higher (36 per cent) at companies with more than 300 employees.[15]

B) Trade Unions

Union density is now well below 10 per cent. Official data from the Labour Force Survey are available for 2001, 2004, 2009, 2015 and 2020.[16] The latest survey showed a 7-8 per cent overall density, with substantial differences across industries and workplaces with different company size and ownership structure.

As is almost generally and uniformly concluded by the authors of the literature available on the topic, labour relations in Hungary are characterised by *weakening freedom to organise, weakening trade union rights*, increasingly *meaningless (national and sectoral) reconciliation of interests*, furthermore, *a contradictory regulatory environment*. This means that the environment affecting labour

[15] Labour Force Survey, Hungarian Central Statistical Office 2015.

[16] I. Sz. SZABÓ, *The Legal Status of Trade Unions in Hungarian Labour Law*, PhD dissertation, 2021, p. 53. https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/szabo-imre-szilard/szabo-imre-szilard-vedes-ertekezes.pdf.

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(and the redistribution of the gross domestic product) is thus constantly changing, while the opinions of the advocacy organisations meant to represent the interests of those affected are becoming marginalised or neglected in many cases. This phenomenon is also amplified by the social processes hampering the search for collective solutions from the start, so the individual strategies overtake, or at least greatly weaken the need for, and the strength of collective action. The employees tend to seek ways to enforce their interests individually (in many cases, to "vote with their feet"), that is, to find a job with another employer, rather than to try to improve the employment conditions by joint action. This is especially true in the current labour market situation, i.e., considering the increasing lack of labour force in the past few years.[17] This is obvious from the indicators of the organisational levels of trade unions as well. The number of organised employees (similarly to the international trends) has been steadily decreasing since the change of the political system in 1989, this is why representativeness and democratic legitimacy have become key questions. Hungarian advocacy groups, while they have first-hand experience of these processes, except for some positive exceptions, keep their relative shares and inherited positions in the narrowing "market", however, an extraordinarily high level of segmentation continues to characterise them as well.[18]

1.2.3. *Employers' Representatives*

There are no recent data available on the strength of employers' associations and estimation is difficult. According to a study by Eurofound[19] one may tentatively calculate that the nine cross-sectoral employers' organizations have together about 180,000 member companies out of around 300,000 corporations. A careful estimation is that the density in terms of employees might be around 50 per cent. According to a recent study[20] the employers' organisations are characterized by a very low level of willingness to cooperate and bargain, and their sustainability is formal, which hampers their effectiveness. The Labour Code does not contain any specific rules on employers' associations.

1.2.4. *Collective Bargaining*

As the highest legal "source" in Hungary, the "Fundamental Law" (i.e., the new constitution from 2011) states, "employees and employers shall cooperate with each other taking into consideration the objective to provide employment

[17] At the time of concluding the paper (January 2022), the so-called coronavirus situation carries yet unknown economic and labour market consequences.

[18] I. Sz. SZABÓ, op. cit.

[19] http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/hungary/hungaryrepresentativeness-of-the-european-social-partnerorganisations-in-the-cross-industry-social.

[20] M. KISS, *Ágazati párbeszéd Magyarországon*, LIGA, 2014.

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and the sustainability of the national economy as well as other community goals. In ac-accordance with the relevant legislation, employees and employers, and their organizations shall have the right to enter into negotiations for the purpose of concluding collective agreements, and to act jointly in order to protect their interests, which covers the right of workers to go on strike".[21] Collective agreements are incorporated into the system of legal sources of labour law in Hungary.[22]

As mentioned above, one of the main goals of the *labour law reform in Hungary*[23] (*the new Labour Code* (has been to revitalize the contractual sources of labour law. The main aim is to strengthen the role of the collective agreement as a contractual source of labour law. "In order to achieve this policy aim, a new hierarchy of labour law sources was introduced: the collective agreement may deviate both in *peius* and in *melius* from the dispositive (not cogent) provisions of the Labour Code".[24]

Naturally, there are several exceptions to the general rule of absolute dispositivity. There is one important sectoral exception to this dominant rule of absolute dispositivity: the Code severely limits the scope of collective autonomy and *collective bargaining in the case of state/municipality owned companies.*[25]

The collective bargaining system of Hungary is characterized by fragmented, decentralized, weakly coordinated, predominantly single-employer bargaining, negotiated mainly between a company-level trade union and a single employer. In principle, the actual utilization of the different potential levels of bargaining is left to the social partners themselves, there are no special provisions in this context. The new LC doesn't offer meaningful solutions for the on-going and historically rooted problem of *excessive decentralization* of collective bargaining in Hungary.[26]

The coverage rate of collective agreements is still very low in Hungary.[27] Furthermore, not only the quantity, but also the quality of existing agreements is challenging: research carried out on this subject has pointed out several weak-

[21] art. 17, sec. (1)-(2) of The Fundamental Law of Hungary (25 April 2011).

[22] On labour law in Hungary, see generally J. HAJDÚ, *Labour Law in Hungary*, Kluwer Law International, The Netherlands, 2011.

[23] On the reform in general: A. KUN, *Labour Law reform in Hungary in context of the global economic crisis: a rugged journey towards flexicurity?* in U. AYDIN, Ö. OGUZ (eds.), *The Recent Changes in EU Labour Law.* Anadolu Üniversitesi Hukuk Fakültesi, Eskisehir, Türkiye, 2014, pp. 3-24.

[24] T. GYULAVÁRI, G. KÁRTYÁS, *The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy*, Pázmány Press, Budapest, 2015, p. 17.

[25] Art. 205-207 of the LC ("Employment relationships with public employers").

[26] In most of the post-socialist, CEE-countries, collective bargaining (if any) has always taken place mostly at micro (company) level.

[27] According to data from 2009, only 33.9% of all employees were covered by collective agreements. Industrial Relations in Europe 2010, European Commission, 2011, p. 36. Since then, this rate has certainly decreased to a considerable extent.

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nesses with regard to the content of collective agreements.[28] Collective agreements often merely repeat the statutory rules,[29] and regularly include illegal or meaningless terms and conditions.

It poses a specific challenge that the European social dialogue depends on the close connections between the European and national levels, as well as the intersectoral and sectoral levels, which could not be properly established in Hungary in the past thirty years either, apart from very few exceptions. This means that no uniform sectoral advocacy structure has been established either on the side of the employer, or on that of the trade union, and it was not institutionalised to such an extent either that would serve as an appropriate basis for its fulfilment. The actual influence of the employer partners, who are also present on the macro-level, on the sectoral policies can be questioned in a high number of cases; this is very visible in the situation of the so-called Sectoral Social Dialogue Committees ("ÁPB" in Hungarian), namely in the lack of sectoral agreements and the inadequate (often dysfunctional) operation of these Committees. At the same time, the dual nature of the Hungarian economy also made it difficult to develop a system for the alignment of sectoral interests. In the elaboration of the sectoral structures, there are no genuine economic interests, so it can be stated that currently, neither the multinational companies nor the Hungarian small and medium enterprises, which employ about seventy percent of the Hungarian employees, have real interests in the development of such sectoral structures.[30]

2. *General Policy Approach to Digitalisation and Work: an Overview*

In order to describe the Hungarian context and understanding of digitalisation and Industry 4.0 concept, it is necessary to overview some related governmental strategies. The Digital Success Programme ("*Digitális Jólét Program",* hereinafter referred as "DSP") launched by the Hungarian Government in late 2015, affects the entire digital ecosystem and the aim is that every Hungarian citizen and business can benefit from digitalisation.[31] DSP consist of several strategies such as Digital Education Strategy of Hungary, Digital Export Development Strategy of Hungary, Digital Startup Strategy of Hungary. The Government decided to extend the DSP and accepted Digital Success Programme 2.0 in 2017. We will discuss below those strategies which relate to Industry 4.0 concept: Industry 4.0, Digital Workforce Program, Artificial Intelligence Coalition.

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[28] T.G. FODOR, B. NACSA, L. NEUMANN, *Egy és több munkáltatóra kiterjedő hatÁlyÚ kollektÍv szerződÉsek ÖsszehasonlÍtÓ elemzése*, Budapest, 2008, http://www.mkir.gov.hu/doksik/ksz/elemzes/orszagos_osszegzo_tanulmany.pdf.

[29] These are the so-called "Parrot clauses".

[30] I. Sz. SZABÓ, op. cit.

[31] https://digitalisjoletprogram.hu/en/about (Downloaded: 25.11.2021).

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It is a common feature of the below presented various – rather general and fragmentary – digitalisation-related governmental policies, strategies that they lack a strong regulatory (and especially labour law-related) profile, and they have been formulated without the meaningful and structured involvement of social partners.

2.1. *Industry 4.0*

In the context of Industry 4.0 a project named "Development of Industry 4.0 Sample Applications" was launched to demonstrate and develop Industry 4.0 Sample Factories and an Industry 4.0 Technology Centre to support the development of domestic manufacturing SMEs', Industrial 4.0 production systems technology, increasing their openness to industrial automation and control solutions.[32] The *Industry 4.0 Sample Factories* project offers a free program that provides key, hands-on experience and knowledge to manufacturing micro enterprises and SMEs to learn about industry 4.0 technologies, their applicability, and thereby increase their competitiveness.[33] Registered enterprises during the project visit the *Industry 4.0 Technology Centre* (operated by Budapest University of Technology and Economics) to observe operating Industry 4.0 solutions, they can participate in professional events.[34]

It is also useful to take look at *Industry 4.0 National Technology Platform Association* (hereinafter referred as 'NTPA). NTPA was established in May 2016 to make a cooperation between the research and university spheres on the one hand, and industrial companies on the other hand[35] due to the complex challenges of Industry 4.0.[36] The Platform operates some specific work groups to concentrate on specific issues such as Strategic Planning; Employment, Education and Training; Production etc. NTPA initiated a Survey Project[37] (hereinafter referred as "the Survey") in 2017 to explore the technological and business readiness of Hungarian companies. Although the Survey is almost four years old now, it still shows the national situation illustratively. The majority of the industrial companies completing the research had no Industry 4.0 strategy in place. It is an essential lesson from the Survey that the biggest difficulty areas of the SMEs are process and work organisation, availability of required skills and continuous training.[38] The Survey concludes that "a complete renewal of the entire education

[32] https://digitalisjoletprogram.hu/en/content/industry-40 (Downloaded: 25.11. 2021).

[33] https://www.ipar4.hu/hu/page/ipar-4-0-kkv-knak (Downloaded: 25.11. 2021).

[34] https://ipar4.hu/hu/page/ipar-4-0-technologiai-kozpont (Downloaded: 25.11. 2021).

[35] See the members: https://www.i40platform.hu/en/organization/members (Downloaded: 25.11. 2021).

[36] https://www.i40platform.hu/en/organization (Downloaded: 25.11. 2021).

[37] https://www.i40platform.hu/sites/default/files/2021-04/Flyer_3.0_ENG.pdf (Downloaded: 01.11. 2021).

[38] The Survey, 36. The problem of training see Chapter 5.3 in details.

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system with special respect to the vocational training, high education and lifetime learning is a must".[39] According to the respondents the direct State interventions are the most promising in the field of education and infrastructure development. It is interesting to note that social partners were totally left out of the Survey. However, in principle, they could be dominant partners of in-house company trainings or sectoral level trainings.

2.2. *Digital Workforce Program*

It has become clear in recent years that Industry 4.0 is not only about, for example, the replacement of the missing tens of thousands of IT professionals, but also hundreds of thousands of highly qualified professionals in digital terms.[40] The Digital Workforce Program (hereinafter referred as "DWP") is a short– and medium-term strategy which aims to alleviate the shortage of IT and digitally trained professionals. Obviously, some jobs will be / are lost by digital transformation therefore the Hungarian Government targets to create new and high value-added jobs through digitalisation. The Government has responded to this challenge from two directions. The first one has been developed to digitally prepare current employees (DWP), while the second one concentrates on the digital training of student at different levels of the education system (Digital Education Strategy).

DWP specifies four main activities which are the foundation stones of the Program.[41]

1) *Measurement, monitoring and forecasting.*[42] The digital labour market's digital skills are new-fangled skills therefore a comprehensive, representative survey is needed which shows the current situation of the labour supply regarding digital skills and abilities. The following activities are included in particular in DWP:

– to develop a labour market forecasting system;
– to define exact labour market demand;
– to develop a labour and training forecasting system;
– to make an up-to-date professional structure model and so on.

2) *Digital competence-development and reference scheme.*[43] It is necessary to formulate digital competencies in a comprehensive, uniform way (beside targeted

[39] *Ibid.*

[40] https://digitalisjoletprogram.hu/en/content/dwp-digital-workforce-program (Downloaded: 25.11.2021).

[41] Ministry of National Economy: Digital Workforce Program, 2018 https://digitalisjoletprogram.hu/files/2e/86/2e865bc650f57539da2dbccf7b169eda.pdf (Downloaded: 25.11.2021).

[42] *Ivi*, pp. 17-18.

[43] *Ivi*, pp. 18-19.

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interventions) therefore the general development mechanisms can also implement digital competence-development.

3) *Incentive program.*[44] According to DWP a flexible incentive program creates opportunities for a significant number of disadvantaged citizens to take part in training that provides high income opportunities. Thus, numerous actions are needed:

– to expand e-learning and blended learning to reduce entry barriers to training;
– to provide student loans and (student) benefits for under-represented social groups in training;
– housing allowance and subsistence allowance in case of retraining;
– to develop a training support system which adjusts to different labour market situations and so on.

4) *DWP training system.*[45] A motivating, attitude-forming and supportive training program should be developed in order to adequate number of IT and digital professionals' training and entering to labour market to be successful. The following activities are included in particular in DWP:

– to launch short-term general IT training programs;
– to develop demand-driven training system;
– to develop training funding models which respond to different life situations and so on.

The Digital Workforce Program (hereinafter referred as "DWP") is a short– and medium-term strategy which aims to alleviate the shortage of IT and digitally trained professionals.[46] Obviously, some jobs will be / are lost by digital transformation therefore the Government targets to create new and high value-added jobs through digitalisation. The Government has responded to this challenge from two directions. The first one has been developed to digitally prepare current employees (DWP), while the second one concentrates on the digital training of students at different levels of the education system (Digital Education Strategy).

DWP specifies four main activities which are the foundation stones of the Program.[47]

1) *Measurement, monitoring and forecasting*[48] (regarding digital skills are newfangled skills).

2) *Digital competence-development and reference scheme.*[49]

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[44] *Ivi*, p. 19.

[45] *Ivi*, pp. 19-20.

[46] https://digitalisjoletprogram.hu/en/content/dwp-digital-workforce-program (Downloaded: 25.11.2021.)

[47] Ministry of National Economy: Digital Workforce Program, 2018. https://digitalisjoletprogram.hu/files/2e/86/2e865bc650f57539da2dbccf7b169eda.pdf (Downloaded: 25.11.2021.)

[48] *Ibid.* 17-18.

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3) *Incentive program:*[50] a flexible incentive program to create opportunities for a significant number of disadvantaged citizens to take part in training that provides high income opportunities. Thus, numerous actions are needed: e-learning and blended learning opportunities, student loans and (student) benefits for under-represented social groups, housing allowance and subsistence allowance in case of retraining etc.

4) *DWP training system:*[51] a motivating, attitude-forming and supportive demand-driven, well-funded training program should be developed in order to adequate number of IT and digital professionals' training and entering to labour market to be successful. The following activities are included in particular in DWP:

– to launch short-term general IT training programs;
– to develop demand-driven training system;
– to develop training funding models which respond to different life situations and so on.

2.3. *Artificial Intelligence Coalition*

The Hungarian Artificial Intelligence Coalition (hereinafter referred as "AIC") fosters, among others, that Hungary shall become an important member of the international AI community.[52] The AIC consists of members like AI developers, market and state actors representing the user side of AI, as well as academia, professional organisations and public institutions. The Coalition has 342 members currently. AIC operates a video channel to distribute information on AI and its appearance in some sectors (like manufacture, logistics, agriculture, commerce, healthcare, public administration and so on).[53] AIC also participated in the development of Hungary's AI Strategy.[54]

The AI Strategy, recognizing the potential benefits and also the potential challenges of technology, sets targets for 2030 and outlines an action plan for 2025. The Strategy focuses on manufacture and autonomous systems; data-driven healthcare; digital agriculture; public administration; energetics; logistics and transport sector, but it does not deal with employment-related issues directly, it

[49] *Ibid.* 18-19.

[50] *Ibid.* 19.

[51] *Ibid.* 19-20.

[52] https://digitalisjoletprogram.hu/en/content/artificial-intelligence-coalition (Downloaded: 25.11.2021.)

[53] See the channel: https://www.youtube.com/c/Mesters%C3%A9gesIntelligenciaKoal%C3%ADci%C3%B3/videos (Downloaded: 25.11.2021.)

[54] Hungary's Artificial Intelligence Strategy 2020-2030. https://digitalisjoletprogram.hu/files/2f/32/2f32f239878a4559b6541e46277d6e88.pdf (Downloaded: 25.11.2021.)

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only sets a basic pillar on education, competence-development and the society's preparation to changes.[55]

3. *Platform Work*

3.1. *Definition of Platform Work and Statistical Data*

In Hungary, platform work as such is neither defined nor regulated. As it is widely reported, the gig (in Hungarian: "*hakni*") economy is still rather immature in Central and Eastern Europe (CEE), more concretely (as a case study) in Hungary. According to some research estimates, the share of the Hungarian adult population (6.7%) making some earnings from platform work is well below of the rates of such countries as, for example, Spain (11.6%), Portugal (10.6%) or Germany (10.4%). etc.[56] The ETUI also confirms that the prevalence of regular internet and platform work remains very low in CEE countries (however, the ETUI finds slightly higher rates for Hungary: the proportion of adults who report ever having tried platform work is 7,8% according to this survey).[57] On-demand platform work (if any) is mostly localized in the capital city (Budapest).

As said, platform work, as such, is neither defined nor regulated. Moreover, platform work (as a phenomenon) is immature, hardly visible and marginal; it is not perceived (yet) as a separate regulatory / employment field and it also lacks specific policy (etc.) attention.[58] As Gyulavári notes: "working through digital platforms and apps is a new and rare form of work in Hungary".[59] Furthermore, surveys reveal that platform work in Hungary is "perceived by most platform workers as an additional source of income but not their institutional anchor to the labour market; for the majority of platform workers, their on-demand platform work is secondary or serves as an entry point for labour market outsiders".[60]

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[55] Hungary's Artificial Intelligence Strategy 2020-2030, 31.

[56] See the so-called COLLEEM project, cited by Cs. Makó, M. Illéssy, S. Nosratabadi, *Emerging Platform Work in Europe: Hungary in Cross-country Comparison*, in *European Journal of Workplace Innovation,* 2, 5, 2020, p. 158.

[57] ETUI "Digital labour in central and eastern Europe: evidence from the ETUI Internet and Platform Work Survey", ETUI, The European Trade Union Institute, 2019. p. 17. https://www.etui.org/publications/working-papers/digital-labour-in-central-and-eastern-europe-evidence-from-the-etui-internet-and-platform-work-survey

[58] See for further details: T. T. Meszmann, *Industrial Relations and Social Dialogue in the Age of Collaborative Economy* (IRSDACE), National Report Hungary, CELSI Research report 27, 2018. https://celsi.sk/media/research_reports/RR_27.pdf.

[59] T. Gyulavári, *Internetes munka a magyar jogban – Tiltás helyett szabályozás*?, in *Pro Futuro*, 3, 8, 2018, pp. 83-95.

[60] M. Kahancová, T.T. Meszmann, M. Sedláková, *Precarization via Digitalization?*

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One can have the impression that the whole "platform-workers" discourse is not primarily a matter of status / classification (employee vs. self-employed) in Hungary (as opposed to countries where the discourse is more developed and nuanced), but a matter of plain lawfulness (declared / undeclared or formality / informality). Accordingly, the related Hungarian debate (if any) is more focused on taxation, unfair competition and public law / administrative law issues (instead of a labour law perspective, focusing on the status-question [61]). According to estimations, some 10–15% of employment (captured by the Wage Survey) is undeclared in Hungary. [62] No data is available to what extent platform work contributes to these figures, but one may guess that this newly emerging sector can stand for a considerable share of undeclared work. As experiences show, the platform economy in Hungary is functioning principally in sectors where, by default, rather informal services are characteristic (e.g., babysitting, household work, cleaning, taxi services etc.). In sum, platform work in general bares a high level of informality in Hungary (lacking institutionalized practices, standards etc.). As the ETUI points out for the CEE region: "the labour market situation of internet and platform workers was somewhat more precarious than that for employed people generally". [63] Quite similarly, Kahancová et al. note that "digitalization enforces precarity". [64]

3.2. *Legal Background and Some Theoretical Issues*

On the whole, the labour law status of platform workers in Hungary is ambivalent. There is no special, targeted regulation either on platform work for itself, or on a broader, more general 'third category'.

The HLC is based – to a great extent – on traditional employment and full-time contracts of indefinite duration. The LC includes a brief – relatively vague and seemingly very broad, but non-operational, rather formalistic, old-fashioned – statutory definition of the employment relationship, the employer and employee. Accordingly, "an employment relationship is deemed established by entering into an employment contract. Under an employment contract: a) the employee is required to work as instructed by the employer; b) the employer is required to provide work for the employee and to pay wages".[65] "Employee" means "any

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Work Arrangements in the On-Demand Platform Economy in Hungary and Slovakia, in *Frontiers in Sociology*, 8, 5, 2020.

[61] According to our latest information two court cases have just started in the question of classification of platform workers. We do not have deep details as the cases are not in a public phase.

[62] F. Albert, R. I. Gal, *ESPN Thematic Report on Access to social protection of people working as self-employed or on non-standard contracts Hungary 2017*, EU, Directorate-General for Employment, Social Affairs and Inclusion, 2017, p. 18.

[63] ETUI, op. cit., p. 4.

[64] M. Kahancová, T.T. Meszmann, M. Sedláková, op. cit., p. 1.

[65] Art. 42, HLC.

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natural person who works under an employment contract."[66] "Employer" means any person having the capacity to perform legal acts who is party to employment contracts with employees.[67] These definitions are formalistic in the sense that they are based on the "employment contract", offering not much room for extensive, inclusive, creative interpretation (e. g. involving platform workers, or other non-standard contractual practices). A re-definition of the notion of the employment relationship might be desirable in order to apply a less formalistic, more purposive definition (focusing more on the economic dependency aspect). It would be important as, in Hungary, "the most widespread form of on-demand platform work is bogus self-employment".[68]

Furthermore, Hungarian labour law is based on a classical "binary divide" between subordinate and independent workers (i.e., employees with full coverage of labour law and the self-employed without any labour law protection),[69] there is no intermediary category. However, it must be noted that the first draft of the new LC (July 2011) attempted to extend the scope of the LC to other forms of employment (in the event of the existence of certain preconditions). The Proposal foresaw the category of "person similar in his status to employee" widely known in an increasing number of countries (i.e. economically dependent workers). Workers in this category depend economically on the users of their services in the same way as employees and have similar needs for social protection. For that reason, the Proposal suggested extending the application of a few basic rules of the LC (on minimum wage, holidays, notice of termination of employment, severance pay and liability for damages[70]) to other forms of employment, such as civil (commercial) law relationships aimed at employment (a "person similar to an employee"), which in principle do not fall under the scope of the LC. This planned legislative solution intended to promote the social security of workers, regardless of the nature of the legal relationship within the boundaries of which work is performed. By virtue of this solution, the Proposal expected to reduce the evasion of the rules of labour law and the efforts made to seek release from the effect of labour law, and thereby it aimed to contribute to the legalisation of employment.

This category might have been applicable to platform works too (at least to some extent). However, it would be difficult (if not impossible) to estimate the

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[66] Art. 34, sec. (1), HLC.

[67] Art. 33, HLC.

[68] M. Kahancová, T.T. Meszmann, M. Sedláková, *op. cit.*, p. 5.

[69] Hungarian labour law has no clear, established definition of self-employment per se, on its own. In practice, self-employed persons are independent contractors who work under a civil law contract. In the Hungarian understanding, the notion if self-employment is rather an abstract term, which has various technical, functional interpretations in various fields of law (e.g. social security, anti-discrimination etc.).

[70] Surprisingly, collective labour law issues were not mentioned here.

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potential effect of a reform alike, but such a "third category" probably could even multiply problems of classification instead of solving them.

Gyulavári concluded that the requirements of the Proposal were too rigorous and would have been difficult to comply with. In his opinion, the definition could have ended up being an empty clause very quickly.[71] He also noted that the applicable labour law provisions were planned to be too weak[72] (for example, collective rights were not involved). The Proposal is not on the agenda anymore. It is remarkable that – as Gyulavári takes notes of it – "both the trade unions and the employers' organisations rejected this legislative amendment on the basis of totally opposed grounds, with trade unions concerned about diminishing employee rights, and employers' organisations anxious about increasing worker protection."[73] Unions – most probably – had the fear that a possible decrease in the number of 'standard' employees might occur, reducing their traditional source of organisation. Employers' organisations opposed the Proposal because they saw it as potentially putting extra burden on employers by granting new, costly labour rights to a wide range of workers. The government was obviously not really insisting on this reform, and capitulated rather quickly and easily at the first sign of resistance by the social partners. Many labour lawyers believe that making new legislation in the field of classification by no means would be proper development to manage arising problems. For instance, a third category of workers (for example, in line with the Proposal presented above) probably would not really clarify status of workers rather than give even more floors to abuses.

Platforms claim that they only serve as "matchmakers" and it is up to the parties to decide about the legal form of work and / or taxation. For example, C4W (ClickForWork) states in its "general terms and conditions": "The Service Provider is also not an employer of the Students, its activity is limited to the mediation of contracts for tasks". In this spirit, some platforms even officially register as a "private job brokerage agency" (PJBA). Article 6 of Act IV of 1991 on Job Assistance and Unemployment Benefits lays down that, apart from government employment agencies, labour exchange services ("private labour exchange services") may be provided by a person who is able to meet the relevant requirements decreed under authorization by this Act. The Government is authorized to decree the conditions and detailed regulations relating to the provision of private labour exchange services and for the notification of private employment agencies. This system is subject to the provisions of Government Decree No. 118/2001

[71] It is interesting to note that self-employed people do not want to work as employees in many instances. According to interviews, it is also a generational issue in Hungary. Workers do not understand why it is beneficial to work as an employee rather than work as a self-employed without some fixity.

[72] T. GYULAVÁRI, *Civil Law Contracts in Hungary*, Keynote Paper, in *Seminar Report*, 7th Annual Legal Seminar European Labour Law Network (ELLN), The Hague – the Netherlands, November 2014, p. 101.

[73] *Ibid.*, p. 102.

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(VI.30.). The Decree uses the terms of temporary work agency (TWA) and private job brokerage agency (PJBA). However, registration as a PJBA is not a consistent practice of platforms.

Platforms usually do not interfere with the autonomy of the two parties –users and platform workers – to organize their own employment frameworks (and this 'matchmaker' role of platforms is not – yet – really called into question in Hungary from a labour law point of view). As it was mentioned before, one may suspect (and experience) that parties (mediated via a platform) often use informal, undeclared practices.

In practice, platform workers are mostly considered to be self-employed persons[74], especially by the platforms (and there are no countervailing policy, regulatory, case-law developments). Platform workers' income, in principle, shall be taxed in Hungary as an income of self-employed person (and self-employed persons can choose various tax-schemes, including the KATA-scheme, described below).

Even if the parties choose to apply formal, legally recognized practices, several employment and taxation forms, regimes are available, even beyond (and within) the plain employee versus self-employed binary. Hereby, three unique legal categories are described briefly, which are (and can be) relevant for platform work in Hungary. None of them are without problems, as described below. For platform workers, the most relevant and realistic legal categories are the following (however, no data exists to what extent these forms are used by platform workers): SE (a form of casual work), household work, KATA-taxation. SE is exempted from certain minimum labour and/or social protection standards or obligations. Household work is outside of the tax system. KATA is a preferential tax regime for small entrepreneurs.[75]

A.) The legal construction of *simplified employment* and occasional work relationships (hereinafter: SE) is partly regulated by Chapter XV of the LC (as a specific form of the employment contract), partly by Act LXXV of 2010 on Simplified Employment (which regulates SÈs administrative, public law aspects). SE is formally an employment relationship, more precisely an atypical one, probably the most atypical one, being relatively far from the protective level of the standard employment relationship (SER). In fact, the SE-system is a kind of "budget/low-cost", or "second-class" employment relationship, partially "outsourced" from the scope of standard labour law (the LC defines the applicable and the non-applicable labour law rules). The SE system provides a "cheap", administra-

[74] See for example: Taxify / Bolt writes about the drivers as "self-employed partners". https://support.taxify.eu/hc/hu/articles/360003299760-Sof%C5%91r-Szab%C3%A1lyzat (Downloaded: 05.05.2019).

[75] See also: A. KUN, Some Tentative Explanations for the Protracted Development of Platform Work (As a Transnational Phenomenon) in *Hungary, KAROLI MUNDUS* (2786-2127), 1, 1, 2021, pp. 267-276. https://ajk.kre.hu/images/doc2021/karoli_mundus/2021I1/kun_attila_some_tentative_explanations_for_the_protracted_development_of_platform.pdf.

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tively less burdensome and flexible – but also less protective – way of occasional employment. It is a form of casual work, or marginal part-time employment. Officially, it is intended to tackle undeclared work. SE is exempted from certain minimum labour and/or social protection standards or obligations. Hereby, there is no space to go into more details, but it must be noted that SE, among others, entails lower, more flexible minimum wages (as of 2013): employers have to pay only at least 85% of the general national minimum wage and 87% of the national minimum wage for employees with secondary level qualifications (guaranteed wage minimum). Practically speaking, this might be one of the biggest enticements of the whole SE-system for employers (in light of this, Gyulavári heavily criticizes this regulatory solution and states that this differentiation can have no rational explanation).[76]

In practice, SE is quite widespread,[77] thus one may have the suspicion that is also often used by employers to substitute standard employment by SE (and save contributions/taxes).[78] Kártyás also reports that "employers might use SE to replace fixed-term contracts under the LC and save the social security contributions."[79] The SE-regime is also very handy for platform work.

B.) The so-called *household work (HW)* has a special status in Hungarian tax law. Household work is a personal service performed for a natural person as employer. Since 2010, wages from household work (i.e.: paid by a natural person "employers" to household service "employees") do not bear any common charges. This unique tax category ('outside' of the tax regime) is regulated by Act XC of 2010 Chapter I. The category of "household services" shall be interpreted narrowly, as only those activities are exempted from tax, which are listed in the Act (home cleaning, cooking, washing, ironing, childcare, home teaching, home care and nursing, housekeeping, gardening); no similar tasks can be considered as a household job. Although this form of employment is free of common charges (and it is exempted from the tax regime), the "employer" has to send a report (via an electronic form, or a phone-line) to the tax authority every month when

[76] T. GYULAVÁRI, Az alkalmi munka a magyar jogban, in Z. BANKÓ, Gy. BERKE, E. TÁLNÉ MOLNÁR (eds), Quid Juris? Ünnepi kötet a Munkaügyi Bírák Országos Egyesülete megalakulásának 20. évfordulójára, Budapest, Pécsi Tudományegyetem Állam– és Jogtudományi Kar, Kúria, Munkaügyi Bírák Országos Egyesülete, 2018, pp. 134-135.

[77] Its predecessor (1997-), the casual employee's booklet (alkalmi munkavállalói könyv, AM-könyv) was also very popular, but gave rise to a lot of abuse and manipulation in practice. Authorities have found that in many cases the casual employee's booklet was used to employ the worker permanently, but under more flexible rules. G. KÁRTYÁS (2016a), *New forms of employment: Casual work, Hungary*, Eurofound Case study 58: Policy analysis. p. 2.

[78] *Cf.* T. GYULAVÁRI, *Internetes munka a magyar jogban – Tiltás helyett szabályozás?*, cit., p. 123.

[79] G. KÁRTYÁS, op. cit., p. 12. See also in this regard: T.T. MESZMANN, *Country report: Hungary – PRECARIR: The rise of the dual labour market: fighting precarious employment in the new member states through industrial relations,* project no. VS/2014/0534, CELSI, 2016, p. 15.

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he or she employs a household worker and has to pay a – rather symbolic – monthly flat rate registration fee. In practice, as statistics show, despite the very low registration fee, HW is rarely registered (and / or such natural person employers are not aware that registration is compulsory). The HW-regime is neutral towards the labour law status of household workers, and it is not a separate form of atypical / non-standard work. In other words: the household worker and the natural person employer may choose the form of their legal relationship freely (it might be an employment contract, contract of services under civil law, simplified employment, however, in practice, such work is often informal). After all, the construction of household work is not really seen as genuine "labour"; it is more perceived as an economic activity and a lawful source of auxiliary income. Furthermore, as no contributions are paid, the household worker is not covered by social security.

HW can be mediated via platforms; there are some examples for this in Hungary (e.g., C4W). In sum, the HW-regime represents the – fairly unsuccessful – attempt to legalise informality in the field of household work (increasingly organized via platforms as well). In practice, as statistics show, despite the very low registration fee, household work is rarely registered (and / or such natural person employers are not aware that registration is compulsory). As Kártyás – and Kelemen as well – note it, household workers still form an "invisible workforce" in Hungary.[80]

C.) *Self-employed persons* (tentatively including platform workers) can choose among *several tax regimes*. Among others, the private entrepreneur may, provided that certain statutory conditions are met, opt for a special, favourable regime of flat-rate taxation, called Fixed-Rate Tax of Low Tax-Bracket Enterprises and on Small Business Tax (KATA). Taxpayers opting for KATA, as a main rule, pay a specific monthly flat-rate tax (of 50,000 HUF – or 75,000 HUF if they choose to do so) instead of corporate or payroll tax. The popularity of this small taxpayers' itemized lump-sum tax (KATA) has grown heavily in recent years (with thousands of small- and micro entrepreneurs opting for it). KATA can entail abuses in the area of employment, as it can motivate an "escape", or a comfortable way out from the employment status to self-employment (giving ground for a tempting, much "cheaper" and easier method of taxation).

In sum, it seems that the intense fragmentation of contractual options and the variability of different tax measures can have the potential to distort labour-law rationales. Therefore, it can be perceived that the potential equalization of the financial burden of various non-standard forms of work would be able to contribute to more transparent and fair employment practices (both in general and in the field of platform work).

Furthermore, the so-called supplanter or superseding effect of some artificial-

[80] G. Kártyás, op. cit., p. 6.; M. Kelemen, *A háztartási alkalmazottak foglalkoztatásának kérdései Magyarországon – a láthatatlan munkaerő,* in *Esély*, 3, 2013.

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ly, state-supported non-standards form of work might also be a – partial – explanation for the overall underdevelopment of the platform economy in Hungary. For instance, as briefly described below, students' employment in Hungary is "de facto", practically monopolized (or at least heavily dominated) by the school cooperatives' sector.

Act X of 2006 on Cooperatives regulates unique non-standard forms of work via cooperatives. The Act on Cooperative regulates four specific types of cooperatives: *school cooperatives* (SCs), social cooperatives, agro-economic cooperatives, general interest associations of pensioners (i.e.: pensioners' cooperatives). Via these cooperatives, the legislator created very specific frameworks of work for certain well-defined groups of workers (students, the "needy", people working in agriculture, those receiving old-age pensions), in which employment entails substantially lower costs, and, at the same time, as a "price" of cheap and flexible employment, these workers are excluded from the standard shelter of labour law and are placed in a significantly less favourable, more flexible legal position.

In sum, SCs are regulated on quite a controversial manner in Hungarian law and they seem to be heavily and disproportionally over-supported by public policy as opposed to their factual activity and effectiveness. The SC-sector seems to operate as a kind of state-funded "business" and it is not fully evident, what are the extra services (in terms of social and employment policy) carried out by SCs in exchange for the exceptional state-support. Among others,[81] Kiss also argues that the whole employment policy applicable to cooperatives should be changed in Hungary.[82]

Although the issues of cooperative-employment and SCs in Hungary are separate "stories", in the context of platform work one may speculate that because of the de facto monopolizing effect of SCs, not many students (and pensioners) turn to alternative, new forms of employment, such as platforms.

To summarize, as Makó et al. note it, Hungarian labour law "presently hardly answers any questions related to the protection of platform workers. Therefore, it would be necessary to create a separate and detailed legal regulation regarding workers outside the scope of employment relationships, with specific attention to platform workers".[83]

Similarly, Gyulavári notes the following: "Hungarian labour law faces serious challenges regarding crowdsourcing and working via apps. The main question is

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[81] A. KUN, *School cooperatives: A 'Hungaricum' in labour law in the field of youth employment*, in R. FERNÁNDEZ FERNÁNDEZ, H. ÁLVAREZ CUESTA (eds.), Empleo juvenil: Un reto para Europa (Youth employment: A challenge for Europe) 300 p. Cizur Menor: Sociedad Aranzadi, 2016, pp. 71-91. P. SIPKA, M. L. ZACCARIA, *A szövetkezeti tagi munkaviszony jogi kockázatai, különös tekintettel az alapvető munkavállalói jogokra*, in *Munkajog*, HVG Orac, 1, 2017, pp. 23-30.

[82] Gy. KISS, Employment Relationship between School Cooperatives and Their Member: The Stepchild of Employment, in *US-China Law Review*, 8, 14, 2017, pp. 514.

[83] Cs. MAKÓ, M. ILLÉSSY, S. NOSRATABADI, op. cit., pp. 165-166.

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how to insert these new forms of work into the existing labour law framework. These new forms may hardly be considered as employment relationships due to the serious differences. Self-employment cannot be the solution either, since it would leave workers without any employment protection. Therefore, regulation of digital work is unavoidable, even if its details are far from clear for the moment".[84]

In general, labour law is currently perceived in Hungary not primarily as "social law", but rather as one instrument of economic and employment policy. The official reasoning of the draft LC (2012) contained the following telling formulations of such policy-objectives: "reducing the regulative functions of state regulation", "implementation of flexible regulations adjusted to the needs of the local labour market" etc. One can have the impression that the unrestrained faith in the supremacy of the market and the contract (as a regulatory tool) puts in the shade the state's role as the guardian of decent working conditions. Partly as a consequence, there is no separate ministry of labour / social issues in Hungary and labour law protection is not at all a priority issue on the political agenda. Long-term, purposive[85] thinking is missing in the field, national-level tripartite dialogue is weak and in terms of EU-labour law (and employment policy more generally) the country is much more a "follower" than a "trend-setter". For instance, in the field of platform work, no official policies, regulatory concepts do exist; the legislator will most certainly wait for a future EU-law measure to start to act (Note: an interview with a high-level government official from the Ministry of Finance – which was responsible for labour law matters till the end of 2019 – has confirmed this total lack of policy attention with respect to platform work in Hungary[86]).

In general, as a union economist (quoted by Kártyás) noted: "the new labour regulation makes the typical employment flexible enough that employers do not need to turn to the new forms".[87] Maybe this statement sounds somewhat speculative, but it certainly makes some sense. It might also be an exaggeration, but some authors assume that the new Labour Code had a regulatory vision to support "the most flexible labour market in the world".[88] Indeed, it is a widely shared view in Hungary that the default, "standard" Hungarian labour law itself offers a plenty of possibilities to alter the structure and content of a seemingly standard employment relationship in a way which includes a huge array of flexi-

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[84] T. GYULAVÁRI, *Internetes munka a magyar jogban – Tiltás helyett szabályozás*?, cit., Abstract.

[85] *Cf.* D. GUY, *A Purposive Approach to Labour Law*, Oxford University Press, Oxford, 2016.

[86] A. KUN, *New Employment Forms and Challenges to Industrial Relations,* cit.

[87] G. KÁRTYÁS*, New forms of employment: Employee sharing, Hungary, Case study 15: Policy analysis*, p. 14.

[88] T. GYULAVÁRI, G. KÁRTYÁS, op. cit.

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bility and "atypicality". Thus, the formally "standard" can easily be turned into materially 'non-standard' via flexible – collective and individual – contractual arrangements and work organisation. It seems that the actual labour market need for creative, non-standard forms of work (including platform work) is somewhat still limited.

3.3. *Industrial Relations Practices*

According to some opinions, Hungarian society is (by default ("very individualistic, highly segmented and lacks a strong grassroots institutional network", which is not a good foundation for well-functioning industrial relations.[89] Social dialogue is generally weak in Hungary. It is not a surprise that it is even weaker in the platform economy sector. Furthermore, collective labour rights enshrined in the L. C. – especially the right to collective bargaining – are tailored to employees, covered by the L. C. In addition, Hungarian labour relations – if any – are usually embedded into workplace-level structures, instead of sectoral, or national levels. As the labour law-status and the workplace-level embeddedness are utterly lacking in the case of platform workers, they have not much chance for collective bargaining.

In general, one might dare to state that non-standards forms of work in general (including platform work) are largely out of the sight of unions and social partners in Hungary (of course, exceptions do exist, but one can have the impression that "the exceptions prove the rule"). The same opinion was confirmed by a recent empirical research dealing with precarious employment in Hungary. This research clearly points out "the lack of involvement of social partners, especially trade unions, in influencing the regulation and employment policies of the government" and that "industrial relations are poorly utilized in fighting precarious employment".[90]

Workers' organization in the platform economy in Hungary is currently non-existent (no data is reported and trade unions also do not report any activity in this respect).

There was only one association of platforms: Sharing Economy Association (In Hungarian: Sharing Economy Szövetség, SESZ) at the start of this research. The Association's website is inactive currently, after 2-3 years operation. SESZ's ceasing can be an illustrative feedback about the overall Hungarian sharing economy mindset.

IVSZ (the ICT association of Hungary) might also be mentioned here, which is the largest and most significant leading interest group of the Information and

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[89] A. TÓTH, *L. Neumann, H. Hosszú, Hungary's full-blown malaise*, in Lehndorff S. (ed.), *A triumph of failed ideas. European models of capitalism in the crisis*, Brussels, ETUI, 2012, p. 152.

[90] T. T. MESZMANN, *Country report: Hungary – PRECARIR: The rise of the dual labour market*, cit., p. 1.

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Communication Technologies industry in Hungary. The association operates as a joint platform for the information technology, telecommunications and electronics sectors ever since it was founded in 1991. As the association has approximately 450 member companies, representing their interests is also critical. IVSZ has defined three important strategic objectives: industry development, market expansion and the development of IT education. In practice, IVSZ deals with the sharing economy to some extent, only marginally.[91]

It is interesting to note that taxi-drivers (and their unique unions) – not really as employees, but as micro-entrepreneurs – protested against Uber heavily in 2016, which activity might be considered as a unique, but rather faint "industrial action".

On the workers' side, "Freelancerblog" can be mentioned, which is an informal community which aims to assemble and build the Hungarian freelancers' community. The group was set up for freelancers in Hungary to share information and knowledge, to offer the experience of a good community and collegiality, which as a freelancer is not easy to live with but can be very missed.[92] "Freelancerblog" seems to be a creative, inspirational new initiative, but it has no specific focus on platform workers.

In relation non-standard forms of employment "in the grey zone" (sham civil law contracts; economically dependent self-employed persons) – social dialogue also suffers from elementary deficits. Trade unions do not represent the self-employed[93] and they do not specifically address the problems of the self-employed.[94] Some minor exceptions do exist, but it is far from being the norm. For example, the Hungarian Motion Picture Makers' Trade Union (in Hungarian: Magyar Mozgóképkészítők Szakszervezete, MMKSZ, established in 2017), represents cinematographers, cutters, cameramen, camera technicians, sound engineers, sound technicians working in Hungarian televisions and film industries (who are mostly self-employed).[95] Another interviewee reported that a new self-organisation of sales agents (as independent contractors) is in the making.[96]

It could be mentioned that during the pandemic, a bunch of delivery riders formulated a kind of loose cooperative, as part of Gólya ("Stork" in Hungarian), which is a co-operative bar and community house in the 8th district of Budapest. In principle, interest-representation is also on the agenda of Gólya, however, no

[91] https://ivsz.hu/en/.

[92] https://freelancerblog.hu/.

[93] F. ALBERT, R. I. GAL, op. cit., p. 4.

[94] H. HUZJAK, K. OVERMYER, *Precarious Work in Hungary and Slovenia: Roles and Strategies of Trade Unions,* Central European Labour Studies Institute, Central European University, Budapest, 2012. p. 10.

[95] http://mmksz.hu/.

[96] Based on interview (E. BUZÁSNÉ-PUTZ, President of the Trade Union of Engineers and Technicians (MTSZSZSZ).

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meaningful activity of this gathering has been reported since then on behalf of riders.

Considering new forms of employment in general, Meszmann notes the following: although some "trade unions are aware of some emerging issues,[97] they have much different priorities and limited capacities to organize individual workers".[98] Alternative forms of workers' organizations are not typical in Hungary. Many unionists confirm (in interviews etc.) that Hungarian unions typically stay on a rather traditional, rigid way of organising. Furthermore, the number of non-standard workers in Hungary is relatively modest, which fact does not make them truly relevant for unions, who generally suffer from capacity problems.

For example, as Neumann points out, "as for the challenges of digitalisation in the field of 'world of work', Hungarian unions have reached at best the stage of learning so far". He also demonstrates, based on the latest comprehensive survey on Hungarian trade unions (2010), that the largest the share of trade unions leaders (78-98 %) did not even pay attention to the various forms of "precariat" active on the offline labour market (e.g., part time workers, fixed-term contract workers and agency workers). Thus, one can easily imagine the overwhelming union-attitude towards the new "digital precariat" (e.g. platform workers).[99]

Hypothetically, Gyulavári notes that the extension of sectoral collective agreements to non-labour law-based employment-related relationships, including platform form might be a solution. If, for example, there was a sectoral collective agreement in the passenger transport sector, then its scope – or at least some of its specific provisions – could be extended to digital platforms of the sector.[100] The only problem is, as described above, that there is no potent sectoral collective bargaining in Hungary. In total, no steady, relevant, weighty social pressure exists in Hungary for the regulation and / or 'humanization' of the platform economy.

4. *Remote Work*

4.1. *Definition of Telework and Statistical Data*

The HLC defines telework as activities performed on a regular basis at a place other than the employer's facilities, using computing equipment, where the end product is delivered by way of electronic means.[101] The HLC prescribes a specific

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[97] Recently, many awareness raising conferences, trainings have been organized by unions on the topics of digitalisation, automation etc., but these have had not much practical effect.

[98] T.T. MESZMANN, *Industrial Relations and Social Dialogue in the Age of Collaborative Economy* (IRSDACE), cit.

[99] See also: Cs. MAKÓ, M. ILLÉSSY, S. NOSRATABADI, op. cit., p. 167.

[100] T. GYULAVÁRI, *Internetes munka a magyar jogban*, cit., p. 93.

[101] Art. 196, sec. (1), HLC.

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content of teleworkers' employment contract: in the employment contract the parties shall agree on the worker's employment by the means of telework.[102] In other words, a telework-contract is a sui generis employment contract, i.e. a specific type of (so-called "atypical") employment relationship. Such a legal relationship between the parties can only be entered into via an explicit agreement in respect thereof and for the specific activities stipulated by the legislation.[103]

The employer shall – in addition to the generally mandatory information provision stipulated by Article 46 of the LC – provide information to the employee concerning[104]: a) inspections conducted by the employer; b) any rules on restrictions to the use of computing equipment or electronic devices, furthermore; c) the organizational unit to which the employee's work is connected.

Obviously, there is rule in the HLC regarding the equal treatment of teleworkers: the employer shall provide all information to persons employed in teleworking as is provided to other employees.[105] Furthermore, the employer shall provide access to the employee for entering its premises and to communicate with other employees.[106] In principle, the legislator provides the opportunity of derogation to the parties by stipulating, among others, that the employer's right of instruction shall, unless otherwise agreed, be limited exclusively to defining the tasks to be performed by the employee.[107] Furthermore, unless there is an agreement to the contrary, the employer shall determine the type of inspection and the shortest period of time between the notification and commencement of the inspection if conducted in a property designated as the place of work. The inspection may not bring unreasonable hardship on the employee or on any other person who is also using the property designated as the place of work.[108] Another dispositive provision of the same nature is that, unless otherwise agreed, the employee's working arrangements shall be flexible.[109] It must be added, that even in the case of flexible working arrangements this rule only means the employees' freedom of managing their working time, and it does not imply any opportunity of transgressing the mandatory rules relating to (the amount of) working time.[110]

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[102] Art. 196, sec (2), HLC.

[103] L. PÁL, *A szerződéses munkahely meghatározása – a "home office" és a távmunka*, in *Munkajog*, 2, 2018, pp. 56-59.

[104] Art. 196, sec (3), HLC.

[105] Art. 196, sec (4), HLC.

[106] Art. 196, sec (5), HLC.

[107] Art. 197, sec (1), HLC.

[108] Art. 197, sec (4), HLC.

[109] Art. 197, sec (5), HLC.

[110] Z. BANKÓ, J. FERENCZ, *Atipikus jogviszonyok – az atipikus munkajogviszonyok a Munkaügyi Tanácsadó és Vitarendező Szolgálat tevékenységében*, HVG ORAC, Budapest, 2017, p. 41. Z. BANKÓ, *Az atipikus munkaviszonyok*. in Gy. KISS (ed.), *Munkajog*, Dialóg Campus, Budapest, 2020.

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Several statistical data, utterly differing from each other, can be found on the percentage of employees employed in the framework of telework in Hungary, indicating how widespread this legal institution became in the roughly 15 years prior to the appearance of COVID-19.

Based on data from the Central Statistical Office (KSH in Hungarian, hereinafter referred to CSO), 3.7% of the employees, i.e. 144,000 persons were employed as teleworkers in the first quarter of 2018.[111] As a result of the public health provisions relating to the pandemic, the number of "teleworkers" – either occasionally or regularly – exceeded 750,000 persons (17.3%) in the spring/summer of 2020, according to data from the CSO.[112] Using quotation marks above was, however, intentional, since there is lively debate going on in connection with the legal regulation about the extent to which telework can be differentiated from the so-called "home office." Even though the two notions seem to somewhat differ according to labour law regulation and theory (see below), the statistical data collection does not differentiate. According to the CSO's definition, a teleworker is an employee who either regularly or occasionally performs his/her work at a location other than their workplace, using information and telecommunication technology equipment. [113]

4.2. *Implementation of 2002 Framework Agreement on Telework*

The implementation of the European Framework Agreement on Telework (hereinafter referred to Framework Agreement) agreed by ETUC, UNICE/UEAPME and CEEP on the 16th of July 2002 took place by a clear-cut legislative solution [114] in Hungary. Social partners with a nationwide presence joined in the process through the system of macro-level interest reconciliation, via the institutionalized tripartite forum for interest reconciliation still in existence at the time (National Council for Reconciliation of Interests, "OÉT" in Hungarian). The trade union confederations and the employers' interest representation bodies participating in the reconciliation of interests were all in favour of the proposal relating to the implementation of the Framework Agreement, hence, the Government, having the support of the social partners, motioned an amendment to the Labour Code (Act XXII of 1992, hereinafter referred as "former Labour Code"). [115] It is to be

[111] http://www.ksh.hu/docs/hun/xftp/idoszaki/munkerohelyz/tavmunka/index.html (Downloaded: 25.02.2021).

[112] https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_tavmunk9_17_03.html# (Downloaded: 26.02. 2021).

[113] https://www.ksh.hu/docs/hun/xftp/idoszaki/munkerohelyz/tavmunka/tavmunka_modsz.pdf (Downloaded: 26.02.2021).

[114] Act XXVIII of 2004.

[115] ETUC-UNICE-UEAPME-CEEP (2006): The Implementation of the Framework Agreement on Telework, 2006. p. 13.

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noted that one can find relatively few examples in the European Union for "transplanting" the Framework Agreement in such great detail into the national legislation[116], which primarily also reflects the weak power of national social dialogue (structures and practices).[117] Another possible explanation for this rather quick and "mechanical" transposition of the Framework Agreement into the Labour Code might be the timing: Hungary joined the EU in 2004, so showing the image of a "good-performer" in terms of legal harmonization was certainly a policy priority at the time.

Hungarian industrial relations seem to neglect employees in atypical (non-standard) legal relationships in general.[118] "*Ambivalent*" is the adjective that appropriately describes the attitude of trade unions towards regulating atypical employment relationships, since they generally try to perform their activities in line with the will of the majority of their members, which usually means protecting the frameworks of traditional, standard employment relationships. Henceforth, those employed under atypical circumstances are marginalized to the peripheries of advocacy.[119] It is to be underlined that the practice of collective agreements in Hungary typically (it is safe to say that almost with no exceptions) does not apply derogations from the default statutory regulations of telework detailed below, even though the possibility is out there to do so (in line with the HLC). The explanation to this might be the following: on the one hand, the number of "genuine" teleworkers on the labour market is rather insignificant (see above), and, on the other hand, the rightful demand that "teleworkers" should basically enjoy the same rights as all other employees is adequately stipulated in the HLC. It is also remarkable that, in the course of our research, we did not find any initiative –

[116] Z. BANKÓ, *A távmunka és az úgynevezett „home office" munkavégzés szabályozásának helyzete Magyarországon*. in L. PÁL, Z. PETROVICS (eds.), *Visegrád 17.0. A XVII. Magyar Munkajogi konferencia szerkesztett előadásai*, Wolters Kluwer, Budapest, 2020, pp. 63–76. For more details, see: Z. BANKÓ, *A távmunkával kapcsolatos jogalkotási, jogalkalmazási és foglalkoztatáspolitikai tapasztalatok Magyarországon*, in *Magyar Munkajog/Hungarian Labour Law Journal*, 2, 2016. Z. BANKÓ, *Az atipikus munkajogviszonyok*. Budapest-Pécs. Dialóg Campus, 2010.

[117] See for further details: A. KUN, *Hungary: Collective Bargaining in Labour Law Regimes* cit.; Gy. KISS, *The legal dogmatic status and law policy opportunities of trade unions based on Hungarian employment regulations from 1992 till today*, in Gy. KISS (ed.), *Trade unions and collective agreements in the new Labour Code*. Akadémiai Kiadó, Budapest, 2015, pp. 11-45.

[118] *Cf.*: A. KUN, *New Employment Forms and Challenges to Industrial Relations: Country Report: Hungary:* NEWEFIN Project. University of Amsterdam,2020. https://aias-hsi.uva.nl/en/projects-a-z/newefin/drafts-country-reports/newefin-drafts-country-reports.html (Downloaded: 05.02.2021).

[119] Z. BANKÓ, *Az atipikus munkajogviszonyok. A munkajogviszony általánostól eltérő formái az Európai Unióban és Magyarországon.* PTE-ÁJK, 2008, p. 84. https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/banko-zoltan/banko-zoltan-vedes-ertekezes.pdf (Downloaded: 05.04.2020).

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prior to the pandemic – in the field of interest reconciliation[120] that would have proposed and / or requested any legislative changes in this respect. Moreover, employees' interest representations deemed the legislation relating to telework one of the least critical elements in the "new" Labour Code coming into effect in 2012 (even though the "new" Labour Code, as a whole, has had a rather unfavourable assessment among trade unions ever since).[121]

In our opinion, the apparent conceptual confusion within Hungarian labour law as regards telework and / or "home office" (see below) can be – to some extent – traced back to the imprecise, short-sighted, rather mechanical implementation of the Framework Agreement, because the HLC requires a *sui generis* – "atypical" – employment contract for telework. To be precise, in the employment contract the parties shall agree on the employee's employment by means of telework.[122] It is worth mentioning that the wording of the former Labour Code,[123] was similarly strict on this point. These rigid regulatory solutions seem to over-formalize telework, while the Framework Agreement only prescribes the "voluntary character" of telework and perceives telework more like "the way in which work is performed" (not necessarily as a separate, atypical employment status/contract).

4.3. *Special Forms of Remote Work in Hungary – "Home Office"*

There are two different views in the Hungarian scholarly literature with regards to whether the institutions of telework and the so-called "home office" are different or identical legal categories. It must be noted that such a harsh, artificial distinction cannot be traced back to the "spirit" of the European Framework Agreement (as long as work from home is voluntary, regular etc.).

A publication by Gábor T. Fodor highlights that there are no explicit provisions on "home office" in Hungarian labour law (of the private sector), so there is no legal base to its existence. "It also follows from this fact that it requires considerable intellectual effort to compare a legally established and regulated legal institution (telework), and a legally unsubstantiated legal institution (home office), since, if we look at statutory law, we compare the something, the existing with the nothing, the non-existing".[124]

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[120] National Economic and Social Council (NGTT in Hungarian), Permanent Consultation Forum of the Private Sector and the Government (VKF in Hungarian), National Council for Reconciliation of Interests of Public Services (OKÉT in Hungarian).

[121] *Cf.*: https://www.liganet.hu/images/a6550/Leginkabb_kifogasolt_elemek_az_uj_Mt-ben.pdf (Downloaded: 27.02.2021).

[122] art. 196, sec. (2), HLC.

[123] Former Labour Code Article art. 192/E.

[124] T. G. Fodor, *Tényleg létezik home office? – egy munkajogász kétségei a home office-szal, mint jogintézménnyel kapcsolatban*, 2020, https://www.hrportal.hu/hr/tenyleg-letezik-home-office---egy-munkajogasz-ketsegei-a-home-office-szal--mint-jogintezmennyel-kapcsolatban-20201117.html (Downloaded: 05.02.2021).

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It is to be noted that, in general, the HLC does not consider the designation of the location of work as a mandatory content of the employment contract; it only prescribes for the parties that the location of the employee's work shall be specified in the employment contract. However, in the lack thereof, the location where the employees regularly perform their duties shall be automatically considered as the place of work (for legal purposes).[125] Thus, if the parties fail to specify the location of work, it does not result in the employment contract to be deemed either null or void.

Telework is a regular form of work based on the parties' mutual, specific ("atypical") contractual agreement, while "home office" is more like a temporary method of employment (and it is not necessarily contractual). According to the legal practice, "home office" can be based on an agreement between the parties or on a unilateral order/authorization of the employer (e.g., if it is prescribed by internal regulation or instruction).

First, if we talk about "home office" – agreements, they can take the form of any kind of agreements between the parties (i.e., written or oral, temporary or more recurring etc.), and such agreements don't need to be incorporated into a basic, dedicated employment contract (as it is the case with telework). Furthermore, Art. 51(1) HLC (1) states that "employers shall employ their employees in accordance with the rules and regulations pertaining to contracts of employment and employment regulations and – unless otherwise agreed by the parties – provide the necessary working conditions." Hence, in principle, the parties of the employment contract are basically free to "contract out" from the fundamental obligation that the employer provides for the necessary working conditions.

Second, as regards the potential unilateral order of the employer: according to Art. 53 of the HLC, employers shall be indeed entitled to temporarily reassign their employees to workplaces other than what is contained in the employment contracts, but the duration of this may not exceed a total of 44 working days or 352 scheduled hours during a calendar year (it is notable that collective agreements can derogate from this default rule, including the time-limit). Therefore – as a main rule – after 44 days or 352 hours, employees shall be entitled to lawfully refuse the employer's instruction "ordering" home office, since it would violate employment regulations.[126] Furthermore, in case of such unilateral order, some general rules of labour law shall apply. For example, according to Art. 6(3) HLC, "employers shall take into account the interests of employees under the principle of equitable assessment; where the mode of performance is defined by unilateral act, it shall be done so as not to cause unreasonable disadvantage to the employee affected". In practice, there are situations, in which work from home ordered might cause unreasonable disadvantage to the employee affected. It must also be

[125] Art. 45, sec. (3), HLC.

[126] B. MOLNÁR, *Gondolatok a home office-ról általában és vírus idején*, in *Magyar Munkajog*, E-Journal, 1, 2020, p. 40.

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noted that this method of the practice of “home office” (based on the unilateral order of the employer) might be at odds with the Framework Agreement’s basic principle on the voluntary character of “telework” (if we envisage “home office” and “telework” identical, especially in case of regularity). On top of that, it is arguable from the perspectives of personality rights, occupational safety and health and data protection, that, without the employee’s consent, the employer can unilaterally transform the employee’s home (or place of stay) to a “workplace”. The “place of work” has to fulfil certain conditions from the perspective of labour law, labour safety and other aspects (for example: data protection).

Third, in the course of “home office”, the employees shall perform their work duties from a specified location, such as their home or their regular place of residence, on a temporary basis, given that the employer is entitled to define – basically with the above-mentioned limits – the concrete location of performance for the employee under the framework of the employment contract. Convincing arguments exist, according to which the employer – as part of the managerial power, prerogatives – can also transfer to the employee the right to determine the concrete place of performance for a specified period of time.[127] As such, “home office” might also be based on the authorization by the employer. In this understanding, – “favourably” for the employee[128] – the employer partially assigns the right to determine the location of work to the employee. However, it is not easy to say how “beneficial” it is for the employee to work from home – for some yes, for some less so; sometimes yes, sometimes less so.

According to arguments in the literature, it is also a significant difference that as regards telework – in comparison with “home office” – the employer’s right of instruction – unless otherwise agreed on – is limited to defining the tasks to be performed by the employee.[129] The HLC uses exclusively the notion and the definition of telework; it does not include any other specific regulations regarding working from home. “Home office” is an ordinary umbrella concept for forms and *de facto* practices of employment described above, unregulated by legislation. As opposed to telework, “home office” is characteristically not of a “regular” nature (however, the notion of “regularity” is very relative, and thus, it can be a matter of debate, as “home office” is also frequently regular in practice[130]). Furthermore, as “home office” is not codified, it is also not stipulated by law that the work shall be performed by computer technology and be forwarded electronically (as it is the case with telework). However, in practice, it is very difficult to im-

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[127] https://www.parlament.hu/documents/10181/1479843/Infojegyzet_2018_18_munkavedelem.pdf/4c1b8c11-211f-788d-4dc8-8040a03092dd (Downloaded: 05.02.2021).

[128] *Cf.* art. 43, sec (1), HLC according to which, unless otherwise provided for by law, the employment contract may derogate from the provisions of Part Two and from employment regulations to the benefit of the employee.

[129] Z. BANKÓ, *Az atipikus munkaviszonyok*, cit., p. 75. and art. 197, sec. (1), HLC.

[130] Especially during the pandemic.

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agine "home office" without computer, IT technology (and it must be emphasized that for home-based manual work, the Labour Code knows a further, specific category: "outworkers"[131], not to be mixed with telework and "home office"). In addition, in the case of "home office", the employer's right of instruction and the employee's working arrangements shall take place according to the general provisions[132] (however, also in the case of telework, the parties are free to agree as they wish on these matters).[133]

In sum, "home office" seems to differ from telework regarding the following main points.[134] First, the teleworker concludes a specific employment contract for this sake, so for him or her it is not an option but an expectation to work at a different place than the employer's premises. Thus, it is a conceptual element of the employment contract serving as ground for telework that the employee performs their duties at a separate place, away from the employer's premises. Second, in the case of the so-called "home office" the place of performing the work is presumably also the employee's residence, but in this case the employee (or – within some aforementioned limits – the employer) chooses this, while in the case of an employment contract for telework it is stipulated by the parties in the contract.[135] Third, in the case of telework, the employer shall be undoubtedly responsible for complying with the (to some extent specific) rules of the OHS Act[136] (as described above), including risk assessment, monitoring etc. However, as regards "home office", according to some opinions[137], such obligations don't exist as these are not explicitly prescribed. In general, it is a matter of intense legal debate, what OHS rules are applicable in such cases.[138] Practically speaking, result-

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[131] Art. 198, HLC. Outworkers may be employed in jobs that can be performed independently, and that is remunerated exclusively on the basis of the work done. The employee's home or another place designated by the parties shall be construed as the place of work. Such activities do not require the use of IT tools.

[132] T. G. FODOR, op. cit.

[133] art. 197, HLC.

[134] *Cf.*: Z. BANKÓ, *Az atipikus munkaviszonyok,* cit.

[135] L. PÁL, *A szerződéses munkahely meghatározása,* cit., p. 59. See also: L. PÁL, *Munkajogi elvi kérdések: a foglalkoztatási és rendelkezésre állási kötelesség teljesítése a veszélyhelyzet tartama alatt: A járványhelyzet egyes munka– és szociális jogi dilemmái II.*, in *Glossa Iuridica Jogi Szakmai Folyóirat,* 7, 2020, pp. 169-184.

[136] Act XCIII of 1993 on Occupational Health and Safety.

[137] *Cf.*: Zs. MARENCSÁK, *Home office versus távmunka,különös tekintettel a munkaidő-szervezés egyes kérdéseire*, in L. PÁL, Z. PETROVICS, (eds.), *Visegrád 17.0 – A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*, Wolters Kluwer Hungary, Budapest, 2020, pp. 110-117.

[138] Naturally, the observance of OHS rules would be reasonable and desirable also in such cases (and this would follow from the "spirit" of the European Framework Agreement as well), but making the employee's home safe as a workplace could impose an unpredictable financial burden on the masses of employers (especially when "home office" is very widespread, during the pandemic). *Cf.*: G. MÉLYPATAKI, D. A. MÁTÉ, Z. RÁCZ, *Forms of Working*

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ing from the different monitoring obligations, the employer's liability for damages can/must be assessed differently. However, we must agree with Gábor T. Fodor that, in fact, there is no legal basis for the position that the employer is not responsible for accidents related to "home office".[139] In contrast, Art. 51(4) HLC prescribes with a general scope that "the responsibility for the implementation of occupational safety and occupational health requirements lies with the employers", and "home office" still falls within the ambit of the employment contract. Péter Sipka also points out that in the case of a "home office" – as we are still talking about an employment relationship – the "loosening" of the legal relationship does not result in an automatic reduction of the employer's liability. He adds that damage incurred in the course of working from home should also be considered as damage in connection with the employment relationship, i.e. the employer's liability cannot be circumvented in this respect, and even the permission to work from home does not, as a general rule, result in being outside the "scope of control".[140] In sum, we claim that the creation of "home office" as an extra-legal category in practice cannot be an "alibi" to circumvent labour laws (applicable for telework).

All in all, as stated above, in our opinion, the above-described conceptual confusions in Hungarian labour law concerning telework versus "home office" might be partly explained by the former imprecise, short-sighted, rather mechanical, rigid implementation of the European Framework Agreement on Telework (2002) into the LC, which strictly requires a *sui generis* – "atypical" – employment contract for telework. Thus, in our view, most of the above described – often confusing – "differentiations" between the two notions (telework *versus* "home office") seem to be rather artificial and shallow. Such a far-reaching, artificial distinction cannot be deducted from the "spirit" of the European Framework Agreement either, where the main focus is on the voluntary character of work from home, which is a "form of organizing and/or performing work" (not necessarily a separate, dedicated atypical contract). Consequently, we believe that the basic principles and rules of the Framework Agreement should be equally applied for telework and "home office" alike (obviously, if they are fairly regular). It has to be note that during summer 2020, it was also on the political agenda to draft a comprehensive, clarifying new law on the topic, but finally, this has not happened to date (see below). The related debate is certainly not senseless, but seems to be slightly exaggerated, as the current – undeniably imperfect –

from Home in Hungary, in PaKSoM 2020 2nd Virtual International Conference: Path to a Knowledge Society-Managing Risks and Innovation Proceedings, Publisher: Research and Development Center "IRC ALFATEC", Niš, Serbia, and Complex System Research Centre, Niš, Serbia, 2020, p. 284.

[139] T. G. FODOR, op. cit.

[140] P. SIPKA, *A munkáltató felelőssége az otthoni munkavégzés során*, in L. PÁL, Z. PETROVICS, (eds.), *Visegrád 17.0 – A XVII. Magyar Munkajogi Konferencia szerkesztett előadásai*, Wolters Kluwer Hungary, Budapest, 2020, pp. 126, 127, 129.

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rules still seem to function satisfactorily in practice: mainly based on the parties' possibility for all kinds of "home office"/telework agreements. In sum, the similarities between teleworking and "home office" far outweigh the possible differences between the two. Thus, a fine-tuning of the existing rules on teleworking through better alignment with the spirit of the Framework Agreement would be appropriate and it would be fitting to use the legal category of telework – and its specific legal guarantees, which also derive from the Framework Agreement – in a broad sense, covering "home office" as well (at least if regularity is given). At the same time, other practicalities do not "shout" for regulation, as the vast majority of emerging issues, as practice has shown, can be reassured by individual agreements (as well as via employer regulations).

4.4. *The Covid-19 Pandemic's Effect on Telework and Social Dialogue*

In Hungary, Government Decree 40/2020 (III. 11.) proclaimed the so-called emergency in the spring. The Government may govern by decrees during emergencies. However, these decrees shall expire with the lapsing of the emergency.[141] In Government Decree No. 478/2020 (XI. 3.) the Government proclaimed an emergency again for the entire territory of Hungary (as of the 4th of November), in the interest of fending off the consequences of the coronavirus pandemic as well as preserving the life and health of the Hungarian citizens. Then again, the Government proclaimed an emergency effective of the 8th of February 2021, based on Govt. Decree No. 478/2020 (XI. 3.).

In the field of national interest reconciliation (i.e.: cross-sectoral national social dialogue) it can be factually recorded that the main tripartite body, the Permanent Consultation Forum of the Private Sector and the Government ("VKF", in line with the Hungarian acronym) had numerically much more sessions since the "breakout" of the pandemic[142] than in the preceding periods. In spite of the regularity (multiplicity) of the events, the meetings did not result in any spectacular negotiations and meaningful agreements in the private sector[143], since the new, temporary labour law norms legislated during the pandemic came mostly as a surprise to the social partners, who voiced their objections on several occasions[144], which

[141] https://www.parlament.hu/documents/10181/4464848/Infojegyzet_2020_6_kulonleges_jogrend+%281%29.pdf/f7c3e7e1-9b7d-cb32-3bf2-174e8d25b56c?t=1585507104211 – A különleges jogrend és a veszélyhelyzet, infojegyzet, Országgyűlés Hivatala (Downloaded: 05.02.2021).

[142] VKF had weekly sessions during the first emergency period, in which there were generally opportunity for transmission of information and a brief exchange of opinions.

[143] I. Sz. Szabó, *Munkajogi elvi kérdések: a szociális párbeszéd és a kollektív szerződések mozgásteréről: A járványhelyzet egyes munka– és szociális jogi dilemmái II.*, in *Glossa Iuridica Jogi Szakmai Folyóirat*, 7, 2020, pp. 157-169.

[144] https://ado.hu/munkaugyek/egyutt-tiltakoznak-a-szakszervezetek-a-24-oras-munkaidokeret-ellen/ (Downloaded: 05.02.2021).

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reached even beyond the national border. At the beginning of the emergency legislation process related to the pandemic, a markedly heated exchange took place between the European Trade Union Confederation and the Hungarian Government [145], especially in connection with new, temporary options to derogate from the regulations of the Labour Code (not discussed here). [146]

With regards to telework, however, a contrary trend was taking shape, and trade union confederations reported that detailed negotiations were taking place on regulating telework in the VKF.[147] The Ministry of Innovation and Technology (hereinafter referred to as MIT) provided information on plans of a draft piece of legislation related to telework at VKF, which was stating that the amendment would provide an opportunity for the employer to contribute to the overhead costs of telework up to 10% of the minimum wage[148] as a quasi flat-rate contribution instead of an itemized settlement. The MIT also stated that expanding the scope of activities that could be performed in the form of telework was among the plans. The location of work would become entirely optional if the provisions of occupational health and safety can be maintained. It

[145] "Our first assessment is that the changes introduced in this law and in the previous measures will bring Hungary into breach of its obligations to secure the rights provided to workers under EU Directives. The measures of particular concern are the changes to the Labour Code "to make employment regulations more flexible, in order to facilitate future agreements between employers and employees." With this move, the provisions of the Labour Code render employment rights vulnerable to being breached in whole or in part. The ETUC will raise these concerns at the highest level with the President of EU Commission, Council and Parliament." – Letter written by General Secretary of the ETUC Luca Visentini to the Prime Minister of Hungary.

https://szef.hu/rovatok/90-nagyvilag/3677-luca-visentini-levele-orban-viktornak (Downloaded: 05.02.2021). https://www.kormany.hu/hu/a-miniszterelnok/hirek/annyi-munkahelyet-fogunk-letrehozni-amennyit-a-koronavirus-elpusztit (Downloaded: 05.02.2021).

[146] The provision of Govt. Decree 47/2020 (III. 18.) that triggered the most heated arguments, according to subsection (4) of Article 6 of which the employer and the employee may derogate from the provisions of the HLC in a separate agreement. This means that any provisions of the HLC can be derogated from freely – both to the advantage or the disadvantage of the employee – with the agreement of the parties ("absolute dispositivity"). For more details, see: https://munkajogilap.hu/osszefoglalo-egyes-munkajogi-szabalyok-alkalmazasarol-a-veszelyhelyzet-kihirdeteserol-szolo-40-2020-iii-11-korm-rendelet-altal-elrendelt-veszelyhelyzet-idotartama-alatt/ (Downloaded: 05.02.2021). A. Kun, Munkajogi elvi kérdések: a felek (munkáltató és munkavállaló) egyéni megállapodásainak mozgásteréről: A jÁrvÁnyhelyzet egyes munka– És szociÁlis jogi dilemmÁi I., in Glossa Iuridica Jogi Szakmai Folyóirat 7, 2020, pp.145-156.

[147] https://munkastanacsok.hu/beszamolo-a-vkf-2020-szeptember-2-i-uleserol/?hilite=%27t%C3%A1vmunka%27 https://munkastanacsok.hu/tajekoztato-a-vkf-julius-21-i-uleserol/?hilite=%27t%C3%A1vmunka%27 https://munkastanacsok.hu/beszamolo-a-2020-aprilis-20-i-versenyszfera-es-a-kormany-allando-konzultacios-forumanak-vkf-uleserol/?hilite=%27t%C3%A1vmunka%27https://www.liganet.hu/10673-beszamolo-a-vkf-2020-szeptember-2-i-uleserol.html.

https://www.liganet.hu/10671-finisben-az-otthoni-munkavegzes-szabalyozasa.html (Downloaded: 05.02.2021.).

[148] The 10% of the national minimum wage was around 44 euros in 2020.

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was also among the proposals that telework could apply also partially during workdays. At the same time, the MIT also emphasized that amending the legislation on telework would primarily provide a framework, and the agreement between the employer and the employee would and should determine the details. The Government negotiated with the social partners on regulating telework once more at the VKF.[149] Although a draft amendment of the HLC was aired, the Government withdrew it, and (for the time being) tries to provide answers via emergency legislation to any pandemic-related occurring labour law, OHS and employment policy challenges.

In sum, the pandemic related labour law legislation aimed at easing the conditions of both telework and "home office" (e.g., by authorizing employers to unilaterally oblige the employee to telework or work in "home office"; by providing options for contractual derogations from the Labour Code, by simplified temporary health and safety provisions; by financial support of working from home etc.).

During the *first wave* of the pandemic, Government Decree No. 47/2020 (III. 18.) on "immediate measures to mitigate the effects of the coronavirus pandemic on the national economy"[150] expanded the managerial prerogatives of employers by permitting them to unilaterally derogate from certain standard rules of the Labour Code, for example by authorizing employers to unilaterally oblige the employee to telework or work in home office etc. Accordingly, this decree dealt with the two concepts (telework and "home office") similarly (like "synonyms").

During the *second wave* of the pandemic (and also applicable during the third wave, at the moment of writing this paper, in March 2021), Government Decree No. 487/2020 (XI. 11.) on "applicable regulations relating to telework during the emergency", also provided a certain degree of "easing" to the regulations of telework for the duration of the emergency. The Decree talks only about telework and it still fails to define "home office", which was sharply criticized by some trade union federations. For instance, according to the opinion of Liga Trade Unions, "home office" shall be incorporated into the system by amending the regulations of the HLC and relating legislation (including the OHS Act and laws on data protection).

4.4.1. *Derogation from the Labour Code During the Emergency*

According to Article 3 of the Govt. Decree, the employee and the employer may derogate from the provisions of Article 196 of HLC (on telework) in their agreement during the emergency. The most important provision from the practi-

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[149] https://novekedes.hu/elemzesek/valtozas-jon-a-tavmunkaban-a-munkaltato-hozzajarulhat-az-otthoni-rezsikoltsegekhez (Downloaded: 15.02.2021.).

[150] According to some experts, this Decree was even unconstitutional, because it was passed without any constitutional authorization for the Government. T. Gyulavári, *Covid-19 and Hungarian Labour Law: the "State of Danger"*, in *Hungarian Labour Law E-Journal,* 1, 2020, p. 111. This has never been officially confirmed.

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cal point of view is Art. 196(2) HLC. It states that in the employment contract the parties shall agree on the worker's employment by means of telework. According to the Govt. Decree, parties can ignore this rule, meaning that during the emergency period, parties do not need to enter into an employment contract that explicitly stipulates that the employee performs their duties by means of telework. The parties' agreement can prevail here. It has to be added though, that this empowering rule also has its limitations: some sort of consensus is by all means necessary between the parties for the work to take place at home, and, insofar as infrastructural, health, etc. conditions cannot be granted, a unilateral obligation by the employer cannot be deemed rational and optimal. (It is yet another question what other steps or options can be considered if the parties are unable to utilize this opportunity). If working from home actually takes place, the special rules of information stipulated under Art. 196(3) HLC shall not need to be applied either. Other standard HLC provisions on telework (Article 197) enable derogations by default, so they can also be put aside (without a need for specific emergency-related empowerment).

4.4.2. *OHS Rules During the Emergency*

According to Section (1) of Article 1 of the Govt. Decree, Article 86/A of OHS Act shall not be applicable during the emergency. These special OHS regulations described above under Chapter 4. – not to be applied during the emergency – prescribe the risk assessment and monitoring duties of the employer. As opposed to these default rules of the OHS Act, the Decree only stipulates that, in the case of telework, the employer shall inform the employee about the rules of safe working conditions that do not carry a potential health hazard and that are necessary for performing the work, and the employee shall select the location of work with the fulfilment of these working conditions in mind.

4.4.3. *Supporting Working from Home During the Emergency*

It is a frequently emerging issue of employment policy – independent of the pandemic – whether work from home can be made more attractive for both employers and employees by attaching (tax-related) allowances or subsidies to them. This has also triggered the biggest dispute among the social partners. Trade unions would have made financial subsidies (as a form of contribution to the overhead costs) mandatory. On the contrary, according to the employers' opinion, "home office" would be doomed with such conditions. According to their point of view, a flat-rate – tax free – contribution to the overheads could only be an option for the employer. However, in their opinion, the concrete amount might as well be HUF 0, since not all employees have extra expenses incurred due to their working from home.[151]

[151] https://nepszava.hu/3091084_tamogatnak-a-tavmunkat-de-lehet-hogy-a-cegek-ertik-jol-a-kormany-uzenetet (Downloaded: 15.02.2021).

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Currently, Article 2 of the Govt. Decree also stipulates a potential derogation from the provisions of Act CXVII of 1995 on personal income tax. For employees performing their work according to their employment contract in the framework of telework in accordance with the provisions of the HLC, an amount previously determined by the parties but not exceeding 10 per cent of the monthly minimum wage valid on the first day of the tax year shall qualify as an item deductible without verification as expense from the amount paid monthly to the employee as reimbursement of expenses relating to telework during the emergency period (if telework does not affect the whole month, then the part of the monthly amount in proportion to the days affected by the telework).

From the circles of the social partners, a request has also emerged that the maximum value of work equipment that can be provided tax free to the employees shall also be increased, adjusted to current prices, supplementing the currently existing itemized cost accounting with a so-called flat-rate cost amount. This would include the cost relating to the expenses arising from using one's apartment to reimburse overhead and other costs, since itemized accounting has so far caused major problems for both employees and employers.

4.4.4. *Post-Covid Perspectives – Modification of the HLC and OHS Rules*

After the rather hectic, "temporary" rules of telework (and home office) during the years of the pandemic (2020/21), the Parliament regulated the topic again in December 2021. Based on the new law, the current temporary rules will live on in the HLC (as replacing the previous rules of telework) after the end of the state of emergency (with effect from 1st June 2022).[152] After all, the new law does not create a *sui generis* legal institution as to home office. Therefore, the most important goals of this new law are to put an end to the ambiguity of home office by expanding and rendering the legal institution of telework more flexible. Accordingly, home office also can be interpreted as a part of telework, whether it is occasional or permanent, or "hybrid" (it must be reminded that, originally, the HLC regulated only telework, rather rigidly, only perceiving it as the atypical employment relationship of mostly permanent working from home). In essence, the agreement on telework (or home office) shall continue be the part of the employment contract, hence (as a main rule) the employer cannot unilaterally order it, nor has the employee an individual right to claim it. The related provisions of the HLC are generally "dispositive" in nature (for example, concerning working time, right of instruction of the employer etc.), so the contractual parties may derogate from them, making it possible to design their own company– or employee-specific telework/home office routine. A new, unique element in the regulation is that, unless the parties agree otherwise, the employee works at the "office" for a maximum of one third of the

[152] Act CXXX of 2021 on the regulatory issues in connection with the state of emergency.

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working days in the current year.[153] In our view, this rule is overly complicated, unreal and, at the end of the day, somewhat superfluous. The new law makes it clear that the employer has the possibility to exercise his right of control remotely with a computer.

For the sake of health and safety (OHS), the law makes a distinction between two forms of telework based on whether the work is carried out by computer, or it is with a non-computer equipment. The basic OHS rules of course must be complied with in both cases, but technically speaking, somewhat lighter (i.e., more employer-friendly) rules apply in the first scenario, if the employee is working with computer. If the employee is working with a non-computer equipment, the place of the work shall be a place defined in the written agreement, and prior examination by the employer is a must (furthermore, the employer or his agent is obliged to regularly ensure that the OSH rules are fulfilled).

5. *Workplace Automation, Industry 4.0 and Social Partners' Strategies*

5.1. *Social Partners' Strategies, Especially in the Metal Working Sector*

Social partners related activity and also social dialogue are generally weak in Hungary [154]; sectorial bargaining is especially weak; bargaining structures are decentralised, fragmented and uncoordinated; coverage is low (less than one third of workers are covered by collective agreements[155]).[156] Hungarian trade unions deal with the issue of Industry 4.0 from a labour market and training-related point of view (if they deal with it at all). The various conferences and professional sessions organised by social partners in this subject have also tried to discuss some questions of occupational transition[157], especially the dilemma of which jobs will disap-

[153] See for a summary: https://www.smartlegal.hu/publication/labour-law-change-in-hungary-new-old-home-office-rules-in-the-labour-code.

[154] A. Kun, I. Rácz, I. Sz. Szabó, *National report on Hungary*, Stage 2 Representing and Regulating Platform Work: Emerging Problems and Possible Solutions, iRel-Smarter Industrial Relations to Address New Technological Challenges in the World of Work. 2020.

[155] A. Kun, *International Research Project DIADSE* (Dialogue for Advancing Social Europe), Country Report– Hungary, Project financed by EU, European Commission DG Employment, Social Affairs and Inclusion, Social Dialogue, Industrial Relations (Agreement number. VS/2014/0530) Duration: December 2014 – December 2016. Project Management: Universiteit van Amsterdam, 2017.

[156] National Report Stage 2., op. cit., p. 11.

[157] For example: 'The future of work' conference organised by Hungarian Trade Union Confederation and Friedrich Ebert Stiftung on 22th November, 2016. http://szakszervezet.net/images/kepek/2017/11_november/A_munka-jovoje_konferencia-Program-20161122.pdf 'The digitalization and robotization of work – Trade unions' new challenges' conference organised by EZA and MOSZ (National Federation of Workers' Councils) on 4-5th May, 2017. https://munkastanacsok.hu/a-munka-digitalizacioja-es-robotizacioja-a-szakszervezetek-uj-kihivasai/

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pear, or which will be created and how big the extent of transition might be. Their main aim during these conferences was to highlight the very fact of transition and pay attention to the fact that workers' competences also must change.

During the research project, the representatives of the trade unions operating in the field of the processing industry reported ambivalent experiences about the challenges related to Industry 4.0. It is a well-known fact that there is a pluralistic trade union structure in Hungary, i.e., there are several different labour unions (which are often highly competitive with each other) simultaneously operating at the same employer; so one cannot identify a uniform opinion of the employees' representatives as such.

In the field of industry as a uniform branch of the national economy, there is still a lack (i.e., shortage) of labour force (i.e., the demand for labour is higher than the supply), although the labour market situation altered by COVID-19 only allows to draw cautious conclusions for now. In the 4th quarter of 2020, nearly 17 thousand vacancies were registered by the CSO [158], which can be deemed high as compared to other sectors. As a consequence of this, the recent years have seen a significant improvement in the bargaining power of the trade unions and the employment opportunities of the employees, employees changed their jobs more frequently, as an adverse effect of which employee turnover has increased.[159]

The corporate trade union officials that were contacted in the course of our targeted research (whose labour unions belong to three national confederations[160] that are involved in the labour relations of the private sector) typically reported that the consequence of automation and in many cases, robotisation is becoming an ever-increasing challenge to the employers that distribute products with a higher added value, which also affects the human resource management practices of these companies. In many cases, this challenge has meant that it is the corporate restructuring efforts resulting from Industry 4.0 that "save the factory" and manufacturing can remain in Hungary; however, there are also examples for technological changes speedily pushing certain specific sectoral activities into the background (e.g., this is the case in the field of lamp manufacturing, which has long-standing traditions in Hungary). On the corporate level, labour relations

"The future of world of work – challenges in manufacture – trade unions' answers" conference organised by Hungarian Trade Union Confederation and Friedrich Ebert Stiftung on 26th November, 2018. https://vasasok.hu/index.php/HU/sliders/1037-a-munka-vilaganak-jovoje-konferencia (Downloaded: 01.11.2021).

[158] https://www.ksh.hu/docs/hun/xstadat/xstadat_evkozi/e_qli027a.html (Downloaded: 01.11.2021).

[159] M. Gelencsér, O. Szigeti, G. Szabó-Szentgróti, *A feldolgozóipari munkavállalók munkaerő-megtartása*. Vezetéstudomány / (Labour Retention by the Employees Working in the Processing Industry. Management Science), in *Budapest Management Review*, 9, 51, 2020, pp. 67-79.

[160] Democratic League of Independent Trade Unions, National Federation of Workers' Councils, Hungarian Trade Union Confederation.

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usually discussed the (re-) organisation of related training and retraining programmes, furthermore, the replacement of the job "levels" and job positions that are eliminated as a result of restructuring. It is usually the employees working in the rank of an "operator" that were brought up as examples by the trade unions, however, the almost complete transformation of the level of the foreman (supervisor) is also typical.

In Hungarian labour law, the information and consultation rights of employee representatives (i.e., the rights to influence or have a say in the decisions), which also constitute the basis of the trade union legal relationship, have been shared between the trade unions and the works councils since the change of the political regime, based on the Western-European example (typically under the German influence). In the Hungarian practice, there is close cooperation (mutual reliance) between the unions and the works council, what is more, sometimes there is also a pragmatic division of labour. The matter of Industry 4.0 is a typical example for such mutual reliance, and for the fact that the specific topics discussed cannot be divided in the negotiations held with the works council and the trade unions.

With regard to the fact that in Hungary sectoral level labour relations work very poorly, one cannot talk of a meaningful coordination of interests "on the meso-level", while on the national level, the state usually merely provides information to the social partners. It should also be mentioned that the state offers an opportunity to the social partners for the handling of the challenges that are also related to Industry 4.0 in the so-called "GINOP" (Economic Development and Innovation Operational Programme – European Social Fund) tender scheme.

5.2. *Information and Consultation Legislation*

In order to the "humanize", among others, the use of AI and various corporate innovations of Industry 4.0, the smooth involvement of worker's representatives is necessary. Employees can exert influence on the managerial decisions concerning the introduction and the implementation of technological changes through trade unions or works councils. In the following subchapter we will discuss the employer's information and consultation obligation which is based on HLC Article 264.

The HLC prescribes that employers shall consult the works council at least 15 days prior to passing a decision in respect of any plans for actions and adopting regulations affecting a large number of employees. The scope of these actions, in relation to which consultation is obligatory, is given by the HLC in a non-exhaustive (exemplary) way (from points a) to o)).[161]

In the context of Industry 4.0, topics under point b) and g) are especially relevant: b) introducing production and investment programs, new technologies, or upgrading existing ones; g) plans relating to training and education.

[161] Art. 264, sec. (1), HLC.

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HLC regulates these rights as minimum rights and its scope may be expanded (but may not be restricted) in workplace agreement.[162]

This obligation for consultation[163] is a relatively weak (essentially soft) norm of the HLC (i.e., it is far from being a genuine co-decision/"Mitbestimmung" right). Moreover, the potential scope of consultation is further limited by the – relatively "open" – rules of Art. 234. of the HLC, according to which the employer is not obliged to communicate information or undertake consultation when the nature of that information or consultation covers facts, information, know-how or data that, if disclosed, would harm the employer's legitimate economic interest or its functioning.

As *Hungler* writes, "the quality of the dialogue is supposed to be further protected by the provisions of Art. 233(3), which prohibits the employer to carry out the proposed action during the time of consultation, or for up to seven days from the first day of consultation, unless a longer time limit is agreed upon".[164] Missing the dialogue will not result invalidity.[165] And the employer's action cannot be annulled, a court decision can only be limited to establishing the violation of consultation obligation. Therefore, it looks like that the HLC does not specify effective sanction in this regard,[166] in other words, these rules of consultation can be considered as a kind of "lex imperfecta"[167] in Hungarian labour law.[168] In our opinion, it would be useful and inevitable to consider the introduction of some kind of a sanction in this regard into the system of collective labour law in Hungary.[169]

It must be noted that the works council has the right of consultation, not the employees. Therefore, only works councils can refer to the fact if the employer violates the consultation obligation. It has to be emphasized that the opinion of

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[162] art. 267, sec. (6), HLC.

[163] See also: S. Kisgyörgy, Gy. Lajtai, *Munkahelyi demokrácia – Az üzemi tanácsok működése és jogosítványaik gyakorlása.* Friedrich Ebert Stiftung, ÉTOSZ, 2021. https://Budapest.fes.de/fileadmin/user_upload/dokumente/pdf-dateien/U__zemi_tana__csok.pdf (Downloaded: 01.11.2021).

[164] S. Hungler, *The Dual Nature of Employee Involvment – An Economic and Human Right Issue,* PhD Dissertation, Budapest, 2014.

[165] E. Hajdu, Zs. Mészárosné Szabó, B. Tallián, E. Tálné Molnár*, A Munka törvénykönyve kommentárja*. HVG-Orac Lap– és Könyvkiadó Kft., Budapest, 2020.

[166] Munkástanácsok: Üzemi tanács / Az új Munka törvénykönyve XX. fejezet. https://munkastanacsok.hu/blog-grid3/erdekegyeztetes/munkahelyi-szint/munkahelyi-szint-uzemi-tanacs/ (Downloaded: 01.11.2021).

[167] A law that typically exists but is not enforced or has no way of being enforced.

[168] See art. 289, HLC.

[169] For instance, in Lithuania, while resolving collective labour disputes on rights, a labour dispute resolution body shall have the right to fine the party that violated labour law provisions or mutual agreements up to EUR 3,000 to be paid to the other party. See: Article 217. of the Labour Code of the Republic of Lithuania.

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the works council is not binding on the employer. The definition of 'large number of employees' is not specified by the HLC; therefore, it should be useful to clarify this notion in the workplace agreement, adapting to the employer's specific characteristics.[170]

5.3. *Education and Training*

5.3.1. *Vocational Education and Training 4.0*

The so-called Vocational Education and Training 4.0 (hereinafter referred as 'VET 4.0') is a medium-term policy strategy for the renewal of vocational education and training (hereinafter referred as "VET") and adult education.[171] It aims to respond to the challenges of the fourth industrial revolution. It has been approved by Government Decree No. 1168/2019 (III. 28.).[172] Thanks to Industry 4.0, the number of unskilled jobs which can be filled without a vocational qualification is decreasing, while the demand for professionals with IT and robotics qualifications is increasing[173] (such as qualifications responsible for the planning, construction, and operation of systems).[174] Nowadays VET can't meet the territorial economic needs completely. It is important to synchronize the training system to the demand of the labour market.

In sum, VET 4.0 highlights *inter alia* that the training structure needs to follow the changes caused by automation and competence requirements will change in the digitised working environment.

The economy and its stakeholders need to define requirements of Industry 4.0 (skills, jobs, etc.) to achieve the above-described goal. The Sectoral Skills Councils (hereinafter referred as SSCs) were established in 2018 based on the previous Act on VET.[175] SCCs still operate although the Act LXXX on VET has replaced the previous VET act in 2019 (hereinafter referred as "VET Act") and it entered into force on 1st of January 2020. SSCs facilitate to present the corporate demand in education and the strengthening of practical training in professional and adult

[170] Gy. KISS (eds.), *Munkajog*. Dialóg Campus, Budapest, 2020, p. 448.

[171] Ministry of Innovation and Technology: Vocational education and training 4.0. 2019 https://dualis.mkik.hu/letoltesek/12_Szakkepzes_es_felnottkepzes_kozept_megujitasi_strategiaja_SZ4_0_20210827_EN.pdf (Downloaded: 25.11.2021).

[172] https://net.jogtar.hu/jogszabaly?docid=A19H1168.KOR&txtreferer=00000001.txt (Downloaded: 01.11.2021).

[173] See also for further details: N. JAKAB, L. BERÉNYI, Zs. RÁCZI, *Új irányok a szakképzés és a felnőttképzés területén – különös tekintettel a raktározási ágazat aktuális kérdéseire*, in *Pro Futuro*, 2, 11, 2021. https://doi.org/10.26521/profuturo/2021/2/10243 (Downloaded: 20.10.2021).

[174] Vocational education and training 4.0 7, https://dualis.mkik.hu/letoltesek/12_Szakkepzes_es_felnottkepzes_kozept_megujitasi_strategiaja_SZ4_0_20210827_EN.pdf (Downloaded: 25.11.2021).

[175] Act CLXXXVII of 2011 on Vocational Education and Training.

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education (for instance SSCs can make suggestions on the Register of Vocational Occupations ("Szakmajegyzék"),[176] prepare forecasts to plan and define goals of VET etc).[177]

According to the VET Act and Government Decree No. 12/2020. (II. 7.) on the implementation of the VET Act, there are nineteen such SSCs.[178] The SSCs' permanent members vary between 8 to 24 persons, which depends on the size and structure of the given economic sector.[179] The permanent members of the SSCs are companies which have assumed the unifying and mediator role. The SSCs members also include a delegate from the trade unions operating in their economic sectors.[180] If we take into account that number of members can be 24 then it is clear that only one person's participation from the trade unions' side is rather negligible. So, trade unions' influence on SSCs' work cannot be significant.

The Hungarian Chamber of Commerce and Industry (hereinafter referred as HCCI) plays an outstanding and influential role in the formulation of training-related and VET policies in Hungary (actually, it seems to play a much bigger role in this regard than traditional social partners and social dialogue), and it co-ordinates the work of the SSCs and provides the operational conditions.[181] HCCI, as a public body, fulfil its duties based on the Act CXXI of 1999 on chambers of economy. The HCCI's mission is "to foster […] the development and organisation of the economy, the safety of business transactions and fair market practices, the manifesting of the general and joint interests of those carrying out business activities, and to further the co-ordination of domestic and international chambers with regard to European integration".[182] The concrete tasks of HCCI in VET are regulated by the VET Act.[183]

[176] As a consequence of VET 4.0 the Register of Vocational Occupations (*'Szakmajegyzék'*) has changed the previous National Qualifications Register, NQR (*'Országos Képzési Jegyzék'*). The Hungarian training system was characterized by fragmentation and specialization because there were many vocations in the NQR, much more than the EU average. Therefore, a radical reduction of the numbers of vocations on the NQR was needed, in order to make the trainings transparent and to adapt the content of the training to the needs of the Fourth Industrial Revolution. Eurydice: Hungary – Developments and Current Policy Priorities.

[177] Eurydice: Hungary – Developments and Current Policy Priorities. https://eacea.ec.europa.eu/national-policies/eurydice/content/developments-and-current-policy-priorities-34_en (Downloaded: 20.10.2021).

[178] See more information: https://akt.mkik.hu/ (Downloaded: 25.11.2021).

[179] Government Decree 12/2020. (II. 7.) on the implementation of the Vocational Education and Training Act art. 312, sec. (1).

[180] Ibid art. 312(1)(c).

[181] Government Decree 12/2020. (II. 7.) Art. 316(2).

[182] https://mkik.hu/en/the-public-tasks (Downloaded: 25.11.2021).

[183] art. 100, VET Act.

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5.3.2. *Training and Labour Law*

Apart from indicating the – fully voluntary – option for the employer and the employee to conclude "study contract" (Art. 229. HLC)[184], the currently effective HLC does not really deal with the topic of training (and lifelong learning). This also means that employees shall be exempted from the requirement of availability and from work duty only for the duration of those trainings which are based on the agreement of the parties (Art. 55. (1) point g) HLC). Therefore, Hungarian labour law, among others, does not provide for study-related specific leaves (or for any kind of sabbatical), and it also does not provide employees with a genuine individual right for further training. Furthermore, meaningful collective bargaining on this matter is also very scarce in Hungary. However, it should be noted that nowadays many authoritative international documents perceive the right to training as fundamental pillar of modern employment policies (see, among others the European Pillar of Social Rights[185], the ILO's Centenary Declaration for the Future of Work[186] etc.).

Pertaining to the performance of employment contracts, the Labour Code defines the fundamental obligations of the parties. In this regard, "employers shall employ their employees in accordance with the rules and regulations pertaining to contracts of employment and employment regulations and – unless otherwise agreed by the parties – provide the necessary working conditions" (Art. 51 (1) HLC). Thus, as a main rule, employers need to provide the necessary working conditions, but the parties can deviate from this rule by individual agreement. It is notable that according to the official ministerial reasoning of the HLC, it can be deduced from the employer's managerial obligation that the employer is obliged to provide the employee with all the knowledge and, where appropriate, training that is relevant to and necessary for the performance of the work. However, this general obligation of the employer does not alter the right to employ another employee for a given job in the future. Judicial practice[187] reveals that in the case of ordinary dismissal of an employer justified by a "quality change"

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[184] In a study contract the employer undertakes to provide support for the duration of studies while the employee undertakes to complete the studies as agreed and to refrain from terminating his employment by way of notice following graduation for a period of time commensurate for the amount of support, not exceeding five years.

[185] EPSR Principle 1. "Everyone has the right to quality and inclusive education, training and life-long learning in order to maintain and acquire skills that enable them to participate fully in society and manage successfully transitions in the labour market".

[186] The ILO's Centenary Declaration for the Future of Work (2019) aims to promote the acquisition of skills, competencies and qualifications for all workers throughout their working lives as a joint responsibility of governments and social partners, as part of the concept of the "human-centred approach to the future of work" in order to address existing and anticipated skills gaps and to pay particular attention to ensuring that education and training systems are responsive to labour market needs, taking into account the evolution of work.

[187] EBH2003. 968.

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("minőségi csere" in Hungarian), it is within the employer's discretion to determine the criteria on the basis of which the different (higher) quality of care of the relevant job will be provided. It must be kept in mind that is a default rule of the HLC that "employers shall be liable to compensate their employees for justified expenses incurred in connection with fulfilment of the employment relationship" (Art. 51 (2) HLC), which applies for employer-mandated trainings (as described above) as well.

It must be noted that the former Labour Code (in force till the entry into force of the HLC in 2012) contained some more specific training-related rights. The Code prescribed, as a general rule, that employers shall allow sufficient "time off" for studies necessary for employees participating in studies within the school system. Furthermore, it also prescribed specific study-related leaves (four working days leave of absence for each exam, ten working days leave for the completion of diploma work).[188] Moreover, the "old" Labour Code also regulated some specific training-related paid leave scheme for the sake of training courses organized by trade unions.[189] Even though these rules were rather rigid and old-fashioned, they were still more than almost nothing (as it is the case with the currently effective HLC).

All in all, a comprehensive reform of Hungarian labour law seems to be a reasonable and timely expectation in terms of training and lifelong learning,[190] especially with a view to the growing importance of the individual right to training of employees (in the context of Industry 4.0) and to the possible introduction of an Individual Learning Account, or "career account"[191] scheme in Hungary.[192]

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[188] Art. 115 of Act XXII of 1992.

[189] Art. 25 (4) of Act XXII of 1992.

[190] See for further details: A. KUN (ed.), Az egész életen át tartó tanulás (lifelong learning) jogi keretei a munka világában, különös tekintettel a munkaviszonyra, Budapest: Patrocinium Kiadó, Acta Caroliensia Conventorum Scientiarum Iuridico-Politicarum, 2017, p. 19, https://ajk.kre.hu/images/doc3/Az_egesz_eleten_at_tarto_tanulas_lifelong-learning_jogi_keretei_a_munka_vilagaban_kulonos_tekintettel_a_munkaviszonyra_2.pdf (Downloaded: 25.11.2021).

[191] *Cf.*: M. DE VOS, *Work 4.0 and the Future of Labour Law*, July 22, 2018, available at SSRN: https://ssrn.com/abstract=3217834 or http://dx.doi.org/10.2139/ssrn.3217834 (Downloaded: 20.10.2021).

[192] For a similar reasoning see in the conclusions of a research project carried out by the Trade Union of Commercial Employees (KASZ): Munkajogi kihívások az ipari forradalomban — Esettanulmány a kiskereskedelmi ágazatban, Kereskedelmi Alkalmazottak Szakszervezete, GINOP-5.3.5-18-2018-00051 számú projektje keretében, Stratégia Agenda Bt., 2021, https://www.kiskerdigitalizacio.hu/index.php/szakmai-anyagok/kiadvanyok/munkajogi-kiadvany (Downloaded: 11.11.2021)

5.3.3. *Individual Learning Account*

The idea of Individual Learning Account (hereinafter referred as “ILA”) arises again and again in Hungary because it relates to education’s reform.[193] Theoretically, ILA could be a suitable way to manage training challenges of Industry 4.0. The creation of ILA would increase individuals’ liability in adult training, especially because Industry 4.0 brings new needs for new competencies. Besides, ILA would give opportunity to others then individuals (i.e., the state, undertakings) to support the training development of workers.[194] But as the experiences show, nothing concrete has happened yet in this regard, only some professional proposals had been prepared to encourage research and steps to regulatory and development work to begin as soon as possible. Application of ILA assumes the shared liability among the state, individuals and undertakings. The tentative introduction of ILA might be seen as a fairly simple methodological or organizational issue. However, this is clearly not the case here: we are experiencing the compulsion to build a comprehensively new training system based on a new kind of perception, a new way of thinking which is still rather unusual in Hungarian mind-set. The Centre for Digital Pedagogy and Methodology (*Digitális Pedagógia Módszertani Központ*)[195] suggests in its Proposal[196] to start examining the possibilities and conditions to build a to be introduced ILA-system. It also emphasizes that beneficiaries/workers must be given a real choice in the system, inter alia, regarding trainings and training institutions.[197] In our view, the tentative institutionalization of ILA in Hungary could not be complete without associated labour law reforms (see above about the right to training, study leaves etc.).

[193] For instance: Á. SZALAI, *Az egyéni képzési számlák rendszere Magyarországon*. Budapest, 2005, https://konyvtar.nive.hu/files/09szalai.pdf E. UDVARDI-LAKOS, *A kompetencia-kártya, avagy paradigmaváltás a gyakorlatban,* Budapest, 2005, https://www.nive.hu/Downloads/Szakkepzesi_dokumentumok/Szakkepzesi_kutatasok/A_kompetencia_kartya_avagy_paradigmavaltas_a_gyakorlatban.pdf (Downloaded: 20.10.2021).

[194] I. RÁCZ, *Az élethosszig tartó tanulás finanszírozásának innovatív megoldásai, különös tekintettel az egyéni tanulási folyószámlák gondolatára*, in A. KUN (ed.), *Az egész életen át tartó tanulás (lifelong learning) jogi keretei a munka világában, különös tekintettel a munkaviszonyra*. Patrocinium, Budapest, 2017, pp. 56-76.

[195] https://dpmk.hu/ (Downloaded: 25.11.2021).

[196] Digitális Pedagógia Módszertani Központ: A magyar digitális munkaerőpiac helyzetelemzésének, valamint a digitális és hagyományos munkaerőpiac nyomon követésére és előrejelzésére szolgáló rendszer koncepciójának kidolgozása. Budapest, 2018. https://digitalisjoletprogram.hu/files/0f/9b/0f9b9b13a62d7eda0c8ab2b198a35cf1.pdf (Downloaded: 01.11.2021).

[197] *Ibid.* 8.

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5.4. *Occupational Transitions*

In order to illustrate Hungarian citizens' attitude towards job automation, one could refer to a Eurobarometer survey from 2017.[198] According to this survey, 38% of Hungarians have a negative view of robots and AI. Thus, Industry 4.0 is a social challenge in Hungary. Obviously, this attitude has softened in the past few years. According to a *McKinsey & Company Report*[199], automation will have a substantive effect on one million workplaces by 2030.[200] As the main findings notes: "… the potential for automated activities is highest in middle-income jobs that involve a higher share of predictable and repetitive tasks. Many activities in occupations requiring little formal education may also be automated depending on the technologies available and cost incentives".[201]

McKinsey Global Institute describes two scenarios for the adaption of new automation technologies in the Report: an early and a late scenario.[202] According to the "early scenario", 47% of current work activities will be automated by 2030 (it is approx. two million people's work). The "late scenario" assumes only 1% adaption by 2030 (it is approx. 44,000 people's work). The average of these two scenarios can be considered as a 'midpoint' which is about 24%. The HCCI calculated that one million people (28% of the Hungarian labour force) are employed at workplaces where machines can only take auxiliary roles, and there is only a smaller part of the tasks that could be automated.[203]

PwC's report on "How will AI impact the Hungarian labour market?" highlights that Hungary has an industrial economy[204] thus craft workers are the most affected by automation.[205] PwC's report has identified three waves of automation in the next decades: algorithm (2020s), augmentation (2025-2030), and autonomy wave (2030s). As the main findings state, Hungary will mostly hit by AI effects in the autonomy wave, in 2030s.[206]

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[198] European Commission: Special Eurobarometer 460 – Attitudes towards the impact of digitisation and automation on daily life, May 2017. https://ec.europa.eu/jrc/communities/sites/jrccties/files/ebs_460_en.pdf (Downloaded: 25.11.2021.).

[199] D. Fine, A. Havas, S. Hieronimus, L. Jánoskuti, A. Kadocsa, P. Puskás, *Transforming our jobs: Automation in Hungary,* McKinsey&Company, May 2018, https://www.mckinsey.com/featured-insights/europe/transforming-our-jobs-automation-in-hungary# (Downloaded: 01.11.2021).

[200] *Ibid.* 52.

[201] *Ibid.* 8.

[202] *Ibid.* 50.

[203] HCCI, *Opportunities of job automation in Hungary*, in *Monthly Bulletin of Economic Trends*, September 2019, 2.

[204] Which means that major impact is expected in the manufacturing, transportation and construction industries.

[205] PwC, *How will AI impact the Hungarian labour market*?, 2019, p. 15. https://www.pwc.com/hu/en/publications/assets/How-will-AI-impact-the-Hungarian-labour-market.pdf (Downloaded: 01.11.2021).

[206] *Ibid.* 4.

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It is important to recognize necessary (new) competences in order to mitigate the negative effects of occupational transition. As *Pató* and *Abonyi* determine "the swap of competencies and their development processes have begun".[207] As they point out in their research, some of the most expected competences are general learning ability; ability to work together and to work in groups; and flexibility. Besides the afore-mentioned competencies, some others obviously come into view, including digital competences, openness to change, problem-solving, richness of ideas and systematic approach. The transformation of education and training is a key to achieve these requirements.

5.5. *Some Other Labour Law-Related Aspects of Industry 4.0*

Apart from the above already discussed labour law-related aspects of Industry 4.0 (see: information and consultation, training), a number of other labour law issues can be noticed that are especially impacted by industrial and managerial changes propelled by Industry 4.0. In this regard, certain adaptation of the regulatory ideas and methods labour law seems to be unavoidable for the future.

A) First, in the broad context of Industry 4.0, activities involving high psychological stress represent an ever-increasing proportion of work-related risks and accidents at work, and absence from work due to psychosocial factors might also occur more frequently. Such novel – mostly mental – work-related risks mostly result from the enhanced use of modern technologies (including robots and cobots for example) and from intensified interaction between workers and digitalised production systems etc. Within the existing infrastructure of Hungarian labour law, employer's liability for damages reflects a dominant civil law approach.[208] This means that liability is court-based, i.e., it presupposes litigation (with typically cumbersome, protracted and rather volatile justification procedure). Thus, compensation is not at all automatic, and usually not efficient. In sum, this civil law inclined, court-based system of liability proves to be dysfunctional in dealing with mass (structural) enforcement of liability as well as with new risks and challenges. Experts more or less agree that a brand new, more automatic, more predictable, more prevention-oriented, more stable, more effective, more complex, more risk-based compensation system would be necessary in

[207] B. PATÓ, J. ABONYI, *A negyedik ipari forradalom hatása a kompetenciacserélődésre* in *Vezetéstudomány*, 1, 52, 2021, pp. 56-70.

[208] See art. 166, HLC

(1) The employer shall be liable to provide compensation for damages to the employee caused in connection with the employment relationship.

(2) The employer shall be relieved of liability if able to prove:

a) that the damage occurred in consequence of unforeseen circumstances beyond his control, and there had been no reasonable cause to take action for preventing or mitigating the damage; or

b) that the damage was caused solely by the unavoidable conduct of the aggrieved party.

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Hungary for the sake of better institutionalisation of employer's liability for damages.[209] In this regard, for example, the National Occupational Safety and Health Policy for the period of 2016-2022[210] foresees the formation of a concept for separate accident insurance branch within the scope of social security, which could form the basis of an effective employer incentive system for the development of working conditions to reduce the occurrence of work-related accidents and occupational diseases. It must be noted that this is not the first proposal of this kind in Hungary over the last three decades,[211] however, these progressive reform ideas have not resulted in concrete legislative actions so far. Another alternative would be to render it compulsory for employers to take out liability insurance for the benefit of the employee.[212] Whichever insurance model (either the social security-based, or the mandatory private liability insurance-based) would be endorsed in the future, the accident insurance should embody a complex, comprehensive tool for the prevention of accidents and occupational diseases, the improvement of working conditions (based on systematic and targeted risk evaluation), the financing of complex rehabilitation and reintegration measures, the improvement of safety-related education and the support to employers' prevention-conscious health and safety activities.

B) Second, the escalating automated, algorithmic, AI (artificial intelligence)-driven, depersonalized transformation of the managerial prerogative, including the employers' right to issue instructions, poses several challenges to labour law (beyond the implicit data-protection and GDPR-related concerns not dealt with here). For instance, question arises, how algorithmic, AI-based, depersonalized instructions can take into consideration those labour law principles ("open norms"), which traditionally presume mindful human assessment. For instance, Hungarian labour law requires that employers' instruction, among others, must comply with such basic principles of labour law as non-discrimination, good faith and fair dealing, the prohibition of the "abuse of rights" etc. (see Art. 6, 7, 12 HLC). Furthermore, employers shall take into account the interests of employees under the prin-

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[209] A. KUN, *Work accident compensation in Hungarian labour law – liability rules and compensation*, in *Magyar Munkajog /Hungarian Labour Law E-Folyóirat*, 1, 2014, pp. 87-104, http://hllj.hu/letolt/2014_1_a/04.pdf (Downloaded: 01.11.2021.).

[210] https://ngmszakmaiteruletek.kormany.hu/download/f/01/b1000/National%20Occupational%20Safety%20and%20Health%20Policy%202016-2022.pdf (Downloaded: 25.11.2021).

[211] See also: The decision of the Parliament number 20/2001 on the countrywide program of work safety. One of the most important goals of this program was to make the employers economically interested in work safety and this goal was thought to be achieved by establishing an independent branch of work accident insurance separating this scheme from other insurance branches and using differentiated contribution-rates proportionate to the risks of the given job and to the (potential) accident-record of the employer (experience rating). The 2084/2002 (III.25) Government Decision spelled out the details of short-term duties in order to establish the separate accident insurance.

[212] Gy. LŐRINCZ, *Kommentár a munka törvénykönyvéről szóló 2032. évi I. törvényhez: Munkajogi sci-fi*, in *Munkajog,* 4, 2018, pp. 1-16.

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ciple of "equitable assessment"[213]; where the mode of performance is defined by unilateral act, it shall be done so as not to cause unreasonable disadvantage to the employee affected (Art. 6 (3) HLC). Such broad standards/"open norms" are hard (if not impossible) to be channeled into algorithmic decision-making. In brief, labour law needs to work out meaningful substantial and procedural guarantees for the use of algorithmic methods of managerial instruction and control.

C) Third, within the context of working time regulation, the idea of "time sovereignty" seems to gain increasing ground, partly driven by Industry 4.0-related developments (for instance, because the growing need for more creative jobs to protect workers from being replaced by new technologies and automation). The concept of "time sovereignty", for instance, is reflected in the key recommendations outlined in the report of the ILO's Global Commission on the Future of Work published in January 2019. The report's "human-centred approach", among others, stresses that workers need greater autonomy over their working time, while meeting enterprise needs.[214] The attitude of Hungarian labour law seems to be misdirected and immature in this regard. For example, in December 2018, the Hungarian Parliament adopted the modification of certain rules on scheduling working time specified by the HLC. The rules entered into force on 1 January 2019. The modifications have been branded – rather unduly – as "slave law" by critics and are still highly debated. Among others, in brief, the amendment raises the yearly maximum of overtime to 400 hours from 250. More precisely, employers can demand overtime of up to 250 hours in a calendar year. If a collective bargaining agreement is in force at the employer, then the parties can agree in the collective agreement that a maximum 300 hours of overtime can be ordered in a calendar year. According to the amendment, if the employee and the employer agree in writing, an additional 150 hours of overtime can be ordered by the employer beyond the 250 hours cap. If a collective bargaining agreement is in force at the employer, then the employee and the employer can agree in writing that a maximum extra 100 hours of overtime can be ordered in addition to the 300 hours cap. The HLC calls this "voluntarily undertaken overtime".[215] This legal institution seems to be an apparent misuse of the above-described concept of "time sovereignty", and it is far from genuinely expanding employees' choice to create a balance between work and private life. It does not require in-depth explanation that within the context of an employment relationship the employee's freely given consent is rather illusory due to the imbalance of power.[216] In practice, employees might be forced to sign such

[213] A. Kun, *"How to Operationalize Open Norms in Hard and Soft Laws: Reflections Based on Two Distinct Regulatory Examples"*, in *International Journal of Comparative Labour Law and Industrial Relations*, 1, 34, 2018, pp. 23-51.

[214] Work for a brighter future – Global Commission on the Future of Work, International Labour Office – Geneva: ILO, 2019.

[215] See art. 109, sec. (2) and art.135, sec. (3), HLC.

[216] Z. Tarján, K. Laribi, *New controversial rules on overtime and reference period in Hungary*, in *Bird & Bird*, 1, 2019, https://www.twobirds.com/en/news/articles/2019/hungary/new-controversial-rules-on-overtime-and-reference-period-in-hungary (Downloaded: 01.11.2021).

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agreements. Although employees are entitled to terminate such agreements on increased overtime by the end of a calendar year and the HLC also stipulates that the termination of such agreement by the employee cannot result in the termination of employment by the employer, these guarantees seem to be shallow. In sum, instead of the above described – rather flawed – concept of "voluntarily undertaken overtime", genuine and innovative measures would be needed in Hungarian labour law as well, in order to meaningfully support the concept of "time sovereignty", among others with respect to Industry 4.0 developments. For instance, some experts argue for the potential, justified introduction of the legal institution of some kind of a "partially flexible work pattern" between the traditional dual categorization of the HLC (i.e., fixed, and flexible work schedules).[217]

6. *Summary, Conclusion*

In general, unionisation is low and unions' bargaining power is generally poor, while collective bargaining is overly decentralised in Hungary (and the coverage of – especially sectoral/industry – agreements is very limited). It is not a surprise that if social dialogue, collective bargaining is weak in general, it is even weaker (almost non-existent) in relation to new industrial challenges (such as digitalisation, Industry 4.0 etc.), and new forms of work (including platform-work, remote work). Similarly, the European Framework Agreement on Digitalisation (June 2020)[218] is not on the agenda (yet), and social partners don't use it as a tool to influence related public policies.

Various digitalisation-related governmental policies, strategies (as described in this paper) are existent, but they are often not very specific, they lack a strong labour law profile, and they have been formulated without the meaningful and structured involvement of social partners.

As regards platform work, it is important to note that the underlying basic Hungarian labour law concepts (i.e., "who is an employee") are formalistic in the sense that they are based on the standard 'employment contract', offering not much room for extensive, inclusive, creative interpretation (e. g. involving platform workers, or other non-standard contractual practices). A re-definition of the notion of the employment relationship might be desirable in order to apply a less formalistic, more purposive concept (focusing more on the economic dependency aspect). In Hungary, platform work as such is neither defined nor regulated; related case-law is not yet developed. Platform workers can bear various legal statuses (including so-called, unique 'simplified employee' status) and can choose various forms of taxation (for instance, if they are self-employed, they can apply the so-called preferential "KATA"-scheme, designed for micro-entrepreneurs).

[217] Gy. LŐRINCZ, op. cit. pp. 1-16.

[218] BusinessEurope, SMEunited, CEEP and the ETUC (and the liaison committee EUROCADRES/ CEC).

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The most widespread form of on-demand platform work is self-employment, not rarely bogus self-employment. The related labour law policy is not yet formulated; policymakers seem to wait for the guiding steps of the EU in this regard. In sum, it seems that the intense fragmentation of contractual options and the variability of different tax measures can have the potential to distort labour-law rationales. Therefore, it can be perceived that the potential equalization of the financial burden of various non-standard forms of work would be able to contribute to more transparent and fair employment practices (both in general and in the field of platform work).

When it comes to “remote work”, as a result of the pandemic, working from home has become the “new standard” for many. Accordingly, statutory regulation of “remote work” has become a hot topic during the pandemic. The HLC recognizes telework since 2004, but its regulation (i.e., the Hungarian legislative transposition of the European Framework Agreement on Telework) has proved to be rather flawed, ineffective, superficial, and to some extent, even dysfunctional. Thus, practice has invented various other “hybrid” forms of “remote work”, such as “home office”, causing intense debates both in legal practice and scholarship. After the Decree-based, "temporary", rather chaotic rules during the pandemic, the Parliament regulated the issues of working from home in December 2021. Based on the new law, the current (so far temporary) regulations live on in the HLC after the end of the state of emergency, with effect from 1st June 2022. Flexibilization and simplification are the “buzzwords” of this reform.

Ad regards Industry 4.0, after sketching the related policies and (rather embryonic) social dialogue developments, this paper analysed the potential adaptability of Hungarian labour law in the context of Industry 4.0., and came to the conclusion that Hungarian labour law is not very well prepared for the upcoming new challenges. In the course of our analysis, specific attention was devoted to some highly relevant aspects of labour law in this regard, including new challenges of information and consultation rights; employer’s liability for damages (with relation to new mental risks); algorithmic, AI (artificial intelligence)-driven, depersonalized transformation of the managerial prerogative, including the employers’ right to issue instructions; working time regulation (and the idea of “time sovereignty”) etc. Probably most importantly in the context of Industry 4.0, the topic of training and education was investigated both from a policy and labour law perspective, pointing out that a comprehensive and forward-looking reform of Hungarian labour law (in a broad sense) seems to be a reasonable and timely expectation in terms of training and lifelong learning (including upskilling, reskilling), especially with a view to the growing importance of the individual right to training of employees (in the context of Industry 4.0) and to the possible introduction of an Individual Learning Account, or “career account” scheme in Hungary.

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ITALY

Ilaria Purificato [1]

SUMMARY: 1. Overview of Domestic Industrial Relations System. – 1.1. Collective Bargaining. – 1.2. Workplace Representation. – 2. General Policy Approach to Digitalisation and Work. – 2.1. Web Platform Economy and Industry 4.0 in Italy: the First Collective Bargaining Experience and Forms of Legislations. – 2.2. Telework and Smart Working in Italian Legislation and Collective Bargaining. – 3. Platform Work. – 3.1. Extent and Relevance of the Phenomenon. – 3.2. Legislative Responses. – 3.3. The Main Jurisprudential Interventions. – 3.4. Industrial Relations Practices. – 3.5. The Relationship with Recent EU Interventions: Directive 2019/1152. – 3.6. Covid-19 Impact on Platform Work. – 4. Remote Work. – 4.1. Telework. – 4.2. The Italian Way to Smart Working between Law and Collective Bargaining. – 4.3. Law No. 81/2017 on Agile Work. – 4.4. Agile Work During the Covid-19 Pandemic. – 4.5. Agile Work in Collective Bargaining: Anticipating and Implementing the Law. – 5. Workplace Automation and Social Partners Strategies. – 5.1. Industrial Relations and Technological Change. – 5.2. Social Partners Strategies. – 5.3. Collective Agreements and Digitalization. – 5.3.1. Some Case Studies. – 5.3.2. Industry 4.0 and Industrial Actions: the Case Of Amazon. – 5.4. "Contratto di Espansione" and "Fondo Nuove Competenze". – 6. Conclusion.

1. *Overview of Domestic Industrial Relations System*

Article 39 of Italian Constitution [2] enshrines the right to freedom of association, which has to be understood as the right to form and to join a trade union. This provision safeguards not only the positive freedom of association, but also the negative freedom to not join any trade union, as evidenced by the article 15 of

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The chapter represents a synthesis of the four national reports realised within the framework of the iRel project: E. ALES, I. SENATORI, D. DAZZI, I. PURIFICATO, C. FAVRETTO, C. GAGLIONE, M. TUFO, L. BATTISTA, E. MENEGATTI, *Construction of the State of the Art*; I. PURIFICATO, A. SCELSI, *Representing and Regulating Platform Work: Emerging Problems and Possible Solutions;* I. SENATORI, C. SPINELLI, *ICT-enhanced Remote and Mobile Work*; L. BATTISTA, D. DAZZI, O. RYMKEVICH, *Industry 4.0. and Trade Unions in Italy*. The reports are available at: https://irel.fmb.unimore.it/about-the-project/.

[2] Art. 39, para. 1, "Trade unions may be freely established".

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workers' statute, which forbids to discriminate workers for their trade Union activity, including the choice to not join any union.

From a subjective point of view, both workers and employers have the right to freedom of association and the concept is so wide that it includes both the formation of formal and informal coalitions.

In Italy, for the workers' side, the system of collective interest representation and collective bargaining are organized by sector. Indeed, there are the sectoral trade union federations reunited into cross-sectoral confederations. The main ones are: CGIL ("Confederazione Generale Italiana del Lavoro"), CISL ("Confederazione Italiana Sindacati Lavoratori") and UIL ("Unione Italiana Lavoratori"). In the relationship between the federations and the trade union confederations one can observe periods of coordination and unitary action towards the employers' associations and the government and, on the other hand, periods of disagreement and fragmentation.

On the employers' side, in response to the workers' associations, representative bodies have been created, emulating, in substance, the schemes and structures shaped by the latter.

Another source of the Italian industrial relations system is the Workers' Statute, which, among other rules, contains those regulating the establishment, and the functions of special representative *bodies* of workers in the company.

With the only exception of the public sector, law does not regulate collective agreements and their effects. In fact, it's gotten up to the autonomy of the social partners the regulation of many aspects that, as result, has been translated in the adoption of intersectoral agreements. These ones have been signed by the main labour confederations with "Confindustria" on 10th January 2014 and with "Confcommercio" on 26th November 2015.

1.1. *Collective Bargaining*

There is not a specific regulation of collective bargaining and, as consequence, the general rules of civil law on contracts are applied to the phase of negotiation, signature and implementation of collective agreements.

The heart of the bargaining process is the mutual recognition of the parts and the system of representation in civil law. Thus, collective agreements should find application only for workers affiliated to those trade unions which have signed the collective agreement. Nonetheless, thanks to the case law, the application of collective agreements is extended to the entire workforce of the bargaining unit.

In Italy, the system of collective bargaining has pluralistic nature. It means that for each sector can co-exist several unions as many as collective agreements. This system raises the risk of an excessive proliferation of collective agreements; in order to avoid this risk, the lawmaker and the social partners have decided to apply the collective agreement dependent on the representativeness of signatory parties.

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The Italian system of collective bargaining is also multi-levelled. Intersectoral agreements deal with general issues of immediate concern to the social partners (for example, collective bargaining procedures, representativeness); sectoral and decentralised ones (which in turn may relate to the local or company dimension) have as point the regulatory function of employment relationships.

In a such pattern, sectoral collective agreements traditionally define the main source of regulation, while the decentralised agreement has an ancillary function, even if, in Italy, there is ongoing a decentralisation process of collective bargaining.

Intersectoral agreements give sectoral agreement the role of defining the economic and regulatory terms and conditions that must be applied to workers throughout the country; then, decentralised agreements operate under the conditions of the former. The sectoral bargaining has also the possibility of delegating the role of determining economic and regulatory conditions to decentralised bargaining. In any case, working time, work organization and issues related to the performance of work are matter that under certain conditions can be regulated by company agreements deviating from sectoral ones.

1.2. *Workplace Representation*

In Italy, the Law no. 300/1970 (Workers' Statute) regulates functioning and functions of employee representatives in the workplace.

According to the art. 19 of the abovementioned law workplace representation bodies, called "Rappresentanze Sindacali Aziendali" (RSA), can be established only with certain requirements. Firstly, the unit must have more than 15 employees; secondly, the criterion of representativeness must be respected: this requires that, in order to form a RSA the union must have signed the collective agreement applied in the company. With regard to the latter requirement, in 2013, the Supreme Court intervened with a judgment on the "Fiat case"[3] establishing that taking part in the negotiations of the collective agreement applied in the company is sufficient requirement to be entitled to create a RSA.

According to the law, the RSA have a set of prerogatives, like the right to call for an assembly at the workplace or to call for a consultation of employees.

Alternative to the RSA in the system of workplace representation are the so-called "Rappresentanze Sindacali Unitarie" (RSU), which are formed following the direct election of workers. As a result, a union participating in the electoral process agrees not to constitute RSA. The RSU that are formed in the company must have the same prerogatives recognized by law to the RSA.

Workers' representatives have a role in the procedure laid down in order to guarantee the employees' involvement. Legislative Decree no. 25/2007 introduces the right to information and consultation, on the basis of which in companies

[3] C. Cost. No. 231/2013.

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with more than 50 employees they enjoy these rights. The form of participation provided in the Legislative Decree no. 25/2007 is “weak” and it concerns matters as economic situation of the company, the employment forecasts and the decisions capable of giving rise to relevant changes to the organization of work and to the employment contracts.

On the other hand, “strong” forms of participation, typical of industrial relations systems of other country (like Germany) can only be found in certain corporate contexts.

2. *General Policy Approach to Digitalisation and Work*

The Italian public debate on digitization is focused mainly on Industry 4.0 and on the platform economy, also called “gig-economy”.

Public attention on issues related to Industry 4.0 was turned on in 2017 when the “Italy’s Plan - Industry 4.0” [4] was published. It was precisely the theme of Industry 4.0 that caught the attention of the social partners. Only since 2018, social partners seem to leave their adaptive attitude to the positions taken by the government in order to take a more active position in the government process “of the changes imposed by digitalization”, by not limiting to manage its impact on the social sphere. In particular, the CGIL highlighted the need to contract the algorithm, leaving behind an attitude of acceptance of technological determinism.

In general, in order to better understand the digital transformation underway, the main trade union have launched study activities and created opportunities for discussion and debate on the subject. The CGIL has also created an online platform called “Idea Diffusa” in which to collect studies and opinions of the current phenomenon [5].

Regarding to the gig-economy, the attention of the media and public opinion has focused exclusively on workers who deliver food at home like riders, neglecting the existence of other categories of workers of the digital platforms.

2.1. *Web Platform Economy and Industry 4.0 in Italy: the First Collective Bargaining Experience and Forms of Legislations*

Work on Digital Platform

As will be discussed in more detail in section 3, the legislative measures that are recorded in the field of work on digital platform are attributable to the amendments made to Legislative Decree No. 81/2015 from the Law Decree No. 101/2019, converted by Law No. 128/2019. The interventions have made chang-

[4] http://www.sviluppoeconomico.gov.it/index.php/it/industria40.

[5] For more information *see* Section 5.4 of this Chapter.

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es to the text of Article 2 of the cited legislative decree, clarifying that the protection regime provided for employees also applies to "Collaborative relationships that have the form of mainly personal, ongoing work, the execution of which is organised by the client", even where this is identified with a digital platform.

In addition, Chapter V-bis has been introduced. It is specifically dedicated to the definition of minimum levels of protection for workers of digital platforms which, in practice, are identified in those who "carry out activities of delivery of goods on behalf of others, in the urban area and with the help of cycles or motor vehicles referred to in Article 47, paragraph 2, letter a), of the Highway Code, referred to in Legislative Decree 30th April 1992, n. 285, through platforms including digital" [6]. In essence, therefore, the specific protection regime would seem to cover only workers engaged in the delivery of food and other goods at home, while excluding a significant part of the workers on the digital platform.

Regarding to the figure of riders, a series of interventions have been recorded by the Courts on requests for protection raised by the same riders, sometimes also supported by trade unions.

Finally, there have been several experiences, mainly at local level, of giving digital platform workers a set of minimum rights in response to the initial lack of legislative action to protect them. In particular, to inaugurate this trend was the "Charter of Fundamental Rights for digital workers" signed in Bologna, which has seen as promoter also the local administration.

As regards collective bargaining, as will be discussed below, the cases in which the parties have extended the application of the existing sectoral bargaining to the figure of the riders have been joined by those who have registered the conclusion of *ad hoc* agreements.

Industry 4.0

As will be discussed in more detail in section 5, in the field of Industry 4.0, the legislative interventions recorded at national level are substantiated in the "Industry 4.0" National Plan published in 2017 and in the subsequent budget laws that provided for incentives and special economic treatments for companies in order to increase investment in new and digital technology for increasing their innovation and competitiveness.

The measures contained in the Plan can be divided into ones aimed at promoting greater levels of innovation and other ones measures at updating workers' skills.

All the measures are as follows:

– Hyper and super depreciation
– Bank loans to invest in new capital goods (Nuova Sabatini)
– Tax credit for R&D
– Patent box

[6] Art. 47-bis of Legislative Decree no. 81/2015.

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– Innovative start ups and SMEs
– Guarantee Fund for SMEs
– Development contracts
– Innovation agreements
– Tax credit for Training 4.0
– Fund for intangible capital, competitiveness and productivity

In order to promote training in digital skills, the “Industry 4.0” National Plan also introduced new organisms: the Digital Innovation Hubs, to be disseminated locally with the support of employers' associations, and centers of expertise to strengthen relations between companies, universities and research institutes.

The National Plan also identifies 9 technological drivers:

1. Advanced production solutions. Autonomous and cooperative industrial robots, integrated sensors.

2. Additive manufacturing. 3D printing, especially for spare parts and prototypes. Decentralized 3D structures to reduce transport distances and inventory.

3. Augmented reality. Augmented reality for maintenance and logistics and all types of standard operating procedures. Display of support information, e.g. through glasses;

4. Simulation. Optimization based on real-time data from intelligent systems;

5. Horizontal/vertical integration. Data integration between companies based on data transfer rules;

6. Industrial Internet. Network of machines and products. Multidirectional communication between networked objects;

7. Cloud. Manage and store huge volumes of data in open systems. Analysis of national initiatives for industrial digitalization: Italy National Plan Industry 4.0;

8. Cyber security. Ensure data protection and secure access to online platforms;

9. Big data and analysis. Comprehensive monitoring and evaluation of available data (*e.g.* from ERP, SCM, MES, CRM and machine data). Support and optimization of decision making in real time.

With the “Crescita” Law Decree (Law Decree no. 58/2019) was introduced the “contratto di espansione”, reserved for companies with more than 1000 employees who invest in reorganization and reindustrialization programs to manage redundancies, reductions in working hours and retirement.

Regarding collective bargaining, it has been recorded that in national and decentralised agreement the term “Industry 4.0” is used to describe the challenges posed by technological innovation and digitisation in general or to refer to the incentives and tax breaks provided for in the National Industry 4.0 Plan.

Nevertheless, there are good examples of reference to industry 4.0 where reference is made to aspects related to training, cyber security and other aspects related to work organisation. These models are mainly located in Emilia-Romagna and, in particular, in experiences influenced by German industrial relations models (Ducati and Lamborghini companies, for example).

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2.2. *Telework and Smart Working in Italian Legislation and Collective Bargaining*

In Italy, the work performed at distance from the employer's premises, thanks to the use of information and communication technologies, has started to spread since the 1990s in the forms of telework, and more recently in the form of smart working.

Telework has been tested as a useful tool to promote work-life reconciliation, to cope with business crises and, at the same time, to increase the productivity of enterprises as well as a vehicle for social inclusion.

Nowadays, in private sector there is not an organic discipline of matter in the private sector, let alone a clear definition of telework. Indeed, there are several legislative sources in which reference is made to this institution, including the Jobs Act (Art. 1 paragraph 9 lett. D) of Law no. 183/2015 implemented with art. 23 of legislative decree no. 80/2015) which, in order to promote the dissemination of the institution in question as a tool to respond to the needs of work-life reconciliation on the basis of the provisions of collective agreements, introduces productivity bonus.

Other specific references to telework are contained in other regulatory sources, such as those governing working time, the privacy aspects and, again, those relating to health and safety.

Otherwise, in the public sector there is an organic discipline of telework in DPR no. 70/1999. However, for a number of reasons, partly linked to the complexity of the Italian bureaucratic system and the lack of financial resources, and partly linked to the low skills of public workers in the technologies needed to activate it, telework has not found much diffusion in Public Administrations.

Moving on to smart working, or "agile work", in 2017 was issued the Law no. 81/2017 that regulates in an organic way the agile work in both the private and public sectors (as well as being dedicated to the regulation of aspects of self-employment).

On the functional level, agile work is introduced as a tool for work-life balance, but also as a means to increase the competitiveness of the company. The main feature of this particular way of performing work is to be found in an agreement between employer and employee, called "agile work pact" (not a substitute for the employment contract), which determine, in concrete terms, the modalities of carrying out the activity outside the company's premises, the way of exercise of the employer prerogatives as well as the tools that are used by the agile workers.

Collective bargaining takes into account both telework and agile work, in most cases treating them as two different institutes, in a few cases, considering smart working as a particular form of telework[7].

Regarding telework, collective bargaining regulates the institution in both private and public sectors. In the first case, a pattern for the collective bargaining is

[7] Please refer to section 4.3 for more details.

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the Intersectoral Agreement of 9 June 2004, which implemented the forecasts contained in the European Framework Agreement on telework of 16th July 2002.

While initially the agreements on telework, exclusively at the company level, also had the function of stemming corporate crises, at a later time ended up prevailing their function as a tool of work-life balance.

There is also plenty of collective bargaining on smart working[8]. Before the legislative intervention introducing an *ad hoc* discipline for this type of work at distance, collective agreements played a fundamental role in the introduction and regulation of pioneering forms of agile work; this is not only to increase flexibility and, in general, to introduce an organizational change within the company, but also to introduce a logic based on the result and responsibility of the employee.

Some sectors have been particularly supportive of the introduction of smart working, as banking, insurance, food and those related to the processing of metals, energy and oil.

3. *Platform Work*

3.1. *Extent and Relevance of the Phenomenon*

The actual spread of the phenomenon of work on a digital platform across the country is not easy to estimate.

The non-homogeneity and high level of informality of this sector and the discontinuity in the performances of services by workers do not allow for the collection of suitable data for the compilation of reliable and final statistics that can account for the spread of the phenomenon in its complexity. Nevertheless, estimates have been made for this purpose.

In January 2022, INAPP (National Institute for the Analysis of Public Policies) published data survey about the spread of the phenomenon throughout the country and information relevant to the identification of the social type of digital platform workers[9].

[8] Actually, some collective agreements use the expression “smartworking” while others “agile work”.

[9] https://www.inapp.org/it/inapp-comunica/infografiche/i-dati-dell’indagine-inapp-plus-sui-lavoratori-delle-piattaforme-italia. Data from the previous INAPP survey in 2019 showed that out of the total Italian population aged between the ages of 18 and 74 %, 5,95% are platform worker. Of this percentage, 0.49% were gig workers, who carry out activities both online and, to a greater extent, offline and claim to be linked to the platform mostly by informal or casual work agreements. As for the profile of the platform workers, data revealed that they were generally made up more of women than men, mainly between the ages of 40-49 and 50-64, and have a medium-high level of education (high school diploma) and were either already engaged in subordinate employment or, on the contrary, unemployed. In addition, for the 30% of platform workers the income earned from performing these activities was essential to meet their basic needs, while for 20% this income was important but not essential.

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Available data show that in Italy there are 570.521 workers on digital platform, of which 7 out of 10 are between the ages of 30 and 49.

For 48,1 percent of interviewed workers, digital platform work is the main activity and for 8 out of 10 it is an essential/important source of income.

The following sections focuses on those form of platform work defined "on-demand via app" by part of scholars, and in particular on the figure of the "rider", mainly on the basis of the more recent legislative intervention which regulates the riders' activities and of their organizational model which would potentially be adequate to give rise to real form of worker representations.

3.2. *Legislative Responses*

Law Decree No. 101/2019 Converted into Law no. 128/2019

Law no. 128 of 2019 converted the Decree Law no. 101 of 2019. Through this legislative act the government has amended art. 2 of Legislative Decree. no. 81/2015 and has integrated the provisions contained therein by providing minimum levels of protection for all "non-subordinate workers who carry out the activity of delivery of goods on behalf of others in urban areas and with the help of velocipedes or motor vehicles ... through platforms, including digital platforms" [10].

With reference to the first line of action, the new text of art. 2 of Legislative Decree no. 81/2015 establishes that the rules governing subordinate work must also be considered applicable to collaborative relationships that take the form of mainly (while, prior to the amendment, they were "exclusively") personal, ongoing work and whose execution methods are organized by the client (in this part, the reference "to the time and place of work" is no longer valid), even if the procedures for carrying out the service are organized through platforms, including digital ones.

As stated in the introductory part of this paragraph, Law no. 128/2019 introduced a minimum level of discipline for a certain category of digital platform workers. In particular, it enhanced Legislative Decree no. 81/2015 with the provisions referred to in Chapter V-bis, which are addressed to those workers who do not fall within the scope of art. 2 paragraph 1 of the above-mentioned Legislative Decree.

The first rule in the article is Art. 47-bis, in which, in addition to identifying the subjective scope of application of the legislation, a definition of digital work platform is also provided as "computer programs and procedures used by the client that are instrumental to the activities of delivering goods, fixing the fee and determining the manner of performance, regardless of the place of establishment". By this way, it is excluded that for them the equation "digital platform = neutral marketplaces intended for the encounter between supply and demand of work" can be considered to be verified.

[10] Art. 47- bis Legislative Decree no. 81/2015.

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The following articles are worth analysing:

– Art. 47-ter, which states that individual employment agreements must have a written form and that workers must receive all information necessary for the protection of their rights, interests and safety;

– Art. 47-quater, which is dedicated to the regulation of remuneration. The law attributes to the collective agreements entered into by the comparatively most representative trade unions and employers' organizations on a national level the task of defining within the collective agreement the overall remuneration due to the worker, thereby authorizing collective bargaining to carry out a mixed calculation which, in other words, is based on both hourly wage and piecework.

Otherwise, in the absence of a collective agreement concluded in compliance with the aforementioned conditions, the remuneration cannot be calculated according to piecework, but must be calculated on an hourly basis by taking into account the minimum wage established by collective agreements of similar or equivalent sectors, signed by the comparatively most representative trade unions and employers' organizations on a national level. Finally, the law states that workers must be guaranteed a supplementary allowance of no less than 10% for work carried out at night, during holidays or in unfavourable weather conditions;

– Art. 47-quinquies, on the basis of which the protection provided for employees in matters of discrimination, and protection of freedom and dignity also apply to platform workers that fall within the subjective scope of the legislation;

– Art. 47-septies, which extends the compulsory insurance coverage against accidents at work and occupational diseases to the employment relationship of riders, specifying that the client is required to comply with the measures relating to the protection of health and safety in the workplace referred to in Legislative Decree no. 81/2008.

Article 2, Paragraph 2, Legislative Decree No. 81/2015

Paragraph 2, lett. a) of Article 2 of Legislative Decree no. 81/2015 authorises collective agreement signed by the most comparatively representative trade union associations at national level to derogate from the legal provision referred to in paragraph 1 since they establish "specific disciplines concerning the economic and regulatory treatment, due to the particular production and organizational needs and aspects of the related sector".

The part in which the regulation specifies which collective entities are authorised to enter into agreements of a derogatory nature aims to prevent the creation of the conditions for internal dumping [11] and mechanisms of unfair competition among companies [12].

[11] V. Leccese, *Il diritto sindacale al tempo della crisi. Intervento eteronomo e profili di legittimità costituzionale*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2012, n. 136, pp. 479 ff.

[12] M. Barbieri, *Un accordo senza respiro*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2013, n. 138, pp. 277 ff.

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The experience gained at the Italian level, in various sectors, shows how this possibility can represent a solution capable of reconciling the needs of safeguarding employment levels and cost sustainability for businesses.

The Relationship Between Law No. 128/2019 and Article 2 of Legislative Decree No. 81/2015

The discipline introduced by Law no. 128/2019 provides a nucleus of protection for self-employed riders. This does not exclude that they can take legal action to ask for the recognition of a relationship of a different nature with the digital platform, that is, employment pursuant to Art. 2094 of the Italian Civil Code or hetero-organized work where the criteria referred to in paragraph 1 of Art. 2 of Legislative Decree no. 81/2015 are compliant, with the corresponding application of the regulations on the employment relationship.

It is also necessary to consider the terms in which the connection is made between the provisions of Art. 2 paragraph 2 of Legislative Decree no. 81/2015 and Art. 47-quater of Legislative Decree No. 128/2019.

Both regulations, in fact, allow collective bargaining to exercise – conditioned to compliance with the previously mentioned requirements – a derogating power of the legal discipline contained in the same article of law.

In the first case, Art. 2 para. 2 allows collective agreements to introduce more specific economic and regulatory rules and thus to exclude the applicability of the provisions of para. 1 (the application – that is – of the rules on subordinate employment to hetero-organized collaborations) where there are certain sectoral production and organizational needs.

In Article 47-quater, the lawmaker grants collective agreements the power to identify the criteria to set riders' compensation based on. However, in the absence of a sectoral collective agreement, riders will be applied the minimum compensation guaranteed in collective agreements for related sectors.

Collective Bargaining for Self-Employed Workers and EU Anti-Competition Law

The scope of articles 2 paragraph 2 and 47-quater implies a reflection on the compatibility of the internal legislation with the European anti-trust discipline.

Article 101 par. 1 of the TFEU establishes that “all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market”, “are prohibited as they are incompatible with the internal market”, except for the exceptions referred to in paragraph 3.

The interpretation of this rule provided by the Court of Justice of the European Union was restrictive. Indeed, the Court of Justice has assimilated self-employed workers to enterprises and, as a result, collective agreements signed by employers’ and workers’ representatives are considered on a par with agreements

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between associations of enterprises which, as such, can prevent, restrict and distort the competition.

One of the most emblematic decisions of the Court of Justice is the Albany case [13]. Through this ruling, the Court established that the collective agreements entered into by the representative organization of workers and employers, which by their nature or by their object of work had as their objective the improvement of employment and working conditions, do not fall within the field of application of Art. 101 par. 1 TFEU (at the time Art. 85 TEC) because otherwise the social policy objectives pursued by these agreements could be seriously compromised.

FNV Kunsten Informatie [14] is another ruling through which the Court of Justice has helped to define the subjective scope of Art. 101 par. 1. In this judgment, the Court of Justice contributed to defining the field of application of Art. 101 par. 1. In particular, the Court has assimilated self-employed workers to enterprises in all respects and, consequently, the statement valid for enterprises, according to which the stipulation of the collective agreement that regulates the minimum price for their services is prohibited, must also be considered valid for self-employed workers. While a collective agreement that establishes minimum compensation for self-employed workers "*affiliated with one of the workers' organizations which are a part of the contract*" is excluded from the application of Art. 101 paragraph 1 TFEU only in the event that the aforementioned self-employed workers are in the same situation as employees who work for the same employer, *i.e.* they are false self-employed workers.

On December 9, 2021, the European Commission released a package of measures to "improve the working conditions in platform work and to support the sustainable growth of digital labour platforms in the EU" [15].

The guidelines on the application of EU competition law to collective agreements of solo self-employed people, adopted by European Commission on September 29, 2022, are among these measures. Their main purpose is to clarify the scope of application of Article 101 TFEU with respect to self-employed workers.

In pursuing this objective, the guidelines made it clear that there are certain categories of workers who are in a condition similar to employees, in view of the legislative and jurisprudential interventions affecting them. Consequently, the restriction of Article 101 TFEU does not apply to them. Section 3.3 explicitly refers to "Solo self-employed persons working through digital labour platforms". Spe-

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[13] Judgment of the Court of 21 September 1999, Albany International BV, C-67/96, EU:C:1999:430.

[14] Judgment of the Court of 4 December 2014, FNV Kunsten Informatie en Media, C-413/13.

[15] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_6605. Specifically, reference is made to: Communication on Better Working Conditions for a Stronger Social Europe: harnessing the full benefits of digitalisation for the future of work; draft guidelines on the application of EU competition law to collective agreements of solo self-employed people; the proposal for a directive on improving working conditions in platform work.

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cifically, the guidelines exclude the application of Article 101 TFEU to them on the basis of essentially three considerations, such as:

– the type of relationship that exists between digital platforms and workers in terms of the latter's dependence on the former in finding clients and the lack of bargaining power of workers given that decisions are made unilaterally by the digital platform;

– the regulatory and jurisprudential interventions that are increasingly directed toward reclassifying the *status* of platform workers as employees;

– the active role of the digital platform in the organization of work according to the client demands.

3.3. *The Main Jurisprudential Interventions*

In Italy, the condition of platform workers, mainly riders, was the subject of a set of ruling by the national courts. These decisions mainly concerned the issue of the legal classification of these workers and, with it, the protection they have the right to access.

With regard to these issues, in particular, the story of six riders of the "Foodora" food delivery platform, who referred to the judges of the Court of Turin in order to obtain verification of the subordinate nature of the employment relationship and the recognition of the related protection since the concrete methods of organization and execution of the relationship did not reflect the typical characteristics of a coordinated and ongoing collaboration relationship such as the one that linked them to the platform [16]. However, at the first instance, the judges rejected the plaintiffs' requests, considering that between the riders and the "Foodora" platform there was indeed a coordinated and continuous collaboration relationship pursuant to Art. 409 no. 3 of the Code of civil procedure.

Against this ruling, the riders appealed the Turin Court of Appeal [17], renewing the request to ascertain the subordinate nature of the relationship with the "Foodora" company; the second instance judges also ruled out the existence of an employment relationship in the present case, but, unlike the ruling registered in the first instance, they classified the relationship between the bike delivery riders and "Foodora" as hetero-organized pursuant to Art. 2 of Legislative Decree no. 81/2015. In the opinion of the Court of Appeal, the procedures of the riders' performance, with reference to times and places, are organized by the digital platform as it was the same platform that specified the shifts and the competent areas, communicated the addresses as well as the deadlines to be met for each single delivery and, consequently, the workers in question had to be granted the protection which is typical of employment relationships, starting from the remuneration, which had to be calculated, as instructed by the judges, by taking as a refer-

[16] Trib. Torino 07/05/2018, n. 778.

[17] App. Torino 04/02/2019, n. 26.

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ence level the V of the logistics, transport of goods and shipping National Collective Bargaining Agreement.

The Supreme Court[18] closed the loop, which with its ruling no. 1663 decided not to annul the decision adopted by the second instance judges and that, therefore, the discipline provided for by Art. 2 of Legislative Decree no. 81/2015 had to be applied to the riders who had promoted the lawsuit. Nevertheless, the judges in charge distanced themselves from the sentence issued by the Court of Appeal of Turin in the part in which it identified in the provision in question the container of a new case, a *tertium genus*, halfway between autonomous and subordinate work. On the contrary, the Supreme Court claimed that the aforementioned provision must be considered as a regulation and that, therefore, upon the occurrence of the indices provided by the legislator, such as personality, continuity and hetero-organization, all the expected protections for subordinate work must apply to the relationship.

3.4. *Industrial Relations Practices*

"Traditional" Unions: Positions and Strategies

The "traditional" trade unions, especially during the early stages of affirmation of work on a digital platform, showed a certain difficulty in intercepting the needs of these workers. As a consequence, relations between workers and workers' representatives seemed to have relaxed mainly due to the fact that the experience and means available to the trade unions could prove to be useful for achieving the goal of greater protection pursued by the former.

Despite the initial difficulties, the unions made an effort to try to identify tools and approaches that could initiate a dialogue with platform workers. These include the experiences of "UIL", who has opened an online union information desk in order to answer the questions of the riders[19]; CGIL has activated the "No easy riders" campaign[20] and has experienced a new way to organize the workers: a member of the trade union has infiltrated the riders in order to understand the organisational and alienating dynamics and attempt to find a solution to the low

[18] Cass. 24/01/2020, n. 1663.

[19] The online information desk is part of the project "Networkers Union". More information is available at the following link: https://sindacato-networkers.it/sportello-sindacale-per-i-diritti-dei-fattorini-della-gig-economy/.

[20] The CGIL has supported food delivery riders by promoting this campaign that initially originated in the cities of Bari, Bologna, Florence, Milan, Naples, Palermo, Rome and Turin. The union believes that they have an employment relationship with the digital platform and that workers should be covered by a CCNL, starting with that of Logistics sector. They also have demanded rights and social protections such as fair pay, the right to leave, disconnection, welfare, health and safety. http://www.cgil.it/food-delivery-cgil-da-8-citta-parte-la-campagna-no-easy-riders/.

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level of socialization and unionization of these workers[21]. Furthermore, all three main trade union confederations believe that the collective bargaining and, more specifically, a national collective agreement could be the way to offer adequate economic protection and regulation to the platform workers.

In addition, the "CGIL" supported platform workers in legal proceedings for better working conditions. Among these there is the action of the "CGIL" (Filt, Filcams and Nidil) which brought to the attention of the Labour Court of Bologna[22] the discrimination implemented by the algorithm, called "Frank", – used by the Deliveroo platform – against those riders who are not continuously available for reasons of family care, illness or strikes. The algorithm used to convert their inability to "log in" to the platform into a loss of score and thus lower positions in the ranking of workers, leading to their exclusion from the digital platform. Furthermore, as was established in the course of the lawsuit, the algorithm's blindness is only apparent since it was proven that on other situations it was able to assess the reasons behind the absence from work.

Last but not least, another strategy is the promotion of collective bargaining at different levels by riders' grassroots movements and traditional unions to fill the legislative gap (it mainly refers to the past and, more specifically, to the period before Law No. 148/2019 came into force).

Spontaneous Coalitions of Platform Workers

In Italy, article 39 of the Constitution[23] lays down the principle of the freedom of association. According to this article, the Italian legal system grants everyone the freedom to organize for union purposes (and, at the same time, the negative right not to organize), including the right to give rise and to join a union organization and act to union scope.

It is almost unquestionable in our system that the right to freedom of association and collective abstention from work is recognised not only for employees but also for workers in a real situation of social sub-protection such as employees[24]. Indeed, Art. 39 of the Constitution lays down the principle of the freedom of association, without any reference to the qualification of the workers.

In response to the declared difficulty of the trade unions to intercept the platform workers, workers' grassroot movements arose with the aim to pursue collective interest[25].

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[21] C. MANCINI, *Un sindacalista "infiltrato" tra i riders*, in *Idea diffusa*, settembre 2018, p. 3.

[22] Trib. Bologna, 31December 2020.

[23] Art. 39 Cost: "Trade unions have the right to organise themselves freely".

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

[25] M. MARRONE, *Rights against the machines! Food delivery, piattaforme digitali e sindacalismo informale*, in *LLI*, 2019, 5, 1.

As affirmed in literature[26], this is not a foregone conclusion considering the particular functioning modalities of the digital platform and the method of performance execution, which trigger psychosocial mechanisms of individualization in the workers. As a consequence, many different spontaneous coalitions of workers have arisen, such "Riders Union Bologna"[27], "Deliverance Project Torino"[28], "Deliverance Milano"[29].

"Riders Union Bologna" is one of the most important grassroots movements, especially for the results achieved. First of all, these workers have tried to create a group of city riders with the purpose of exchanging opinions, advice, help and organising meetings where all citizens could participate. In order to achieve this objective, they have created a specific chat reserved for the workers starting from the original chat created by the platform to manage the deliveries; furthermore, they have created pages on social media, like Facebook, where they explain what they are fighting for and ask citizens to support their claim of right[30] – for example, they have asked citizens not to make orders on set days in order to boycott the functioning of the digital platform. Moreover, the same workers have established relationships with associations who have made available to them physical places where they may meet in non-working time or where they can repair their cycles in a do-it-yourself way.

On 9th October 2019, riders who expressed opposition to the provisions of Decree Law no. 101 of 2019 have created the "Associazione nazionale autonoma dei riders" (ANAR), which is the first national trade union in the gig-economy sector. As the other groups of riders, the ANAR also uses social networks in order to raise the awareness of workers and keep them up to date on the initiatives and practices put in place by the association.

The grassroots movements have adopted new or, if one prefers, revisited strategies compared to the traditional ones.

As has been observed in literature[31] about the "Riders Union Bologna" phenomenon, the organisation of a traditional strike in this context would have been unsuccessful and difficult to accomplish.

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[26] M. Forlivesi, *Alla ricerca di tutele collettive per i lavoratori digitali: organizzazione, rappresentanza, contrattazione*, in *Labour & Law Issues,* 2018, 4, 1.

[27] Its channel of communication is Facebook: "Riders Union Bologna".

[28] Its communication channel is Facebook: "Deliverance Project".

[29] Its channel of communication is Facebook: "Deliverance Milano".

[30] For example, in two post published from Riders Union Bologna on their Facebook profile on March 1, 2018 and on February 23, 2018 they respectively wrote "[…] A final appeal also to the citizenship: stay by our side, avoiding ordering at least for tonight. Let the lords of the platforms understand that before profit comes the good of people who work!" and "[…] to anyone who wants to sympathize with us, we ask to make their voice heard: you can call the customer number of the platforms, declaring to support our claims".

[31] M. Marrone, op. cit.

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Indeed, the operating procedures of the digital platforms could have easily replaced striking riders with new workers; as a consequence, thanks to a widespread organization of the riders promoted by "Riders Union Bologna" on 23rd March 2018 the first block of the service took place which, essentially, had the same purpose and effects of the strike. In pursuit of this objective, the riders used all the means at their disposal to spread the message and they also asked for help from the clients, who had an active role in order to boycott the functioning of the platforms and thus obtain their attention.

Such "blocks" were accompanied by demonstrations and protests transmitted and spread through social networks. In this context, communication had an important role because it has used to attract public interest and the media on the working conditions of the riders.

Therefore, raising the awareness of society can be considered an additional means used by the new form of representativeness in their "fight" strategy.

Among the strategies developed by the riders there are also the solicitation and involvement of the institutions, at a local and national level, in order to start negotiations and to discuss rights for platform workers.

On 1st May, 2020 – Labour Day – riders announced the birth of the platform "Rights for riders" aimed at unifying the experiences of the national grassroot movements[32].

Employers' Associations

In Italy, digital platforms are not affiliated to any of the existing employers' organizations. In the field of food delivery, on 7th November 2018 an association called "Assodelivery" was founded; as it can read on its website[33], this association is an Italian trade association which has the purpose of "guaranteeing" the food delivery technological platforms a unitary representative organization. Digital platforms which cover about ninety percent of the Italian food delivery market, like Deliveroo, Glovo, Just Eat and Uber Eats, are affiliated to this association.

The "Assologistica" association[34] also deserves to be mentioned. It represents more than 250 logistics companies, general and refrigerated warehouses, port, interport and airport terminal operators operating in Italy. On 18th June 2018 this association was one of the signatory parties of the agreement aimed at integrating the NCA Logistics with a specific regulation on the economic and regulatory treatment to be reserved for riders (the other representative associations of the signatory entrepreneurs are Confeltra, Fedit, Federspedi, Confartigianato transport, Fita-CAN).

[32] For example, Riders Union Bologna published on its Facebook page the following news "On the occasion of May 1st, the National Day of Workers' rights claim, riders from different Italian cities launch the common platform 'Rights for Riders'. From Milan to Bologna, passing through Florence, Rome, Naples and Palermo, the riders join together to create the union of trade union experiences active on all the territories of the peninsula as 'Rider x the rights' […]".

[33] http://assodelivery.it/chi-siamo/.

[34] https://www.assologistica.it/.

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Platform Workers' Claims

The requests made by the riders has originated in the failure to match the contractual provisions and the concrete methods of organizing and executing their work used by the digital platform. If one looks at the cases presented by the riders in Court (dating back to prior to the changes made by Law no. 128/2019), it appears that contract recognizes them the *status* of self-employed workers; however, riders asked to be given the *status* of employees and the related protection, by reason of the way of performing the service. In summary, they asked for:

– recognition of employee status;
– abolition of piecework [35];
– INAIL insurance;
– insurance for any damage caused to third parties;
– security means provided by the company;
– prohibition of discriminatory behaviour;
– guaranteed hours and hourly wages (RUB);
– indemnity in case of smog, rain and festive work;
– privacy transparency and shift assignment;
– parental leave;
– social security rights;
– recognition of trade union rights;
– abolition of rating;
– right to disconnect.

Later, riders' claims have also extended to other issues, such as: cases of collective discrimination [36], health and safety protection at the time of the Covid-19 health emergency [37], digital illegal recruitment [38], and, more recently, on issues related to the enforcement of collective agreement [39].

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[35] On this point the workers' grassroot movements seems to not have a single and shared vision; indeed, as came to light during the hearing at the Senate about the legislative decree no. 101/2019, a part of riders ("Riders contro il decreto") has expressed their dissent to the proposal for abolition of the piecework payment and, in addition, their troubles and aversion to the provision of the Inail mandatory assurance because it could cause the abandonment of the Country by digital platforms. More generally, hot themes have been – and are – piecework payment, abolition of ranking and the respect of workers' privacy.

[36] Trib. Bologna, 31st December 2020, cit.

[37] Trib. Firenze, 4th May 2020, Trib. di Bologna 14th April 2020 and Trib. Roma. *See* also D. DRAETTA, *Il lavoro autonomo dei rider ai tempi del Covid-19*, in *Rivista Italiana di Diritto del Lavoro,* 3, 2020, pp. 475-480.

[38] Trib. Misure Prev. Milano, 27th May 2020, n. 9.

[39] Trib.e Firenze, 9th Feruary 2021, G.A. RECCHIA, Not So Easy, Riders: *The Struggle For The Collective Protection of Gig-Economy Workers*, in *Italian Labour Law e-Journal*, 2021, n. 1, pp. 195-207; Trib. Bologna, 30 June 2021, G. A. RECCHIA, *Il sindacato va al processo: interessi collettivi dei lavoratori e azione di classe*, in *Lavoro Diritti Europa*, 2021, 4, pp. 1-13; A. D. DE SANTIS, *Processo di classe per le controversie di lavoro*, in *Lavoro Diritti Europa*, 2021, 4, pp. 2-10.

Main Results Achieved by Workers' Coalitions

The Charter of Fundamental Rights of Digital Work in the Urban Context

Before the enactment of the legislation on platform work, both riders' grassroots movements and social parties and the local institutions took measures to fill the legislative gap and, thus, to satisfy the protection needs of the workers.

The first milestone is the "Charter of fundamental rights of digital work in the urban context", a goal reached by "Riders Union Bologna", which is a local level act with a national vocation. As affirmed in literature[40], the Chart of Bologna, despite its nature of a local agreement, is characterized by a universalistic spirit, which comes to light both in the provisions aimed to promote the "spreading of a new culture of digital labour in Italy and in Europe" [41]and in its scope of subjective application.

The Chart is the result of the requests from riders to the local administration and of the participation of the workers' trade unions (CGIL, CIISL, UIL), the platforms' delegates (Sgam and MyMenù) and the mayor of Bologna in the negotiating table.

The aim of this act is to promote safe and fair work in the urban territory and to improve the life and working conditions of platform workers through twelve articles which lay down minimum standards of protection to all the workers of the city who use one or more platforms to perform their job, regardless of the qualification of the employment relationships.

According to Art. 1 the beneficiaries are not only the riders but also, and more in general, all the workers who use digital platforms to perform their work, regardless of the qualification as self-employed or employed, and where the digital platform defines the characteristic of the service or goods and sets its price.

The Chart of Bologna regulates the right to prior and complete information on all elements of the employment relationship and on the existence of training courses to improve one's own profiles, on the transparency obligations regarding the functioning of the reputation rating and the right for the worker not to be subject to automated decisions, on rating portability, on the right to fair and dignified remuneration, on the right to non-discrimination, on the right to health and safety, the protection of personal data, the right to disconnect. Finally, articles 9 and 10 promote the freedom of association and the right to strike.

National Collective Labour Agreement of Logistics, Transport of Goods and Shipping

In the absence of a National Collective Labour Agreement for the platform workers, the commitment of the trade unions (Filt-CGIL; Fit-Cisl; Uiltrasporti)

[40] M. Forlivesi, op. cit.

[41] Charter of fundamental rights of digital work in the urban context.

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has extended the application of travelling personnel's regulation of the National Collective Labour Agreement of Logistics, Transport of goods and Shipping to the riders.

More specifically, in December 2017, during the renewal of the above cited collective agreement, the workers' and employers' associations has introduced the riders as new professional figures; subsequently, on 18 July 2018, they has signed an integrative agreement of the renewed collective agreement where all the protections are extended to these workers.

The Court of Appeal of Turin referred to the above NCLA in a judgement where riders were one of the parties [42]. After the classification as hetero-organized workers pursuant to article 2 of Legislative Decree n. 81/2015, the Court identified in level V of the above-mentioned agreement the criteria for the calculation of their direct, indirect and deferred remuneration.

Experimental framework agreement of the province of Florence and Law no. 4/2019 of the Lazio Region regulating "Provisions for the protection and safety of digital workers".

At the decentralized level, two experiences were recorded: Experimental framework agreement of the province of Florence and Law no. 4/2019 of the Lazio Region regulating "Provisions for the protection and safety of digital workers".

The first agreement was signed on 5 May 2019 by the company "La Consegna srls" with "FILT-CGIL", "Uiltrasporti" and "FIT CISL" (workers' representations) with the aim of qualifying new hired riders as employees and applying all legal provisions and remuneration protection of the traveling staff of the National Collective Agreement for Logistics, Transport of Goods and Shipping who are employed in discontinued jobs, also defining their working hours.

Law no. 4/2019 of the Lazio Region is the first example of legislation. Its aims are to protect the dignity, health and safety of digital workers and to increase the transparency of the functioning mechanisms of the digital labour market, also in order to protect digital platforms and promote the harmonious development of the whole society.

Although doubts had been raised about the constitutional legitimacy of this act, the Council of Ministers did not contest the law which, therefore, remained in force.

The "Charter of the Rights of the Riders and of the Gig-Economy Workers" Signed in Naples

The Charter is the result of the collaboration of trade union associations, local institutions and local groups of riders. It emulates the positive experience of the Bologna Charter on the Neapolitan territory.

[42] App. Torino, 04/02/2019, n. 26, cit.

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Assodelivery – UGL NCA

On 15 September 2020, "Assodelivery" and "UGL-riders" signed a national collective agreement aimed at establishing specific regulation for riders.

This collective agreement introduces protection for riders, which it expressly qualifies as self-employed. This protection basically follows the minimum provisions established by Law no. 128/2019 and implements the provision of Art. 47-quater of Legislative Decree no. 81/2015 which, in relation to remuneration, establishes that a national collective agreement stipulated by the most representative trade unions can introduce a mixed remuneration, calculated both per hour and per piecework.

However, on 17 September 2020, the Ministry of Labour and Social Policies notified an official communication to the representative association of food delivery companies in which it is argued that in all likelihood the contracting union lacks the requirement of greater representativeness required by Art. 47-quater and that the same provision, making express reference to the "most representative trade unions", rules out that the NCLA may be signed by only one trade union.

This contract has been defined by the main trade unions as a "fraudulent" contract.

On June 30, 2021 the Court of Bologna ruled on the legitimacy of the collective agreement under review on an appeal brought by "Nidil", "Filt" and "Filcams" of "CGIL" to sanction Deliveroo's anti-union conduct under Art. 28 L. no. 300/1970[43].

The judge held that the national collective agreement signed by UGL Riders and Assodelivery is not legitimate because it does not meet the requirements of Article 2 and Article 47-quater of Legislative Decree No. 81/2015 in order to waive legislative provisions. As consequence, the Court ordered the food delivery company to stop applying this contract to its riders, to reintegrate those who had been excluded from the digital platform because they were against the application of this contract, and to publish the decision in two national newspapers at its own expense.

Protocol to the National Collective Agreement of Logistics, Transport of Goods and Shipping

On 2 November 2020, "Filt Cgil", "Fit Cisl" and "Uil Trasporti" and the employers' associations who had already signed the NCLA Logistics, transport of goods and shipping, as well as the Protocol of 18 July 2018, signed a protocol aimed at regulating the work performance of self-employed riders. Specifically, this Protocol has extended the protection relating to both the work performance and the economic and regulatory treatment provided for by the 2018 Protocol

[43] Trib. Bologna, 30th June 2021.

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and relating to the NCLA of Logistics to the workers referred to in Art. 47 bis and following of Legislative Decree no. 81/2015.

With reference to the economic aspects, and in particular the calculation of remuneration, the contract, signed by trade unions with the comparatively more representative character required by Art. 47-quater of Legislative Decree no. 81/2015, establishes the criteria for defining the remuneration of cited workers, excluding the possibility to be pay them by piecework.

As for the regulatory treatment, it has transparency obligations regarding the information that the individual contract must guarantee the worker and the application of the provisions of Law no. 300 of 1970 on the protection of the freedom and dignity of workers and equal treatment.

Furthermore, due to the decentralized nature of the work carried out by the riders, the protocol promotes the development of decentralized bargaining that serves to better understand and implement the organizational needs of platform workers.

Employment Contract for Just Eat Riders

On March 29, 2021, the company Takeaway.com Express Italy, part of the Just Eat Group, and the trade unions "Filt-Cgil", "Fit-Cisl" and "Uil-trasporti" signed a company integrative agreement aimed at classifying riders as employees. More specifically, the agreement recognizes that "permanent employment contracts are the common form of working relationship under which the Worker performs his or her work under the Company's dependence" and applying to them the discipline of the national collective contract for the logistics sector.

3.5. *The Relationship with Recent EU Interventions: Directive 2019/1152*

On 20 June 2019, Directive (EU) 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union was signed.

The Directive has replaced the previous Directive 91/533/EEC of the Council relating to the employer's obligation to inform workers of the conditions applicable to the contract or employment relationship.

The intervention, in line with the most recent provisions introduced by the European Pillar of Social Rights, aims to improve working conditions by promoting more transparent and predictable employment conditions, addressing "every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State, with consideration to the case-law of the Court of Justice" [44].

[44] Art. 1.

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As provided for in Recital no. 8 of the directive, platform workers fall within its scope if they meet the required criteria (therefore, if they possess the characteristics necessary in order to be considered workers under EU law) or where they are bogus-self-employed, even though the trade unions had shown their willingness to extend the subjective scope of the directive.

This directive becomes relevant in relation to the provisions of Art. 47-ter of Legislative Decree no. 81/2015 in the part in which it establishes in par. 2 that in case of violation of the provisions regarding the form of the contract and the information due to the worker referred to in paragraph 1 of the same article, the protection measures established in Art. 4 of Legislative Decree no. 152/1997 must be applied. From this provision it can be gathered that the information referred to in par. 1 are also found in the same legislative decree, which transposed Directive 91/533/EEC on the employer to inform the worker about the conditions that are applicable to the employment contract or employment relationship. Consequently, the replacement of directive 91/533/EEC with the most recent directive 2019/1152 implies that the rules with which the directive will be transposed into national law will replace its contents.

3.6. *Covid-19 Impact on Platform Work*

Italy was the first European country, in order of time, to be hit by the epidemiological emergency of COVID-19. As consequence of the diffusion of the virus, on 31 January 2020 the Council of Ministers declared a state of national health emergency and the Government started to adopt social and economic measures to cope with the pandemic through administrative acts [45].

A set of administrative acts adopted by the Government led to lockdown and to the suspension of those activities considered non-essential for the Nation. In compliance with the urgent provisions ordered by the Government, citizens remained in their homes, laying the foundations for bringing out the full potential of food delivery.

Consequently, food delivery platforms decided not to suspend their service, leaving the rider the choice of whether to continue working or not. Thus, despite the health emergency, a great number of them continued to ride because, as stated on the social network of workers' representatives, for many of them, home delivery is a job that allows them to fulfil the payment of bills and basic needs, therefore, they could not stop working, especially in the absence of social security cushions or other income support tools.

[45] About the labour measures adopted by the Government, *see* C. GAGLIONE, O. RYMKEVICH, I. PURIFICATO, *Covid-19 and Labour Law*, in *Italian Labour Law e-Journal*, 2020, 13, https://illej.unibo.it/article/view/10767.

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The Role of the Trade Unions

Traditional trade unions intervened with various initiatives to support riders during the period of health emergency.

Among these are the letters written by “Cgil”, “Cisl” and “Uil” and addressed to “Assodelivery” and to the former Minister of Labour and Social Policies, Nunzia Catalfo, and to the Minister of Health, Roberto Speranza, in which they requested interventions aimed at obtaining compliance with the regulations regarding the health and safety of workers[46].

In addition, the CGIL supported the workers in the appeals filed before the Courts of Florence and Bologna to obtain a supply of individual safety devices from the digital platforms[47].

The Behaviour of the Food Delivery Platforms

With some limited exceptions, the behaviour of the food delivery platforms was resolved with a failure to cooperate.

First of all, with the declaration of the state of emergency, the owners of the digital platforms decided to not suspend the service, putting the riders in front of a clear choice: to work or not to work, with the ensuing consequences.

Secondly, initially and in any case before the judgments of the Courts intervened, the main food delivery platforms did not provide the necessary personal protection equipment to workers, putting their health and safety at risk.

In reaction to the increase in infections also among riders, the Deliveroo platform introduced insurance aimed at those riders who tested positive for Covid-19 and who have been hospitalized; the insurance coverage establishes in their favour a sum of 30 euros for each day of hospitalization for a maximum of 30 days and a severance grant of 1,500 euros for those who have been hospitalized in intensive care.

Furthermore, Assodelivery collaborated with FIPE for the drafting of rules that the companies in the supply chain and food delivery platforms are required to observe to guarantee home delivery service in compliance with precautionary measures and hygiene and health regulations.

Lastly, the food delivery companies concerned have implemented the decisions issued by the Courts of Florence and Bologna by supplying personal protection equipment to riders, clarifying that since the beginning of the pandemic they have actually taken all the necessary measures to ensure the protection of workers' health.

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[46] At the following link the full text of the letter is available: https://www.nidil.cgil.it/coronavirus-emergenza-riders-cgil-cisl-uil-ilgoverno-si-faccia-parte-attiva/.

[47] Trib. Bologna, 14th aprile 2020, cit.; Trib. Firenze, 5 maggio 2020, cit.

Legal Proceedings Brought by Workers to Obtain Personal Protection Equipment

In response to the food delivery platforms' failure to supply individual safety devices, riders placed the matter before the judges to obtain the recognition of this right. There were 3 rulings that took place in the field of workers' health and safety after the entry into force of the Law no. 128/2019.

The Courts of Florence, Bologna and Rome with a precautionary decree without prior hearing of the other side, given the existence of the risk of irreparable damage to the health of the workers while waiting for the time of the trial, ordered the digital platforms to provide individual protection devices.

The legislative bases of these decisions were found either in Art. 2 of Legislative Decree no. 81/2015 and, therefore, in the classification of workers as hetero-organized and, as such, entitled to the protection of subordinate work or in Art. 47-septies, par. 3, it rules that "the client who uses the platform, including digital platforms, is obliged towards the workers referred to in paragraph 1, at his own expense, to comply with legislative decree no. 81 of 9th April 2008".

The Intervention of Local Authorities

The municipalities of Bologna[48] and Milan[49] have undertaken to provide riders with personal protection equipment (masks and gloves).

The Lazio region has launched economic support measures for the most vulnerable people affected by the pandemic. In the initiative "A bridge to return to professional and educational life: emergency economic support measures for the most fragile and exposed to the effects of the pandemic" riders were awarded a contribution of 200 euros for the purchase of personal protection equipment aimed at guaranteeing better conditions for protection against risks to their health[50].

Government Interventions

Decree Law no. 18/2020, also known as "Cura Italia" and Decree Law no. 34/2020, also known as the "Rilancio" Decree, contained the measures launched by the Government to cope with the crisis caused by the Covid-19 pandemic, including those which also benefited the riders.

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[48] Riders union bologna has made the announcement in two of his Facebook posts (on May 5, 2020 and on May 13, 2020).

[49] https://milano.repubblica.it/cronaca/2020/04/14/news/coronavirus_milano_kit_mascherine_guanti_rider_ristoranti-253980968/.

[50] The link to the public notice is http://www.regione.lazio.it/binary/rl_main/tbl_documenti/FOR_DD_G05062_29_04_2020_Allegato2.pdf . The notice, among the measures, includes a "one-off contribution of € 200.00 to 'digital workers' (so-called Riders) as a category governed by Regional Law 4/2019 'Regulations for the protection and safety of digital workers', for the purchase of personal protective equipment to ensure better conditions of protection against the risks of contagion.

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In fact, upon the occurrence of certain characteristics, the riders were able to access the measures provided for in support of certain categories of self-employed workers.

In particular, the riders registered with a VAT number (active from 23rd February 2020) and those who had a continuous collaboration contract (co.co.co.) active on 23rd February 2020 and registered in the "Gestione separata" of the National Social Security Institute (I.N.P.S.), who did not receive a pension and were not enrolled in other forms of compulsory social security, were able to apply for this allowance for the month of March (bonus for self-employed workers). All those riders who did not fall within the description of the standard were excluded from the benefit.

With the Recovery decree, this allowance was also supplemented for the months of April and May and in the greater amount of 1000 euros; at the same time, an allowance of 600 euros was introduced for the months of April and May in favour of self-employed workers (therefore, also riders) whose employment relationship included the following characteristics:

– On-call job contract holders who completed at least 30 working days between 1st January 2019 and 31st January 2020;

– Seasonal employees from sectors other than tourism and spa establishments, who unintentionally ceased working in the period from 1 January 2019 to 31 January 2020 and who worked for at least 30 days;

– Casual work providers who were not registered with other forms of compulsory insurance, who in the period from 1st January 2019 to 23rd February 2020 had casual employment contracts and did not already have a continuous employment contract on 23rd February 2020. For this category it was necessary to be registered for the separate management of the National Social Security Institute (I.N.P.S.) and paid at least one contribution per month within the above-mentioned period.

– Non-owners of another contract of employment or beneficiaries of a pension.

Furthermore, the "Cura Italia" Decree, in Art. 42 paragraph 1 included the contagion from Covid-19 among the causes of professional injury, providing that the INAIL economic benefits are due to workers obliged to abstain from work due to quarantine. Riders also fall within the field of application of these provisions by virtue of the entry into force of Art. 47-septies, which extended to digital platforms/clients the obligation to guarantee riders, whatever the contractual scheme within which the relative relationship is formalized, insurance against accidents at work and occupational diseases.

In particular, riders fall within the category of workers who, according to the National Institute for Insurance against Accidents at Work (INAIL) circular no. 13 of 2020, are exposed to a high risk of contagion since this risk is related to the performance of their job as it is carried out in contaminated work environments or in close contact with users.

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The advantage for this category of workers consisted in reversing of the burden of proof. For these workers it was sufficient to prove the infection by attaching relating medical certification and to be assigned, specifically, to tasks attributable or equivalent to those listed in the reference occupational risk class. The INAIL, on the other hand, had to provide legal proof that the infection occurred in a non-working context.

4. *Remote Work*

As stated in the introductory section of this Chapter, since 1970, thanks to the implementation of computer science and communications within the working environment, smart working has settled as a form of remote work. This modality of working performance, shaped to guarantee better work flexibility and productivity for the company, allows the workers to perform from home, facilitating both their working and personal life. Nonetheless, it wasn't implemented much.

The evolution of information technology and communications has resolved into a transformation of the productive processes largely orientated on automation and digitalization, so much that a huge part of work can be executed outside of the working place and not necessarily from home.

In this context, smart working gets established, which uses TIC as enabling tools for the development of the service according to innovative space-time paradigms which concur, at the same time, a major flexibility of work conditions and accountability of the workers within the objectives of the working performance.

Lights and shadows of such an innovative way of working organization have been highlighted, the latter mostly identified in a pervasive control which can generate a prolonged use of the tools to perform the service.

4.1. *Telework*

According to the prevailing literature, telework can indiscriminately gain both the contractual form of autonomous and subordinate work. Nonetheless, as much as in the public and private sector, telework has been regulated as a method of work performance within a subordinate employment relationship.

Public Sector

In the public sector, the Law of 16th June 1998, no. 191 has regulated telework, limiting itself to defining its main features and referring to other sources for the detailed regulation.

The definition of telework can be found in the Presidential Decree no. 70 of 8 March 1999, which aimed to regulate the organizational measures for the implementation of telework.

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In consideration of the definition by Art. 2, para. 1, lett. b) of above-mentioned decree, telework is way of performing work which uses TIC in order to execute activities outside the public administration's premises, in which ever suitable place, as long as the connection with the public administration is guaranteed.

The cited decree establishes that every public administration needs to have a detailed telework project to identify, first of all, the goals to reach, interested activities, technologies to be used, number of employees involved, time and modality of realization, costs and benefits (Art. 3). Furthermore, Art. 5 provides indications on the characteristics and criteria to follow for the installation and use of the telework stations.

The Framework Agreement of 23rd March 2000 defines the criteria to identify the public employees to put in telework project and fixes the economic and regulatory treatment to be applied to them. Furthermore, the framework agreement identifies three forms of telework, which are telework from home, mobile telework and working in telework centres.

More recently, with the provision contained in Art. 9 of the Law Decree no. 179 of 18th October 2012 (conv. by Law no. 221 of 17th December 2012) it has been tried to introduce a telework by default which would have brought such working method from being an exception to a rule.

However, the lawmaker's provisions were disregarded. Therefore, the legislator has intervened in favour of telework once again, emphasizing in Art.14 Law no. 124/2015 its usefulness as a work-life balance tool in order to promote the implementation of this organizational measure in public administrations.

As for the contribution of the collective bargaining in the process of regulating telework, it should be noted that the sector agreements have defined various aspects in greater detail such as, among others, the modalities for implementing projects, the criteria for defining working hours and on-call time, training initiatives, and the duty of confidentiality. Second-level agreements, on the other hand, adapted the regulation of telework to individual contexts and defined detailed aspects such as the regulation of specific training and performance bonuses for teleworkers.

Private Sector

In the private sector, telework is regulated by collective bargaining.

The Cross-sectoral Agreement of 9th June 2004 is the main source. It implemented the provisions of the Framework Agreement of the EU social partners on telework of 16th July 2002, sharing its values and goals.

Similar to the public work, in the private sector the Cross-sectoral Agreement qualifies telework as a way of performing work that is characterized by being carried out outside the workplace through the use of TIC[51], and by being voluntary

[51] Art. 1 of the Cross-sectoral Agreement of 9th June 2004.

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for both employers and employee [52]and by the reversibility of such choice[53]. The agreement then governs organizational profiles[54] as well as other aspects on which the particular methods of activity execution may be affected such as privacy[55], data protection[56] and the health and safety of the teleworker[57].

Art. 11 of the Cross-sectoral Agreement of 9th June 2004 contains a specific clause that governs the competences of the lower-level collective agreements. However, the law does not contain any specific reference to the competent collective agreements, because it simply refers to the "competent level" leaving the idea that the collective bargaining system generally applied in the country at a given moment should be applied. These rules, established mainly by autonomous contractual sources, *i.e.* cross-sectoral agreements, tend to favour the sectoral level of bargaining, giving it a sort of coordinating authority in comparison to the company and local levels, despite the growing importance recognized to the latter in the last three decades. This is reflected in the collective bargaining of various sectors such as clothing, banking and telecommunications.

Speaking of the different types of clauses within the collective bargaining, there can be two types: the first one is limited to reproduce the provisions within the cross-sectoral agreement; the second one, instead, tends to adapt its content to the sector specific needs, dealing with aspects such as the various remote working places from which the work obligation can be absolved and how to choose between them.

Interventions of company level collective bargaining in the field of telework have been firstly noted in large companies and they limit themselves to specify the sector bargaining content, adapting them to the companies' needs.

Collective Bargaining: Social and Economic Functions of Telework

Sectoral and company collective agreements show in their texts the functions already attributed to telework by the Framework Agreement on telework and the Cross-sectoral Agreement of 2004, namely those of work-life balance, modernization of the work organization within the company and employees' empowerment.

Moreover, it was ascertained that telework could have other functions based on the provisions laid down in collective agreement, mainly at company level. Indeed, it is seen as a suitable tool to promote company's environmental sustainability, as a special tool of the labour market since it lends itself to being activated as an alternative to collective layoffs or geographical mobility of workers in the

[52] Art. 2. of the Cross-sectoral Agreement of 9th June 2004.

[53] Art. 2, para 6. of the Cross-sectoral Agreement of 9th June 2004.

[54] Art. 8 of the Cross-sectoral Agreement of 9th June 2004.

[55] Art. 5 of the Cross-sectoral Agreement of 9th June 2004.

[56] Art. 4 of the Cross-sectoral Agreement of 9th June 2004.

[57] Art. 7 of the Cross-sectoral Agreement of 9th June 2004.

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event of a company transfer[58], or as a "disaster recovery" solution to ensure continuity of production in the event of temporary closure of offices due to force majeure, or as a social support measure aimed at particular workers categories (both of these latter functions are mentioned in the Groupama collective agreement of 2014, – insurance sector –).

With specific reference to the working time related issues of teleworkers, the Cross-sectoral Agreement in Art. 8 substantially reporting what has already been established by Art. 9 of the Framework Agreement on telework. Indeed, it establishes, firstly, that the workers autonomously manage their working hours organization, always in compliance with the collective agreements and applicable legislation and, secondly, that the teleworker's workload and performance standards are equivalent to those of similar workers on the employer's premises.

The implementation of these principles in sectoral and company collective bargaining has been cautious, meaning that various collective agreements have left the parties the possibility of choosing whether to derogate from the ordinary rules of number and distribution of working hours or, again, have left teleworkers free to define the daily hourly organization of work but always in compliance with the overall hourly parameters established by the applicable sectoral agreement.

In company contracts, the implementation of the general framework took place following different directions: in some cases, the teleworker is asked to remain available at certain times in order to allow coordination with the company organizational process; rarely however, the smart worker is asked to strictly respect the working hours practiced in the company; in other cases, flexibility turns into a total exemption from the application of the applicable legislation on working hours.

It was noted that, concretely, the framework legislation has received a mild implementation and that the cause of such an outcome may have been caused by the clause in the European Framework Agreement requiring that the workload and performance standards of teleworkers are equivalent to those of other workers. The same doctrine has observed, in fact, that working hours have always represented the most reliable and objective criteria for assessing the fulfilment of the work obligation and, therefore, also the activity carried out remotely. As consequence they conclude that the social partners probably considered the strict harmonization of working models (both in terms of the number and distribution of working hours) as the safest tool of complying with the EFTA clauses and protecting teleworkers rights.

Collective Bargaining: Working Conditions, Rights and Duties of Teleworkers

The European framework agreement and the intersectoral agreement have regulations aimed at identifying employers' obligations in order to guarantee the

[58] *See* collective agreements of GDF Suez 2013 and Bassilichi 2016.

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worker a series of standards regarding the protection of working conditions, data, surveillance, work equipment, etc.

These rules, once implemented by sector and company collective bargaining, are transformed into more specific predictions. At the same time, the duties of teleworkers are better defined so as to allow a more profitable exercise of the employer prerogatives.

An aspect intrinsically connected to the peculiar nature of remote working that is governed by collective bargaining is that related to the compensation of the expenses incurred by the worker for the execution of the service from home. With specific reference to the tools that are used, collective agreements establish that they must be provided to the teleworker by the employer.

Another issue normally dealt with by collective agreements concerns the health and safety of teleworkers: there are limits to the access and inspection of the employer at the worker's home and the measures that the teleworker is required to follow to prevent accidents and data breach.

With specific reference to remote control topics, collective agreements, especially those at company level, are divided into those that allow remote control of workers, allowing the collection of data and their use for evaluation purposes, on the assumption that this practice is consistent with the privacy legislation [59] as it is instrumental to the execution of the work performance [60] and those which, on the other hand, expressly undertake not to use work equipment (such as microphones and webcams) for remote surveillance purposes [61].

Most collective agreements regulate the exercise of managerial prerogatives in the context of teleworking according to the standard hierarchical model based on management and control [62]. However, some cases foresee a possible shift towards result-oriented solutions: for example, the 2013 national collective agreement for the telecommunications sector paves the way to the possibility of an evaluation based on the achievement of objectives linked to the daily or weekly duration of the working activity, while the 2013 agreement of Sara (insurance sector) provides for the possibility of monitoring work performance through periodic reports.

Collective Relations

Collective agreements, implementing the provisions of the European framework and intersectoral agreement, also regulate collective relations. In particular, the orientation is to guarantee teleworkers the possibility of maintaining permanent communication with their representatives and with other workers.

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[59] Article 4 of the Workers' Statute.

[60] *See* collective agreements of banking sector 2013, Nestlè, 2010.

[61] *See* ENEL 2011 Collective Agreement.

[62] *See* Graphics 2008 Collective Agreement.

A shortcoming that has been noted is that of the lack of involvement of workers in the preparation of decisions regarding the strategies and problems related to the implementation of teleworking in each organization. Exceptions, for example, can be identified in the Unicredit Agreement which provides for a joint examination of the signatory parties in the event that the number of requests for teleworking positions exceeds the threshold of 8% of the total workforce and in the Bipartite Observatory established by the National Agreement for the Telecommunications sector signed in 2013 which deals with analysing, evaluating and discussing every teleworking related matter.

4.2. *The Italian Way to Smart Working between Law and Collective Bargaining*

Private Sector

Before the entry to force of the Law no. 81/2017, collective bargaining had experimented with forms of smart working, especially in certain sectors such as banking, insurance, food, metalworking, energy and oil. These collective agreements, which refer to this form of work sometimes in terms of smart working, others in terms of flexible work and rarely using the expression "agile work", define multiple aspects. Among these, there are those related to workers authorized to access this method of work execution and the criteria for identifying the space-time coordinates where performing the service to those on the managerial power of control and the protection of the worker's privacy and confidentiality.

As has been observed, despite the formal objectives of smart working are to be identified in the promotion of work-life balance, in the increase of company productivity and in the change management of corporate strategies, concretely the achieved objective was of giving advanced remote work new rules, without trapping it in those designed for teleworking [63].

As it was observed, it would seem that the legislative intervention was not necessary at all to let companies practising smart working. Thus, the idea was advanced that the principle of Law no. 81/2017 could be identified with the aim of systematizing previous negotiating experiences to overcome the problem of the limited effectiveness of collective agreements, which in the Italian legal system do not have *erga omnes* validity, in order to define a regulatory framework that supports the adoption of innovative organizational models, especially for the small and medium-sized enterprises benefit [64]. It was noted that there are aspects that are exclusive object of the legislative discipline as they are not covered by the collective bargaining, such as the right to disconnect, the notice in case of agile work termination and continuous training.

[63] I. SENATORI, C. SPINELLI, *ITC-enhanced remote and mobile work. National report on Italy*, 2021, p. 16, available at the following link https://irel.fmb.unimore.it/download/italy-ict-enhanced-remote-and-mobile-work/.

[64] *Ibidem*.

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Public Sector

In June 2017, the Directive of the President of the Council of Minister no. 3/2017 which introduced guidelines for the adoption of work organization measures aimed at work-life balance and, in this perspective, provided indications on the use of work flexibility, "the so-called agile or smart working", for public administrations, was approved.

With the extension by Art. 18 of the Law no. 81/2017 on agile work, where compatible, in public administrations the goal of improving organizational performance and productivity has also been extended to the public sector.

Therefore, agile work also in public administrations is aimed at triggering virtuous processes of organizational and managerial modernization in order to produce positive results on work-life balance and, therefore, on the organizational well-being of workers, but also on effectiveness and efficiency of administrative action. Moreover, this form of work can be useful for a strategic vision aimed at tackling absenteeism and achieving cost savings.

4.3. *Law no. 81/2017 on Agile Work*

Law no. 81/2017 on agile work aimed at outlining a framework within which the intervention of collective bargaining is inserted and which had already experimented with pilot schemes before its enactment.

The Legal Definition of Agile Work, its Legal Qualification and the Principle of Consent.

Law no. 81/2017 regulates agile work in articles 18 to 23, identifying the institute's purposes in increasing the levels of competitiveness of the company and favouring the work-life balance of employees.

In particular, the definition that the law provides of agile work is "a peculiar execution mode of the employment relationship agreed by the parties, encompassing forms of organization by stages, cycles and objectives, without strict time and place constraints, possibly involving the use of technological tools for carrying out the work activity. Work is performed partly inside the company premises and partly outside, without a fixed location, provided that the maximum weekly and daily working time established by statutory law and collective bargaining are respected" [65].

Two main characteristics are deduced from this definition: time and space flexibility of the service execution. This to say that work can be done in a flexible way still respecting the daily timetable established by the collective bargaining; meanwhile with space flexibility, its intended that a part of the service is performed outside of the company places.

[65] Article 18, paragraph 1 Law no. 81/2017.

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Regarding the technology tools, their use is merely considered as a possibility, therefore while carrying out the service their attributed function is as support instead of qualifying.

In consideration of its definition, agile work is considered either as a mode of performing subordinate work [66] or as a form of telework [67].

In the first case, part of the scholarship says that agile work does not constitute a form of telework due to the fact that the latter, unlike the first, is carried out outside the company premises as a rule. Another part of the scholarship [68] points out that agile work represents a form of telework. According with this view, agile work is an alternate telework, where the "regularity" of the performance is interpreted as continuity of its execution.

A third interpretation is based on the type of use of digital tools. In fact, in the case of agile work, the use of these tools is a mere possibility, while in the case of telework their use is necessary. According to this vision certainly both agile work and telework constitute forms of remote work expression, with the peculiarity that in the case in which agile work is carried out using digital tools (such as in the hypothesis in which mobile devices are used) this can represent an alternative form of telework and consequently the worker can take advantage of all the protections recognized to the teleworker.

Taking into consideration its definition, it has been supported that agile work can constitute "both the mere reproduction of the ordinary work performance in a place other than the company premises, as well as the performance of work with a high degree of mobility, connectivity and productivity*, i.e.* truly smart" [69].

Finally, both agile work and telework share a fundamental aspect and that is that they can be enabled only after the worker consent.

In the specific case of agile work, beyond the legislative framework aimed at

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[66] V. PINTO, *La flessibilità funzionale e i poteri del datore di lavoro*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2016, I, 366; A. ALLAMPRESE, F. PASCUCCI, *La tutela della salute e della sicurezza del lavoratore* "*agile*" in *Rivista giuridica del lavoro e della previdenza sociale*, 2017, I, 315; A. DONINI, *Nuova flessibilità spazio-temporale e tecnologie: l'idea del lavoro agile,* in (Aa. Vv.), *Web e lavoro. Profili evolutivi e di tutela*, Giappichelli, Torino, 2017; G. BOLEGO, *Commento all'art. 18, l. n. 81/2017*, in R. DE LUCA TAMAJO, O. MAZZOTTA (eds.), *Commentario breve alle leggi sul lavoro*, Kluwer-Cedam, Padova, 2018, 3129; M. MARTONE, *Lo* smart working *nell'ordinamento italiano*, in *Diritti Lavori Mercati*, 2018, pp. 311 ff.

[67] O. MAZZOTTA, *Lo statuto del lavoratore autonomo ed il lavoro agile*, in *Il quotidiano giuridico*, 1 febbraio 2016, disponibile all'indirizzo http://www.quotidianogiuridico.it/ documents /2016/02/01/lo-statuto-del-lavoratore-autonomo-ed-il-lavoro-agile; M. TIRABOSCHI, *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, n. 4, 38; M. PERUZZI, *Sicurezza e agilità: quale tutela per lo* smart worker*?*, in *Diritto della Sicurezza sul Lavoro*, 2017, n. 1, pp. 2 ff., disponibile all'indirizzo http://ojs.uniurb.it/index.php/dsl/article/view/960/904.

[68] P. PASCUCCI, *La tutela della salute e della sicurezza sul lavoro*, Aras Ediz., Fano, 2014.

[69] I. SENATORI, C. SPINELLI, *ITC-enhanced remote and mobile work*, cit.

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laying down a general framework[70], the parties define a series of working conditions in the so called "agile work pact"[71]. This is an agreement that goes hand in hand with the employment contract and has a fixed or indefinite duration. As noted in literature[72], giving the parties a balanced definition of their respective interests represents an act of trust by the legislator towards them, but at the same time reveals a series of critical issues, such as those related to the truly voluntary nature of the worker expressed consent in accepting certain working conditions.

Some Critical Issues about Agile Work

The use of digital tools to perform work services raises risks for workers, which could interest the health and safety of the worker, the right to disconnect and the control power exercised by the employer.

Below, each of these implications will be explored, presenting the possible forms of protection the worker can dispose of.

Health and Safety

The agile worker has more than one tool at her/his disposal to protect his health and safety in performing the work.

Particularly, a first form of protection is guaranteed by the employer obligation to provide information, at least annually, through which it is required to inform workers and representatives of the risks associated with carrying out a work activity outside the company locals[73].

This provision is not complete of the health and safety protections which agile workers should be recognized. Indeed, despite the peculiar way of performance execution, all the protections provide for non-agile workers by the legislative decree n. 81/2008 are applied also to them.

Because of the vision proposed in the literature, according to which agile work and telework are both species of the same genus, *i.e.* remote work, there are no obstacles in applying the protections provided to the first one for carrying out work via terminals which, in practice, expressly refers to telework.

Finally, the agile worker can access both the protections against injuries and

[70] Law no. 81/2017.

[71] A. ANDREONI, *Il lavoro agile nel collegamento negoziale*, in *Rivista giuridica del lavoro e della previdenza sociale*, 2018, pp. 105 ff.; E. GRAMANO, *L'accordo sul lavoro agile: forma e contenuto*, in ZILIO GRANDI G., BIASI M. (eds.), *Commentario breve allo statuto del lavoro autonomo e del lavoro agile*, Kluwer-Cedam, 2018, pp. 509 ff.; E. DAGNINO., M. MENEGOTTO, L. M. PELUSI, M. TIRABOSCHI, *Guida pratica al lavoro agile dopo la legge n. 81/2017*, Adapt University Press, Modena, 2017, pp. 37 ff.

[72] A. RICCIO, *L'accordo di lavoro agile e il possibile ruolo della certificazione*, in Gruppo Giovani Giuslavoristi Sapienza (eds.), *Il lavoro agile nella disciplina legale, collettiva e individuale*, Working Paper C.S.D.L.E. «Massimo D'Antona» *Collective Volumes*, 2017, n.6, pp. 61 ff.

[73] Article 22 paragraph 1 Legislative Decree no. 81/2008.

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occupational diseases that depend on the work performance activities outside the company premises, and those granted to workers during the relocation process from their home to the workplace, in case the location replacing the company premises is chosen based on the work performance needs, in compliance with the principles of work-life balance and those of reasonableness [74].

Right to Disconnect

Unlike in other European countries, in Italy Art. 19 of Law no. 81/2017 demands the definition of the "technical and organizational measures necessary to ensure that the worker can disconnect from digital devices" not to collective bargaining, but to individual autonomy, putting its practical feasibility at risk since the law does not identify the tools through which to pursue this objective.

In order to guarantee its effectiveness, the right to disconnect could be framed within the measures envisaged to protect the health and safety of workers, as a technological version of the right to rest.

Another functional vision to ensure the effectiveness of the right to disconnect leverages the prejudices that a constant connection could cause to the personal life of the worker, essentially looking at the right to disconnect as a way of protecting the privacy of the worker [75].

Despite the goals of work-life balance fixed in Art. 18, par. 1 Law No. 81/2017 [76] and in the 2019 budget law (Law no. 145/2018) there are no condition or limitation to guarantee that the individual agreement on agile working actually pursues this aim.

Supervisory Power of the Employer

The power that the employer can exercise to control the work performance by the agile worker is the subject of the agreement that is reached between the employer and the worker.

With regard to the power of control, the provisions of Art. 4 of the Law no. 300/1970, as amended by Art. 23 of the Legislative Decree no. 151/2015 are applied. In fact, the control over agile work (when it is performed with the use of digital devices) [77] would fall within the hypothesis of control that is exercised through the tools used to perform the work.

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[74] Art. 23 Legislative Decree no. 81/2008.

[75] J. E. RAY, *Le droit à la déconnexion, droit à la vie privée au XXI siècle*, in *Droit Social*, 2002, pp. 939 ff.; D. POLETTI, *Il c.d. diritto alla disconnessione nel contesto dei «diritti digitali»*, in *Responsabilità civile e previdenziale*, 2017, 1, pp. 7 ff.

[76] R. DI MEO, *Il diritto alla disconnessione nella prospettiva italiana e comparata*, in *Labour & Law Issues*, 2017, vol. 3, n. 2, pp. 17 ff.; E. SENA, *Lavoro agile e diritto alla disconnessione: l'incidenza delle nuove tecnologie sulle modalità di esecuzione della prestazione di lavoro*, in *Diritto del mercato del lavoro,* 2018, pp. 245 ff.

[77] A. BELLAVISTA, *Il potere di controllo sul lavoratore e la tutela della riservatezza*, in G. ZI-

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Consequently, according to the Article 4, paragraph 3, in order to use the data and information collected thanks to the technological tools used by the worker to carry out his work, the employer have to inform workers about the forms of control and the use of data collection.

In the case of agile work, such information is usually provided for or even negotiated in the agile work pact [78].

In addition, the guidelines dictated by the Privacy Guarantor also apply.

4.4. *Agile Work During the Covid-19 Pandemic*

With the spread of the Covid-19 pandemic, the use of smart working has significantly intensified, as highlighted by the data published by the Bank of Italy [79], which show that there was an increase of 14,4% in 2020.

During this emergency period, the smart working has emerged as a suitable solution to safeguard the health and safety of workers and, at the same time, to guarantee production continuity, in sectors whose activities obviously lent themselves to being carried out remotely.

Private Sector

In order to make the activation of agile work in an emergency situation quicker and more effective, the Italian legislator has introduced a special legislation that differs from the ordinary one both with reference to the procedures for establishing and operating agile work. In fact, in its emergency version, agile work loses an essential feature, which is the voluntary character of its activation both for the employee and the employer.

Two forms of pandemic agile work have been identified [80]:

1) A general form, which can be activated with a unilateral act of the employer on the basis of simplified requirements whenever the type of activity and the characteristics of the work allow it;

2) A special form, reserved for those individuals who, with the covid-19 pandemic, were exposed to greater health risks or were carrying out care activities. This category of workers may include disabled workers, workers with immunodeficiencies, workers living with a family member belonging to one of the aforementioned categories, workers in other health vulnerability conditions that can increase the risk of being affected by COVID-19; parents of children under the age

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LIO GRANDI, M. BIASI (eda.), *Commentario breve allo statuto del lavoro autonomo e del lavoro agile*, Kluwer-Cedam, Padova, 2018, pp. 627 ff.

[78] S. MAINARDI, *Il potere disciplinare e di controllo sulla prestazione del lavoratore agile,* in L. FIORILLO, A. PERULLI (eds.), *Il Jobs Act del lavoro autonomo e del lavoro agile*, Giappichelli, Torino, 2018*,* 222.

[79] https://www.bancaditalia.it/pubblicazioni/note-covid-19/2021/Nota_Covid_1_DPFG.pdf.

[80] I. SENATORI, C. SPINELLI, *ITC-enhanced remote and mobile work*, cit., p. 26.

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of 14 affected by schools' closure. These workers have a more than fair right to request the remote performance of their work, provided that the latter is compatible with the particular methods of execution that agile work requires.

The carrying out of agile work in its emergency version has brought out a series of criticalities of the institution, mainly linked to the absence of supervision by the employer in the phases following its activation (such as self-isolation, difficulty of managing one's own schedules and objectives and the collapse of the work-life divide).

Public Sector

Due to the health emergency from Covid-19 and the restrictions that have been adopted to limit the spread of the virus, agile work has become the ordinary way of performing services in Public Administrations [81]. Also in this case, the institute has undergone changes, starting with the aim of protecting the health and safety of workers and preserving the continuity of public services. In its emergency version, the activation of agile work no longer requires the signing of an agile work pact since the public administration has the unilateral power to decide on its activation [82].

Even after experimenting with emergency agile work, flexibility of time and space of work seems to remain an organizational prerogative in the public administration. This is demonstrated by the introduction of an obligation for public administrations to draw up the Organizational Plan for Agile Work (POLA) as a section of the Performance Plan, after consulting the unions, by the 31 January of each year [83].

4.5. *Agile Work in Collective Bargaining: Anticipating and Implementing the Law*

Collective Bargaining Level

The concept of "agile work" developed by the legislator in legislative decree no. 81/2015 was inspired by a pioneering decentralized collective bargaining that had already experimented with very similar solutions. Even after the definition of a legislative intervention, the institution regulation on a collective contractual level was mainly registered at the company level. However, with the advent of Covid-19 the situation seems to have partially changed since there has also been the sector bargaining inclusion.

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[81] Directive of the Ministry of Public Administration No. 2/2020.

[82] Art. 87, par. 1, lett. b, d.l. n. 18/2020, conv. by Law No. 27/2020.

[83] Art. 263, par. 4-bis, Decree Law No. 34/2020, conv. by Law No. 77/2020, which amend Art 14, l. n. 124/2015.

Definitions and Structural Elements of Agile Work

It has been observed the definitions of agile work provided by law and collective bargaining are different. This also depends on the recognized function of the technological tool, the use of which is not necessary for the law, while for collective bargaining it represents a prerequisite.

In addition to the tools aimed at promoting remote communication in the work performance (for example the Office 365 tools), collective bargaining also refers to the alternation between remote activities and in-headquarters activities, proposing solutions based on a weekly organization or providing for a maximum number of hours to be used in a month. Furthermore, collective bargaining also intervenes with reference to the workplace where the activity is carried out outside the company structures. If the legislative provision suggests that the work can be carried out anywhere, the collective bargaining intervenes to ensure that the quality and safety standards in the workplace are respected. Sometimes collective agreements require that the place of performance of the service is not too far from the company locals, some other times they provide for a list of the types of places allowed to carry out remote work.

Organisation of the Work Performance

With reference to working hours organisation, according to the law a feature of agile work is the possible lack of time limits in performing the working activity, although in compliance with the maximum time limits set by law and collective bargaining.

Despite this theoretical freedom of working hours organization, collective bargaining intervenes to delimit this time-lapse. It rarely allows the agile worker time distribution to coincide with that of the work performed in offices, more often it identifies time slots in which the worker can carry out the work activity in a discontinuous and intermittent manner, remaining available to the employer. It was also observed how collective agreements can provide for multilevel solutions, in the sense of constructing both rigid and more flexible solutions, to be used according to the particular features of the work [84].

Another peculiar organizational aspect of agile work relates to the organization of the activity carried out remotely by phases, cycles and objectives. In this regard, the provisions contained in the collective agreements seem to be less programmatic and more rhetorical. It has been observed that most collective agreements expressly refer to the fact that agile working models do not alter the employer's power to direct and control the execution of the work performance [85]. However, if a paradigm shift is required from an organizational point of view

[84] Examples are the following collective agreements: TIM 4 August 2020; Eataly 15 July 2020.

[85] I. Senatori, C. Spinelli, *ITC-enhanced remote and mobile work*, cit., p. 13.

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within the company because it pushes towards a results-oriented approach, then collective bargaining should intervene with well-structured schemes that allow the setting of measurable objectives, monitoring and evaluating the activity and dealing with the guarantee of the worker, such as challenging decisions made on assessments-based performance results.

This would imply the definition of a well-structured system which, however, does not yet seem to be rooted in collective bargaining. Indeed, it has been observed that "Even in the cases that go deepest into addressing the issue, the definition and the assessment of the targets is entrusted to the unilateral initiative of the supervisor (*e.g.* Fincantieri 17th July 2020, metalworking), or to an individual agreement with the worker (Coop Alleanza 3.0 16th December 2020, Trade and Services). The risk entailed in such small-scale solutions is that they could be too weak to live up to the challenge (*i.e.* to promote a real shift towards a result-oriented organization), and also leave the worker deprived of an adequate system of guarantees" [86].

Conditions of Employment, Rights and Duties of Agile Workers

Despite the provisions of Art. 20 of the legislative decree no. 81/2015 does not seem to fully equate the treatment of agile workers to those who perform the service within the company premises, it can be observed that collective bargaining sometimes intervenes, specifying that agile work does not involve any change in the position occupied by the worker within the organization and the economic and regulatory conditions it enjoys.

With reference to benefits and compensation such as, for example, meal tickets and holidays, it was initially excluded that agile workers were entitled to these prerogatives, while it was observed that post-pandemic collective bargaining adopted an opposite approach, tendentially recognizing such treatments to agile workers [87]. Likewise, the most recent collective agreements recognize agile workers the compensation for the "infrastructural" costs incurred to carry out the activity remotely.

Two issues that deserve intervention by the legislator are disconnection and surveillance, which represent an implication of use of digital tools.

With regard to disconnection, it was noted that with some exceptions [88] in which it is discussed in terms of right / duty, in other cases the approach is less clear-cut, favoring the adoption of good organizational practices (for example, avoid scheduling meetings during the lunch break).

Regarding the surveillance issue, it seems collective agreements ask the employer for respecting limits and conditions set out in article 4 of the Workers'

[86] Ivi, p. 33.

[87] Ivi, p. 34.

[88] Coop Alleanza 3.0 Collective Agreement.

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Statute, also referred to by the legislation on agile work [89]. Only some of them expressly commit the employer not to install remote surveillance devices [90].

It has been argued that collective bargaining can be a powerful source for introducing clarity and finding shared solutions, suitable for meeting organizational needs and containing employer powers to benefit the workers' rights. This is to respond to the critical issues that may arise during the implementation of Art. 4 of the Workers' Statute. In particular, this article provides for the exemption from the limitations that generally operate in the event of the installation of remote surveillance devices of those equipment directly functional to the execution of the work performance. Therefore, one might wonder about the possibility of including "data analytics" in the scope of this exemption.

Collective Relationships

The analysis of collective agreements has shown that, in most cases, the same trade union rights recognised to the workers in the company are extended to agile workers. In order to ensure their application, digital solutions are also prepared which allow agile workers to take part in union meetings as, for example, by digital platforms [91].

As for the involvement of workers in issues related to the implementation of agile work in the company, it was found that constant and daily involvement is quite rare, while the practice of joint examination is more widespread; finally, less frequent seems to be the unilateral management of these aspects by the company management, reserving the information of workers as the only participatory moment [92].

5. *Workplace Automation and Social Partners Strategies*

The term "Industry 4.0" is referred to those new technologies with high levels of automation, digitization and interconnection which can give rise to the so called "smart factory" with their implementation.

According to DESI Index, Italy still lags behind other European countries in the implementation of new technologies and digitalization in the companies, ranking 19 on 28 [93].

In Italy, the debate on Industry 4.0 has beginning in 2016 with the launch of the "Industry 4.0 Plan" by the former Ministry of Economic Development.

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[89] Article 21, Law no. 81/17.

[90] *See*, for example, collective agreement of HBG Online gaming, Findomestic and Eataly.

[91] *See*, collective agreements of ENEL (9th June 2020), TIM (4th August 2020), Fastweb (2020).

[92] I. SENATORI, C. SPINELLI, *ITC-enhanced remote and mobile work*, cit., p. 35.

[93] https://digital-strategy.ec.europa.eu/en/policies/desi.

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The Government set out to achieve 5 main objectives through this plan by allocating funding and implementing structural interventions. These goals can be summarised as follows:

– increasing the flexibility of small production line batch with the economies of scale of mass production;

– increasing the speed from prototyping to mass production using innovative technologies;

– increasing productivity by reducing installation time and downtime;

– improving quality and reducing scrap through real-time production monitoring using advanced sensors;

– improving product competitiveness through additional capabilities enabled by the Internet of Things (IoT).

In 2020, this plan was renewed and was joined by a new "Transition 4.0 Plan", which places greater emphasis on innovation, green policies and investment, and SMEs involvement.

Always in 2020, the Ministry of Technological Innovation and Digitization has launched a public consultation on a document titled "2025 A Strategy for Technological Innovation and Digitization of the Country", which proposes 20 actions aimed at enhancing digitization, innovation, and the sustainable and ethical development of society.

More recently, the government has developed the "National Recovery and Resilience Plan" (NRP)[94], implementing the Next Generation EU, in which digitization is one of the main pillars and one of the missions the national plan is aimed at.

5.1. *Industrial Relations and Technological Change*

Both the legislative and trade union response to the challenges of technology was considered "adaptive" because the social partners would be "fascinated" by technologies[95].

With specific reference to the trade union profile, this adaptive approach seems to have been challenged only since 2018 when the CGIL General Secretary declared that it was necessary to govern the changes driven by digitization, rather than simply accepting them and to manage their impact on society[96].

Such an approach by trade unions is a legacy of the past. Collective bargaining on the issues of technological innovation has been nearly absent for many years, due to the lagging position of our country in the use of digital technologies[97].

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[94] Piano Nazionale di Ripresa e Resilienza del Governo italiano (2021).

[95] I. SENATORI, C. SPINELLI, *ITC-enhanced remote and mobile work*, cit., p. 10.

[96] D. DAZZI, WHITTALL, *Comparative analysis of national reports within DRESS Code for European multinational companies: a challenge for Glocal Industrial relations*, 2018, VS/2016/0388.

[97] V. CIRILLO, M. RINALDINI, J. STACCIOLI, M. VIRGILLITO, *Trade unions' responses to In-*

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Only in 2008, with the financial crisis, there was a reversal, with decentralized bargaining beginning to include flexible production plans and agreements to cope with market fluctuations.

The silence of collective bargaining on the organizational and workers' welfare implications of implementing digital technologies meant that other collective regulation instruments could try to fill this gap. Among the aforementioned instruments there are consultation and information rights, worker participation in all its forms, and continuing training.

Trade unions complain that they are not involved in managing the technology issue, except in a few rare cases. Exceptions seem to be made by some territorial realities such as Emilia Romagna, where strategies are being adopted, such as the "Pact for work and climate", aimed at involving all actors in forms of cooperation designed to promote investment in the digital transformation of the economy and society [98].

As it was noted [99], those such as this are still exceptions, since the most recent strategies adopted at the national level do not seem to be reversing course with regard to the involvement of trade unions. The latter, in fact, have complained about the absence of adequate involvement in the NRP's definition stages with the consequent request to the government to introduce a form of governance that allows all parties to be informed and involved.

It was only in 2021 that a Protocol was signed by the CGIL, CISL and UIL and the Italian government to promote the involvement and participation of the former in the implementation stages of the NRP.

5.2. *Social Partners Strategies*

With the advent of Industry 4.0, it became increasingly clear to the social partners that a cultural change in the approach to technological innovation was needed. The "Industry 4.0 Plan" was seen as the first step in this direction, appreciated by the main trade unions especially because it let it emerge how the issue of the transition to Industry 4.0 could no longer be ignored and required public intervention, and because the social partners were involved in guiding and monitoring the Plan through their inclusion in the steering committee for its governance.

Digitization and the introduction of technological innovations in the workplace mean that forms of worker participation need to be reconsidered. To this end, since 2016, there have been a series of interventions aimed at promoting ex-

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dustry 4.0 amid corporatism and resistance, LEM Working Paper Series No. 2020/21, Scuola Superiore Sant'Anna, Laboratory of Economics and Management (LEM), Pisa, 2020.

[98] Emilia-Romagna Region, *Pact for work and climate. In Emilia-Romagna we build the future together*, 2020.

[99] L. BATTISTA, D. DAZZI, O. RYMKEVICH, *Industry 4.0 and Trade Unions in Italy*, National Report, p. 11.

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perimentation with forms of worker participation suitable for adapting to the new scenario.

Among them, the so-called “Factory Pact” (“Patto per la Fabbrica”) signed by CGIL, CISL and UIL and Confindustria in 2018 can certainly be counted. The Pact aims to address the impact of digitization through the intensification of the use of certain tools, first, through continuous training, in particular, aimed at the gain and re-skill on digital skills; second, it promotes the use of worker participation through a renewed collaborative relation between employer and workers, especially in the forms of organizational participation (“partecipazione organizzativa”), that is, through the involvement of workers in the design of work organization.

More agreements were then concluded dealing with training and workers' health and safety, aspects affected by technological change.

In general, trade unions share the view that collective bargaining would enable the technological impact to be anticipated, and worker participation is the most appropriate tool to ensure their position in decision-making.

Trade Unions’ Different Approaches to Increase their Knowledge about Industry 4.0

In order to better understand the “Industry 4.0” phenomenon, national social partners have developed different projects.

With reference to workers’ representatives, the experiences of CGIL, which launched the “Industry 4.0” project, can be mentioned. This initiative stimulates discussion between experts and technicians on the issues of the digitization of work, through the use of the digital platform “Idea Diffusa” and the creation of an Industrial Committee. CISL has come up with the “Industry 4.0 Workshop” [100], while Uiltucs has launched an online trade union platform for ICT workers and professionals, named “Net-Workers” [101].

Employers’ organizations were found to be active at the territorial level in strategies aimed at stimulating companies toward Industry 4.0 and guiding them in changing processes [102].

5.3. *Collective Agreements and Digitalization*

At the national level, there have been surveys aimed at understanding the spread of Industry 4.0 technologies at both the national and regional levels, as well as the approach and role of trade unions with respect to the ongoing transformation [103].

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[100] E. BARTEZZAGHI, L. CAMPAGNA, L. PERO, *Le tecnologie ed il lavoro che cambia*, Laboratorio Cisl Industria 4.0, 2017.

[101] https://sindacato-networkers.it/.

[102] An example is “Free the Intelligence” (“Liberare l’ingegno”).

[103] M. GADDI, F. GARIBALDO, N. GARBELLINI, *Industry 4.0 and its consequences for work and labour*, Fondazione Sabattini and Association culturale Punto Rosso, 2018.

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A first finding concerns the subjects that most commonly constitute the focus of collective bargaining in relation to their connection to digital innovations. The workers' training is one such matter, especially as it relates to the acquisition and updating of digital skills.

A particular case in point is the collective agreement in metalworking sector. In this agreement training is presented as a right of workers, as well as it is established direct involvement of works councils in planning aspects related to it.

In general, it has been observed [104] that training is an element present in most collective agreements, although the space devoted to it differs considerably from agreement to agreement. In fact, this can be considered a mere joint commitment of the parties, but it can also be the object of a real participatory intervention by the parties, leaving room for the intervention of joint commissions and participation groups (Luxottica collective agreement).

Training is not the only strategy to face the negative effects of 4.0 technologies on employment levels. Indeed, other four strategies aimed at the same goal are promoted, such as:

1) Protecting workers' right to privacy and complying with the prohibition of digital surveillance under Article 4 of Law no. 300/1970;
2) Incentives for early retirement in case of professional obsolescence;
3) Introducing forms of remote work;
4) Enabling the exercise of representation rights even in the digital context.

A second point that emerges from the data collection concerns the role of trade unions and the relationship of these organizations with technology.

It was observed that the role of trade unions in the "design stages" of technological innovation is marginal because it consists in accepting the transformations dictated by new technologies at different levels.

On the other hand, their role is crucial both in the stage of promoting new investments for process and product innovation and in the adoption of new technologies.

Furthermore, the study of part of collective bargaining in the Emilia-Romagna region has revealed how the role of trade unions is fundamental in the stages of technology implementation thanks to the establishment of bilateral joint commissions, *i.e.* internal bodies with information and consultation rights and sometimes also with propositional functions (*e.g.*, Bonfiglioli, Ducati, Lamborghini, Cesab-Toyota).

The issue of working time also turns out to be central in a reflection on the substantive aspects of the working relationship that are affected by the implementation of digital technologies in the workplace. Specifically, new technologies have incentivized and increased suitable mechanisms to bring about intensification of work time.

Certainly, the continuous and massive monitoring that can be implemented through digital devices as well as the analysis of data collected through such sur-

[104] L. BATTISTA., D. DAZZI, O. RYMKEVICH, *Industry 4.0 and Trade Unions in Italy*, cit., p. 15.

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veillance and their subsequent comparison and use for decision-making is an element that can contribute to this result.

With respect to this situation, collective bargaining does not intervene to regulate working hours in the sense of setting rules that mitigate the intensity of working hours.

5.3.1. *Some Case Studies*

Historically, Italian industrial relations have shown little interest in issues related to technological innovation. However, with the rapid spread of digitalization and its main effects on working conditions and on the labor market, there seems to be a change of pace aimed at pursuing goals of greater worker involvement and participation in technological implementation processes.

Below there are brief description of some national and company collective agreements in the metalworking sector where such trends are evident.

As this analysis will show, technologies are traveling at a very high speed and, as a result, there is a need to promote more active involvement of trade unions and workers' representatives than in strategic decisions regarding the introduction, use and impact of digital technologies on workers' rights and welfare.

National Collective Agreement for the Metalworking Sector

The national collective agreement of the metalworking sector, signed on 5th February 2021, addresses some of the issues related to technological innovation, dealing with some specific issues, such as participation, professional classification of workers and training.

Regarding the first of these elements, it can be seen that the collective agreement implements participatory practices by resorting to the creation of Observatories [105] and a national joint commission. The formers are mainly concerned with studying and monitoring economic, production, social and employment dynamics with reference to the organizational transformation related to Industry 4.0, the latter then monitors the implementation of the new system, examines needs and provides guidance in case of disputes.

With reference to the professional classification of workers, the collective agreement introduces an important novelty, namely, a classification based on the different level of autonomy recognized to the worker.

To this end, technical and scientific skills, autonomy and responsibility, soft skills and versatility are taken into account since they are key factors in the new digitized work environment and must be under constant observation.

The "vocational training" factor is taken into consideration especially with the aim of intervening to reduce the digital skills gap that characterizes many Italian companies.

[105] Art. 1 Metalworking NCLA.

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To this end, the value of continuous training is recognized. The social partners paid special attention to this element in a Memorandum of Understanding signed by “Federmeccanica”, “Assistal” and “Fim-Cisl”, “Fiom-Cgil”, “Uilm-Uil” on 12th July 2018. The integration of this protocol into the sectoral collective agreement led to the recognition of a real right of the worker to training, which takes the form of 24 hours paid by the company during which the worker can attend courses designed to develop professional or transversal skills.

In addition, on a non-compulsory basis, certain subject areas have been identified for which to activate training as a priority, and the territorial training and apprenticeship commissions have been given the task of monitoring and verifying the effective implementation of the training courses.

Company-Level Collective Agreements

Lamborghini

The Lamborghini company has been present in Emilia-Romagna region since 1963. Its collective agreement[106] is highly innovative when considering the ways in which aspects related to Industry 4.0 are regulated. Indeed, the company has activated a new organizational model called “Manifattura Lamborghini” that is inspired by the smart factory experience and thus engages the union on innovative social issues such as democratic participation in technological innovation, diversity, sustainable mobility, data availability, and health prevention.

The participatory model adopted at Lamborghini absolves values of the Volkswagen Charta, thus it assimilates and reinterprets the models in which the participatory spirit is embodied in German industrial relations. This system of “negotiated participation” consists of an articulated plan of information and consultation procedures that take place within a set of designated bilateral bodies, which also have prepositive functions, each with expertise on a specific subject.

The aim pursued is to encourage the integration of digitization to pursue not only the company’s productivity and flexibility goals, but also to protect employees’ working conditions.

The company contract also addresses the issue of skills, stating that it takes advantage of investments under the “Industry 4.0 Plan”.

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[106] Supplementary and participation contract Automobili Lamborghini SpA 2019-2022 signed on 26th July 2019 between RSU Automobili Lamburghini, FIOM-CGIL Bolona e FIM-CISl Area Metropolitana Bolognese.

Bonfiglioli Reducers

Bonfiglioli's company strategy[107] is essentially based on enhancing performance bonuses in order to promote company-wide innovation processes and enable worker participation.

The structure of the Results Bonus is divided into two parts: management indicators on the one hand and enhancement of technical and digital training and the culture of safety on the other.

With regard to the first aspect, three factors are taken into consideration, such as: production efficiency, quality and punctuality of deliveries, implemented in the production sites (Bologna and Forlì), with the aim of stimulating workers' commitment to achieving company results.

Then with reference to the part concerning technical training, a corporate platform dedicated to learning and developing skills and promoting a culture of safety at work was created.

A number of projects have then been adopted aimed at designing and ensuring training courses for learning all the skills needed to cope with the changes dictated by new technologies.

In this sense, the company boasts the experimentation of a best practice, namely the "Manufacturing Excellence Academy 4.0"[108], which represents one of the first concrete examples of a holistic approach to the development of skills 4.0 through a retraining path articulated in technical and cultural content.

Toyota Material Handling Italy

Toyota's collective agreement[109] also emphasizes the implementation of a more participatory industrial relations system and the fundamental role of training, which it considers a strategic lever of innovation.

With reference to this second aspect, the company recognizes the importance of stimulating and cultivating the talent of workers, developing their technical and communication skills as a step to ensure high quality standards. Starting in 2018, it introduced the Toyota Academy through which training courses are organized within the company that focus on providing the tools and knowledge for the development of new digital skills with special attention to the innovations brought by the Digital Company project, which will lead to a strong digitization of business processes.

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[107] The Company Collective Agreement is signed on 22nd July 2021 among Bonfiglioli riduttiori SpA, Confindustria Emilia Area Centro, FIOM-CGIL Emilia Romagna, FIOM-CISL of Bologna, FIOM-CISL of Forlì, FIOM-CGIL of Forlì, FIOM-CISL Romagna, UILM-UIL of Forlì.

[108] https://www.bonfiglioli.com/italy/it/news/academy-sole24ore.

[109] The Company collective agreement has been signed on 27th October 2017 among Toyota, FIOM-CISL, FIOM-CGIL.

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The collective agreement also pays special attention to issues of worker health and safety. The company has introduced a special prevention system called "Near Miss", which involves all workers in efforts to report possible risk solutions.

Ducati

In a context of digitization and Industry 4.0, Ducati's collective agreement[110] also pursues a more participatory system of industrial relations and recognizes the importance to be given to training and skills strengthening in the name of improving workers' living and working conditions and the company's competitiveness.

The aim of a higher workers' participation is pursued through the creation of technical committees, while in order to increase workers' skills, a system of job posting and job rotation is introduced, complemented by a different job classification system. Special attention is paid to workers over 50, for whom the agreement provides a special skills analysis in relation to Industry 4.0, in line with the experience of the VW Group.

Dalmine

The collective agreement[111] provides for the presence of a series of technical committees dedicated to the analysis of specific issues. One of these is the ODL committee, which also deals with issues related to the implementation of technological innovations within the company.

These include the Mes (Manufacturing execution system), an information system developed by the Group for the market, which allows it to manage and control all stages of production, simultaneously monitoring safety and quality parameters and exchanging information in real time with the company's management system. The limitation of this system is due to the fact that the contract does not regulate in as much detail as it should the limits for the control that can arise from it.

Autamarocchi

In the agreement[112] the explicit references to digitization are contained in the part where security and surveillance systems are regulated. Here it is clarified that these technologies are used only to ensure security and prevention from theft and for occupational safety but cannot be used for monitoring work performance.

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[110] Signed on 5th March 2019 among Ducati and FIOM-CGIL RSU Ducati Motor.

[111] The Company Collective Agreement has been signed on 9th January 2019 among Damline spa, Confindustria Bergamo, RSU di Damline e Sabio, FIM-FIOM-UILM.

[112] Signed on 12nd November 2015 among Automarocchi spa, FILT CGIL. FIT CISL, ULTRASPORTI and Autamarocchi RSU.

5.3.2. *Industry 4.0 and Industrial Actions: the Case of Amazon*

Amazon and Algorithmic Management

The Amazon company is a particularly emblematic case.

Coming into the spotlight is mainly the algorithmic management[113] system and, with it, the system of constant control and monitoring of the performance of the worker and the entire logistics supply chain managed by the company itself.

Amazon: Union Strategies in Italy

In Italy, labour relations with the giant Amazon are problematic for several reasons, which can be identified in the influence exerted by the culture of the company's country of origin, its diffusion on the Italian territory as individual and autonomous realities, and the difficulties of finding a constant in employment contracts, both because of the many sectors involved and because of the different types of contracts signed between employer and employee.

In 2018, as a result of a five-year unionization process and the first Amazon strike at the plant level, Amazon and the workers' representatives and local (Piacenza) unions of "Filcams.Cgil", "Fisascat-Cisl", "Uiltucs Uil" and "Ugl Terziario" signed the first company collective agreement in the Piacenza (Castel San Giovanni) fulfillment center.

Subsequent attempts by trade unions to extend the application of the agreement to other sectors and to create a single coordinating body with the union failed because of the company's opposing position.

The First General Strike in Amazon's Supply Chain

In March 2021, Amazon workers held a twenty-four-hour strike throughout Italy. This was the first time in Italy that trade unions had been successful in creating a common and collective solidarity along the supply chain and subcontracting at the national level.

The reason at the bases of the strike was the behaviour of the company which refused to acknowledge its social responsibility to subcontracted drivers. Indeed, although Amazon plans and controls their work, the drivers are not recognized as direct employees.

The First Industrial Relations Protocol on the Recognition of Collective Representation at Amazon

On September 15, 2021, at the Ministry of Labor, as a result of a long negotiation process made up of struggles, mobilizations and strikes along the supply

[113] V. De Stefano, S. Taes, *Algorithmic management and collective bargaining*, Foresight Brief, ETUI.

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chain and the resumption of dialogue with Amazon and "Assoespresso", the National Transport and Logistics Federations of "Cgil", "Cisl", "Uil" (Filt Cgil, Fit Cisl and Uil Trasporti), together with the National Unions representing temporary workers (Nidil Cgil, Felsa Cisl and UIL Temp) signed the Industrial Relations Protocol with Amazon Italia Logistica srl.

The agreement lays down the mutual recognition of the social partners, the role of union representation and the adoption of the National Collective Agreement for Logistics, Goods Transport and Shipping as the instrument that regulates the employment relationship between Amazon and its employees and affirms the essential role of union relations.

The Protocol is non-binding in nature, but it sets the direction along which corporate collective bargaining should move with reference mainly to issues such as hours, shifts, workloads, proper recognition of classifications and grading levels, stabilization of labor relations, health, safety and prevention in the workplace, training courses and professional enhancement as well as on economic issues such as performance bonuses, incentives and special increases.

5.4. *"Contratto di Espansione" and "Fondo Nuove Competenze"*

In the wake of the "Industry 4.0 Plan", the Government has increased its intervention in order to modernize the Italian labor market through the creation of new, interconnected programs. Among them, the "contratto di espansione" and the "fondo nuove competenze" are in line with the goals set in the National Recovery and Resilience Plan presented under the Next Generation EU. Both programs focus on the need to reindustrialize and reorganize Italian companies with new hiring and the increase of digital and technological skills in the workplace.

With specific reference to the "contratto di espansione" it should be pointed out that this is an experimental social shock-absorber program, which gives companies with more than 1.000 employees (now 100) the opportunity to enter into tripartite negotiations with unions and the Ministry of Labor for a process of corporate reorganization [114].

Measures it promotes are an expression of both active and passive job policies. Indeed, on the one hand, it provides mechanisms that induce pre-retirement under certain conditions and establishes a reduction in working hours for certain categories of workers; on the other hand, it accompanies the reduction in working hours with participation in training programs so that the transition of skills to digital is facilitated and, in addition, programs for new hires are promoted.

Beneficiaries of the "contratto di espansione" are also small and medium-sized enterprises (the minimum number of workers hired in the company must be 100), which are those that most characterize the structure of Italian industry.

[114] Art. 1, point 349 Law no. 178/2020 amending the art. 26-quater, Legislative decree no. 34/2019.

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In addition to companies with a minimum of 100 employees that are interested in implementing a reorganization of their premises, activities and workforce, the comparatively most representative trade unions at the national level and the Ministry of Labor are involved in the procedure.

Law regulates the procedure to be followed for negotiations, however, the presence of trade unions and the role they play in limiting the power of the employer suggests a revival of industrial democracy.

At the same time, the "contratto di espansione" involves a relaunch of the role of RSAs and RSUs within companies, which, through their proximity to company and worker needs can contribute to better and more effective management of digital and technological innovation.

The "Contratto di Espansione" and its Application: Some Cases

The expansion contract has been applied by several companies with different purposes. In the following, the experiences of Eni, Tim and Bricocenter will be noted.

Eni

The tripartite contract signed by ENI, the Ministry of Labor and "Filctem CGIL", "Femca CISL" and "Uiltec UIL" in April 2021 represents one of the first expansion contracts signed in Italy after 2019.

Its goal is to promote a corporate strategy that will enable it to become carbon neutral by 2050, thanks mainly to a modernization of the entire production chain. These goals were already part of ENI's strategy, being included in the "INSIEME" project, an industrial relations protocol aimed at sharing, with labor organizations at the national and company level and within the entire Italian territory for its size, the management of future challenges brought by the digital and innovative transition.

In detail, ENI planned to pursue its goals through initiatives aimed firstly at early retirement of workers and, second, in hiring new workers with updated skills. Such turnover would make it possible to reconvert company structures, update some activities and create new ones in the name of sustainability. The skills of the new hires will cover some strategic areas for the company's future, such as renewable energy, logistics, circular economy, digital transition and production innovation.

The expansion contract also includes a major investment in training. The program "Our Eni. Fit for Purpose" provides for specific courses, in-person and e-learning, on the different paths envisaged by the Expansion Contract and integration with on-the-job training.

Tim

TIM's 2021 expansion contract aims to reduce the digital divide in the Italian market and break into new and profitable areas such as Gaming, IoT and Cyber

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Security. The Industrial Plan, signed with "SLC-CGIL", "FISTel-CISL", "UIL-Com-UIL" and "UGL Telecommunications", aims to renew the skills of the workforce toward a "digital transformation of processes and services" offered by the company.

Bricocenter

The Expansion Contract was signed by Bricocenter Italia with "Filcams CGIL", "Fisacat CISL", "UILtucs" and the Ministry of Labor in November 2020. Alongside the company's modernization goals, there are additional objectives on which the uncertainty and negative dynamics triggered by the Covid-19 pandemic have exerted an influence. Thus, the company proposes to reorganize its business, accelerating the creation of more technological and innovative warehouses that take advantage of the new opportunities offered by an increasingly digitized market. At the same time, it has considered introducing digital skills into the company with a "non-traumatic resolution of near-retired workers".

The strategy adopted by TIM moves in the direction of making new hires, promoting employee training and reducing working hours, especially to certain categories of workers, so as to increase the number of training hours.

New Skills Fund

The "Fondo Nuove Competenze" is an active labour policy tool co-financed by the European Social Fund to support companies and workers in the post-pandemic phase by promoting employee training.

Basically, this fund is making it possible to organize tailor-made training courses to stimulate company innovation and growth, as well as training courses/programmes aimed at strengthening workers' digital and technical skills that workers follow during working hours, but which is financed by the government.

The "Fondo Nuove Competenze" aims to shake up the current state of the national workforce, which is characterized by a lack of highly skilled professionals. This is achieved through a careful analysis of workers' skills and training needs and the creation of *ad hoc* training courses.

Funding provided by the "Fondo Nuove Competenze" is addressed to companies that have entered into collective agreements to reduce working hours pursuant to Art. 88, para. 88, paragraph 1, of Legislative Decree No. 34/2020.

Such funding can be cumulated with other, such as those provided by the Interprofessional Funds. This should theoretically allow companies to train their workers completely free of charge.

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6. *Conclusion*

Digital transformation and the introduction of new technologies into the workplace is a process from which companies cannot escape, on pain of losing competitiveness in the market. However, in order to ensure that workers do not pay the price of such a process of innovation, in terms of a reduction in rights, it is essential that lawmakers and social partners act to limit the possible negative impacts of the new technologies' implementation.

Italian unions have taken time to gain awareness regarding the need for action on the challenges issued by technology.

The delay of unions with respect to the wave of digitization was evident as digital platform work spread like wildfire throughout Italy.

As seen, the initial difficulty of trade unions was filled by the rise of grassroots movements that collected workers' claims and became their voice bearers.

Currently, the role of trade unions in digital platform work seems to be intensifying. In particular, in their more recent actions, unions are supporting and assisting workers in litigation, using court pronouncements for strategic purposes of recognizing certain rights in order to pave the way to the extension of the levels of protection achieved to other workers. Otherwise, media and political attention seems waning.

With reference to agile work, in Italy, at present the emergency regime with its simplifications is still in force. In fact, Law No. 142 of 2022, which converted into Law Decree No. 115 of 9th August 2022 (also known as the "Decreto Aiuti-bis") has provided measures applicable to smart working as well. Specifically, it extended until 31st December 2022 the simplified emergency procedure of telematic communication of agile work in the private sector, which then will not need to proceed with the signing of the individual agreement.

Also with respect to the Industry 4.0 issue, the development of innovative technologies can lead to effects on workers' working conditions and their opportunities to access the labor market. The social partners are acting on several levels. Collective bargaining is combined with calls to intensify the use of social dialogue and, as a result, more collaborative and coordinated management of labor relations.

At the European level, the European Social Partners Framework Agreement on Digitalization signed by the European social partners and addressed to national social partners should be mentioned. In this autonomous agreement, the multiple aspects on which digitization can impact are highlighted, and particular importance is given to the issues of digital skills and training, right to disconnection, principle of human-in-control in Artificial Intelligence era, and protection of human dignity in relation to surveillance as well. To address these challenges, the European social partners promote a shared commitment of employers, workers and their representatives that is embodied in a jointly managed dynamic circular process.

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With regard to worker participation, an analysis of national legislation and collective bargaining shows that at the national level participatory practices encounter limits to their widespread adoption. Indeed, in order to become established, it is necessary for both parties to have an interest; appeals to productivity and competitiveness benefits for the enterprise may not be considered effective and efficient in the employer perspective if balanced with the provision of "stronger" forms of participation on strategic matters for enterprises.

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POLAND [*]

Izabela Florczak [1], *Marta Otto* [2], *Anna Piszczek* [3]

SUMMARY: 1. Overview of Domestic Industrial Relations System. – 2. General Policy Approach to Digitalisation and Work in Poland. – 3. Platform Work. – 3.1. The Conceptual Conundrum of "Platform Work" in Poland. – 3.2. The Impact and Diffusion of Platform Work in Poland. – 3.3. Regulatory Framework of Platform Work in Poland. – 3.4. Industrial Relations Players Response to the Platform Work in Poland. – 3.5. The Future of Platform Work in Poland. – 4. Remote Work. – 4.1. Implementation of Framework Agreement on Telework in Poland. – 4.2. Forms of Remote Work Before and During Pandemic. – 4.3. New Regulatory Initiatives and Practices v. Post-Covid Perspectives. – 5. Workplace Automation and Social Partners Strategies. – 5.1. Setting the Scene. Poland in the Wake of Industry 4.0. – 5.2. Social Partners' Strategies. – 5.3. Policy for the Development of Industry 4.0 in Poland. – 5.3.1. Institutional Building Blocks of Polish Industry 4.0 Ecosystem. – 5.3.2. Towards Better Understanding of the Impact of Ai on Polish Labour Market. – 5.4. Speculations on the Degree of Preparedness of the Regulatory Landscape to the Industry 4.0. – 6. Conclusions.

1. *Overview of Domestic Industrial Relations System*

Under article 20 of the Constitution of the Republic of Poland, a dialogue between social partners constitutes one of the pillars of the economic system of the Republic of Poland. It is a key instrument for the implementation of the idea of social market economy. The Constitution of the Republic of Poland assigns a special role to the negotiations between social partners, particularly for the purpose of resolving collective disputes and concluding collective labour agreements. The Polish labour law sets up the principle of freedom of association, which should be

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understood as a freedom to form, operate and dissolve organisations which unite workers and employers. In the Polish legislative system the freedom of association has two basic dimensions: the freedom (right) to form trade unions and employers' organisations and the freedom to join such associations. In the Polish labour law also a principle of participation of employees in the management of an establishment should be indicated. Its` essence is the participation of the employees in the decision-making processes concerning the functioning of such establishment.

An important actor in the social dialogue constitutes the Social Dialogue Council (*Rada Dialogu Społecznego*). The Council replaced the Tripartite Commission for Social and Economic Affairs. Statutory members of the Social Dialogue Council are composed of representatives of: the government, representative trade union organisations and representative employer organisations [4]. The Council is the main institution of the national tripartite dialogue. At the voivodship level there are the Voivodship Social Dialogue Councils. The sectoral dialogue has also the tripartite formula.

The representative trade union organisations are three national trade union organisations, including two confederations:

– NSZZ "Solidarność", the Independent and Self-Governing Trade Union ("Solidarność" Niezależny Samorządny Związek Zawodowy);
– OPPZ, the All-Poland Alliance of Trade Unions (Ogólnopolskie Porozumienie Związków Zawodowych);
– FZZ, the Trade Unions' Forum (Forum Związków Zawodowych).

At the national level, the three major trade union confederations try to exert influence especially on legislation, for example, directly in the area of labour law, but also with regard to social and labour market policy.

According to the Statistics Poland (GUS), there are 12,500 trade unions in Poland, to which over 1.5 million people belong (2018). People affiliated with trade unions represent 4,9% in relation to the adult population of Poland and 16,3% – employed on the basis of an employment relationship in establishments employing more than 9 people. The average number of trade union members in 2018 was 127. Of the persons on the membership lists of trade union organisations, 8,7% were retired and 0,1% were employed under civil law contracts. Among trade union members, 87,5% belonged to organisations affiliated to the three trade union centres belonging to the Social Dialogue Council. More than half of trade union members were affiliated to company and sub-company trade union organizations (51,0%), followed by inter-company organisations (30,5%). A separate group were trade unions with a complex organizational structure, whose units were not registered in the REGON register (so-called uniform unions) – 17,3% of trade union members belonged to them. The smallest part were members of trade unions

[4] http://dialog.gov.pl/dialog-krajowy/rada-dialogu-spolecznego/rada-dialogu-spolecznego/ (24.01.2022).

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of individual farmers (1,2%). The largest proportion of trade union members (23,2%) worked in education, followed by public administration and national defence (13,9%). A significant share in the membership structure was also held by persons employed in industrial processing (12,7%) and in health care and social assistance (12,4%)[5].

Trade unions remain in a state of advanced pluralism. They are organised in three major ways: cross-occupational (including "Solidarność", a general workers' union), occupational, and territorial. The relevant decline in Polish union density results from the processes instigated in the 1990s and early 2000s by the political and economic transformation, such as privatisation, labour market liberalisation and industrial restructuring. Trade union membership is more often declared by older workers than younger ones – the average age of trade unionists is 43 years, and that of non-associated workers – 40 years. Women are a little more often unionised than men. In addition, more often than on average, these are people working in public institutions and state-owned enterprises, representing professional groups such as technicians and middle-ranking staff, as well as administrative and office workers. Trade union membership is more often declared by those employed in companies with more than 50 employees than in smaller companies or institutions.

Until 2006 unions provided the only legally constituted representation for employees at the workplace. However, legislation implementing the EU directive on information and consultation provides for the creation of works councils. They are created in companies with more than 50 employees (initially 100 for a transitional period until March 2008). In Poland, despite the dual channel of employee representation, trade unions remain the main platform for employees to have a voice, as works councils have largely failed to become embedded in the national industrial relations. According to official statistics, only 567 works councils have been reelected for a second term (compared with 3,401 established for a first term). The decreasing interest in works councils is mainly attributable to rather narrow prerogatives[6].

There is also a role for ad hoc representation in shaping industrial relations. The ad hoc representatives are mostly commonly appointed when there is no other entity representing the employees. The Polish laws provides for the possibility of appointing ad hoc employees representatives, for example: at the conclusion of agreements on temporary suspension of the inter-company provisions of labour law, procedures for setting conditions of telework by the employer or setting a list of jobs when reduced working time should be applicable.

According to Statistics Poland (CSO), there are 400 employer organisations

[5] https://stat.gov.pl/obszary-tematyczne/gospodarka-spoleczna-wolontariat/gospodarka-spoleczna-trzeci-sektor/partnerzy-dialogu-spolecznego-zwiazki-zawodowe-i-organizacje-pracodawcow-wyniki-wstepne,16,1.html (24-01-2022).

[6] Industrial relations in Poland: background summary, https://www.etui.org/covid-social-impact/poland/industrial-relations-in-poland-background-summary (24.01.2022).

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actively operating in Poland, with a membership of 19.1 thousand employers, both legal entities and sole proprietors (2018). Legal entities dominated among the members of employer organisations, accounting for 69,9% of the membership base. In 2018, an average of 54 employers belonged to one employer organisation, and half of the organisations had no more than 24 employers. The employers' organisations represented in the Social Dialogue Council collect 29,8% of the membership of all employers' organisations; they are:

– Employers of Poland (Pracodawcy Rzeczpospolitej Polskiej)
– Confederation "Lewiatan" (Konfederacja "Lewiatan")
– Association of Polish Crafts (Związek Rzemiosła Polskiego)
– Employers' Association Business Centre Club (Związek Pracodawców Business Centre Club)
– Association of Entrepreneurs and Employers (Związek Przedsiębiorców i Pracodawców)
– Federation of Polish Entrepreneurs (Federacja Przedsiebiorców Polskich).

Almost every 5th employer organisation declared in 2018 that the main industry of its members' activities was health care and social assistance (18,5%). Members of employers' organizations often conducted their activities also in industrial processing (10,3%), services (9,8%) and trade (9,2%)[7]. The oldest, largest and most representative employers' organisation in the country is Employers of Poland (Pracodawcy RP). It has accompanied Poland's political and economic transformation from the very beginning, since 1989, by representing interests of entrepreneurs of all sectors and businesses. The Confederation forms an association of entrepreneurs of 19 000 companies who employ over 5 million employees; the most of all such organisations in Poland. It is a partner of social dialogue, a participant in the Social Dialogue Council and a co-originator of independent dialogue.

With the labour law reform of 1996, a free collective bargaining mechanism was introduced in Poland with the withdrawal of the state from detailed regulation of labour relations by means of a simplified labour code and a limitation to minimum standards. At this juncture, collective bargaining in Poland can take place either at the level of single companies or workplaces or at a multi-workplace level. In principle, all trade unions are entitled to engage in collective bargaining at the enterprise level provided that they have achieved unanimity with regard to their demands before entering into negotiations with the employer. In practice, this proves difficult mainly due to Poland's extremely pluralistic trade union system: in many companies, 20 or more company trade unions have to reach agreement. Thus, collective bargaining is extremely decentralised in Poland, and in terms both of numbers covered and impact, it is collective bargaining at individual company level

[7] https://stat.gov.pl/obszary-tematyczne/gospodarka-spoleczna-wolontariat/gospodarka-spoleczna-trzeci-sektor/partnerzy-dialogu-spolecznego-zwiazki-zawodowe-i-organizacje-pracodawcow-wyniki-wstepne,16,1.html (24.01.2022).

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(single-employer collective agreements) that is more influential. Less than 3% of the national workforce is estimated to be covered by multi-employer collective agreements. At the same time the content of collective agreements has been steadily deteriorating (according to analyses of the National Labour Inspectorate) and nowadays rarely exceeds the provisions of the labour law. Even though the government has a right to generalise (extend) multi-employer collective agreements (so that they cover the whole sector), it has never used that prerogative. Collective bargaining coverage is low, estimated to be at 30% [8].

2. *General Policy Approach to Digitalisation and Work in Poland*

The issue of digital work has become subject of debate only recently in Poland. Thus, in essence, the terminology, and the data on the scale of this new phenomenon is still rather unclear [9]. The terms that seem to be used more often in this context are: *automatyzacja i digitalizacja procesów pracy* (automation and digitalization of labour processes), *platformy pracy* (platform work), *inteligentna reindustrializacja* (smart reindustrialization), *gospodarka zleceń* (gig economy), *uberyzacja rynku pracy* (uberisation of the labour market). The term "digitalisation" in turn is being translated as *digitalizacja* or *cyfryzacja.* Interestingly enough, due to the lack of a uniform conceptual grid, some commentators use these terms interchangeably to describe the same phenomena [10], while others use them separately to describe different phenomena. In a direct Polish meaning *digitalizacja* denotes the process of transforming analogue processes and physical objects into their digital counterparts. *Cyfryzacja*, on the other hand, although it appears to be a similar phenomenon, is a term that describes the total process of implementing digital technology [11].

In the public debate, digitalization in the world of work seems to be mainly associated with processes related to work via platforms. The relevant perception seems to play a minor role for the country's key stakeholders, and as such reflects the still rather marginal significance of the described phenomenon to Polish labour market.

[8] Industrial relations in Poland: background summary, https://www.etui.org/covid-social-impact/poland/industrial-relations-in-poland-background-summary (24.01.2022).

[9] See generally: D. OWCZAREK, *Overview of new forms of work in the European Union*, in D. OWCZAREK, M. PAŃKÓW, J. CZARZASTY, M. KOZIAREK (eds.), *New forms of work in Poland,* Institute of Public Affairs, Warsaw, 2018, p. 10.

[10] A. ROGALEWSKI, *Cyfryzacja i praca platformowa. Informator dla pracowników*, Friedrich-Ebert-Stiftung, Przedstawicielstwo w Polsce, Warszawa, 2020, p. 9: http://library.fes.de/pdf-files/bueros/warschau/16035.pdf.

[11] Unfortunately, studies prepared by recognized Polish researchers are not helpful in understanding the relevant differences in terminology. For instance, A.M. ŚWIĄTKOWSKI uses the term *digitalizacja* to de facto describe *cyfryzacja* of the labour law. See: A.M. ŚWIĄTKOWSKI, *Digitalizacja prawa pracy*, in *Praca i Zabezpieczenie Społeczne*, 2019, 3, pp. 11-18.

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As much as 11% of Poles aged 18-65 had experience with platform work, but only 4% of Poles work this way on regular basis. Platform work is predominantly a side job (for 71% platform workers) and related to low wages (40% of regular platform workers earn less than € 240 per month, further 26% earn between € 240-480 per month) and unpredictable or small number of working hours [12]. Thus, in general, the public debate seems to be focused more on a wider phenomenon such as digitalisation and the automation of work [13].

At the same time, at this juncture there are no legislative works concerning regulations pertaining to the digital work (with the exception of transport sector-*vide infra* section 3). The recent report from 2018 by the Commission for the Codification of Labour Law (*Komisja Kodyfikacyjna Prawa Pracy*), states merely that: "Time constraints [in the preparation of the draft labour law] did not allow regulations referring to the phenomena such as the so-called 'uberisation' of the labour market, to be proposed. The abovementioned phenomenon has not yet intensified in Poland, and the very regulation of this matter is extremely difficult" [14].

Such an approach of the legislator leaves no illusions that the subject of digitalisation of work processes is not considered as requiring urgent standardisation. The relevant perception seems to be to some extent a by-product of the sui generis policy vacuum concerning the processes of digitalisation of the world of work in Poland.

Indeed in Poland's development policies, one can hardly find any that have even a fragmentary reference to processes related to the digitalization of work. This does not mean that the topic of digitalization is completely ignored. However, it mostly appears on the occasion of signalizing the necessity to update employees' competences to the needs of the new, digitalized reality. For instance, the Provincial Labour Office in Warsaw in 2019 published a report concerning the competences of the future on the Mazovian labour market in the perspective to 2040 [15]. The application objective of the research carried out in the preparation of the report was to formulate recommendations that would enable medium- and long-term decision-making in the field of shaping and developing the so called "competencies of the future". Yet, the achieved effect was directed at creating solutions preparing employees for the challenges of today, rather than preparing the legal environment to regulate this matter.

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[12] D. Owczarek, *Don't GIG up! Extending social protection to GIG workers in Poland*, https://www.isp.org.pl/pl/publikacje/don-t-gig-up-extending-social-protection-to-gig-workers-in-poland.

[13] *Op. cit.*, p. 55.

[14] Commission for the Codification of Labour Law (2018), Explanatory note to the draft proposal of the new Labour Code in Poland, Warsaw.

[15] Z. Bednarczyk, N. Kołos, K. Nosarzewski, M. Jagaciak, Ł. Macander, *Kompetencje, Jakich Nie Było Kompetencje przyszłości na mazowieckim rynku pracy w perspektywie do 2040 roku*, Mazowiecki Urząd Wojewódzki w Warszawie, Warszawa, 2019.

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In a similar vein the Polish Development Fund, *i.e.* a group of financial and advisory institutions for entrepreneurs, local governments and individuals investing in the sustainable social and economic development of the country, in its reports solely refers to the current trends related to digitalization at the Polish labour market. The relevant references do not contain, however, any legislative recommendations, but rather focus on the description of current phenomena, such as increasing the level of digitization in the enterprise [16] or digital workplace [17].

A study that describes the digitalization of work from a slightly different perspectives is the Report – Digitalization and the Labour Market [18]. The study consists of four parts. The first part presents the phenomena related to the changes brought about by the introduction of new technology to the labour market. In particular, forms of digital work are discussed and attention is paid to the theoretical basis for explaining the related changes in the labour market. The second part discusses the role of digital work as a solution for including in the labour market a group of people perceived as the most vulnerable to unemployment, namely people with disabilities. The third part of the report includes the results of surveys conducted in the initial months of the Covid-19 pandemic among companies and public institutions surveys on the changes that can be expected once the restrictions end. The fourth section includes the results of a survey of students as future employees confronting the challenges created by new technologies. The report concludes with recommendations for policymakers that may be useful in formulating public policies aimed at supporting labour market actors affected by digitization. The authors point out, among other things, that policies developed in the future should address such areas as:

– building confidence in technological changes that increase productivity and competitiveness of enterprises;
– joint action to promote solutions that may affect the stability of employment, presenting guarantees and opportunities created for those who want to improve their qualifications or for those who lose their jobs or whose working conditions deteriorate;
– ensuring stable development of new technologies through legal regulations and public support;
– creating solutions introducing guarantees for the other side of contracts, together with adequate laws protecting the interests of both employees and creators, designers, etc.;
– introducing laws on fair and non-discriminatory competition;

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[16] Z. Kot, B. Walczyk, *Jak zwiększyć poziom cyfryzacji w firmie? Poradnik dla MŚP*, PARP. Grupa PFR, 2021.

[17] P. Chaber, *Digital Workplace – cyfrowe miejsce pracy*, in P. Chaber (ed.) *2021. Monitoring trendów w innowacyjności Raport 11*, PARP. Grupa PFR, Warszawa, 2021, pp. 63-74.

[18] M. Ćwiek, M. Ćwiklicki, D. Firszt, M. Jabłoński, N. Laurisz, A. Pacut, M. Sołtysika, *Cyfryzacja i rynek pracy*, MSAP, Kraków, 2021, p. 92.

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– financial and infrastructural support for broad access to new technologies and digital and ICT tools;

– adapting labour law to the challenges of digital work (including prevention of uberisation);

– use of new technologies to match job seekers' skills or advice in employment support institutions;

– introduction of flexible forms of employment (the flexibility of the labour force in the labour market should be combined with a parallel, strong support for Active Labour Market Policies);

– counteracting the dualization of the labour market through structural and systemic actions of the state increasing the professional and qualification mobility of employees with simultaneous income support conducive to raising qualifications [19].

The roadmap for policymakers created by the authors of the report mentioned above deserves to be taken into account when developing the necessary action strategies. Digitalization of work in Poland is a phenomenon that requires immediate regulation, even at the level of non-binding acts, due to the fact that it is already a reality of the labour market.

3. *Platform Work*

3.1. *The Conceptual Conundrum of "Platform Work" in Poland*

Platform work represents one of the latest phenomena on the Polish labour market, which has also been reflected in the fact that neither Polish legislation nor the legal doctrine have provided univocal definition related to platform work. Some of those have been however construed by the Institute of Public Affairs (*Instytut Spraw Publicznych-ISP*) [20] – a leading Polish think tank and an independent centre for policy research and analysis, established in 1995 with a mission to contribute to informed public debate on key Polish, European and global policy issues.

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[19] *op. cit.*, pp. 82-84.

[20] D. OWCZAREK, *New forms…*

English definition	Polish definition	Short description
ICT-based mobile work	*praca zdalna oparta na technologiach informacyjnych i komunikacyjnych*	employees can perform work from anywhere and at any time using new technologies
voucher-based work	*praca za talony*	the employment relationship is based on payment for services with a voucher purchased from an authorized organization that covers both payment and social security contributions
portfolio work	*praca portfelowa*	a self-employed person works for many clients, performing small jobs for each of them
crowd employment	*praca platformowa*	there is an online platform for matching employers and employees, and large tasks are often divided into smaller parts and allocated to employees in a "virtual cloud"

According to the Institute, the key features of platform work include:

– intermediation between the ordering party and the contractor on an online platform,
– the involvement of three parties: the internet platform, the client and the worker,
– using the online platform to perform specific tasks or to solve specific problems,
– the nature of outsourcing (contracting work outside of the main contractor),
– division into small parts (tasks),
– provision of on-demand services.

Notably, "in Poland, where the concept of platform work is still less used in the public debate, often the term 'freelance' is being relied on instead, probably owing to the fact that the first platform workers were freelancers in creative and online industries, such as IT specialists or programmers". IT-related freelancing platforms still exist (for example, Freelanceria), but hardly any other types of platform work are available[21].

[21] Eurofound (2018), *Employment and working conditions of selected types of platform work*, Publications Office of the European Union, Luxembourg, pp. 10, 14.

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3.2. *The Impact and Diffusion of Platform Work in Poland*

According to the study by the Institute of Public Affairs[22], the number of employees who regularly work for platforms in Poland is about 4 percent, and those who have provided such work at least once in their lifetime about 11 percent. Poland does not stand out from other Eastern European countries in this respect. In Poland, so far there are however no official statistics regarding the legal basis of platform work (whether those are employment contracts, civil law contracts or self-employment). The National Labour Inspectorate conducts (in consultation with the Border Guard) research on platform work. At the moment, it can be pointed out that many people employed through platforms work on the basis of civil law contracts. Yet, most of the surveyed by IPA treat platform work as an additional form of income. Thus, more often these are also people who are working on a day-to-day basis in a less stable form (temporary employment contract defined – 14,7%, self-employed – 14,1%) or working without a contract (13,8%).

Notably, according to the IPA report significantly more often platform work was performed by the youngest respondents, aged from eighteen to twenty-four years – 22,4% (the person between twenty-five and thirty-four years of age – 14,3%). It is not surprising in this respect that more often platform workers have primary and lower secondary education (16,7% each) and live in larger cities (from 200 thousand to 499 thousand inhabitants – 15,3%, over 500 thousand inhabitants – 13,1%).

The time commitment of respondents was generally relatively low. 25 per cent stated that they work less than 10 hours, another 25 per cent between 10 and 20 hours, 14 per cent between 20 and 40 hours and only 9 per cent over 40 hours per week (nota bene 31 per cent of respondents said they could not estimate the weekly working time). Almost every tenth person works more than 40 hours a week for the platform, *i.e.* more than full-time work under an employment contract. This demonstrates not only that the platform is the only source of work for these people, but also that they have to do overtime to support themselves. According to employee of Uber Eat: "(..) especially in Warsaw, they often have to devote 11-13 hours a day to work in order to achieve the intended income."

The relatively large number of Ukrainian workers in Uber in Poland is not different from that of migrant workers in Western European countries. This is primarily due to the fact that the platforms operate in the grey area of legal regulations, where the status of the person working for them is neither part of the employment relationship nor of the self-employment relationship. Therefore, emigrants working for the platforms do not need a work permit or a permit to conduct business activity. It also happens that Ukrainian citizens provide platform work in Poland on a voluntary basis.

The precarious nature of platform employment is also evidenced by very low wages. According to the ISP survey, the earnings of respondents were mostly less

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[22] See: D. OWCZAREK, *Don't Gig-Up*, cit., pp. 57-60; D. OWCZAREK, *New forms…*, pp. 74-79.

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than 1000 PLN per week (40 percent of respondents). 26 per cent of employees stated that they earn between PLN 1,000 and 2,000, 18 per cent between PLN 2,000 and 5,000 and only 9 per cent gave an amount exceeding PLN 5,000 per week. The relevant earnings range vary, of course, depending on the findings of the algorithms. The latter do not take into account the cost of living in a given town. Against this background, Warsaw stands out, where the costs of living are the highest in Poland and some applications use the algorithm to lower the value of earnings from a given course in comparison with other cities. There are also different rates for the number of completed orders between Warsaw and smaller cities[23].

3.3. *Regulatory Framework of Platform Work in Poland*

In Poland there is no general statutory regulation of platform work. According to the information provided by representative of the Ministry of Family, Labour and Social Policy, so far no specific legislative work on persons employed through platforms is being carried out in the Ministry. The only act that covers partially the platform work is the so-called Lex Uber Act, that has been in force in Poland since 1 January 2020. It constitutes an amendment to the Act on Road Transport of Passengers of 16 July, which defines an intermediary in the transport of passengers, as well as the rules of their operation. During the first month of Lex Uber application the Police has inspected 140 drivers, 27 were threatened with penalties of up to 20 thousand zlotys for breaking the regulations.

Police data demonstrate that not everyone has a brokering license for the carriage of passengers, for which they can be punished. An inspection may impose a penalty for violating LexUber provisions by means of an administrative decision. According to police information, those who earn extra money in Uber, Bolt or FreeNow are breaking two rules. They do not have a license to transport people by taxi and they transport passengers with the wrong vehicle. According to art. 5b, a person can have a license to transport people by taxi or a motor vehicle designed to carry over 7 and not more than 9 people including the driver. If the driver has the second license, he must drive a car that can fit more than five but less than 9 people including the driver. Drivers must therefore either have a taxi license or drive a van. For lack of license they face 12 000 PLN fine, and another 8,000 for transporting with the wrong car. Theoretically, to avoid punishment, from January 1 2020, drivers conducting business activity can apply for a taxi license under the new rules, *i.e.* without passing the topography exam. To get it driver must have a cash register and taximeter or an application provided by an intermediary. For now, however, there are no rules specifying how the application should work, so

[23] https://www.opzz.org.pl/aktualnosci/swiat/polsko-niemieckie-seminarium-na-temat-pracy-platformowej-wymiana-doswiadczen-w-zakresie-regulowania-cyfrowego-rynku-pracy-i-organizowania-pracownikow-platformowych.

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diagnosticians have nothing to check. As a result, driver must have a taximeter, even if the passenger pays through the application.

As the Ministry of Digitization informed, the draft provisions do not interfere in the applications auxiliary used to arrange transport of persons, in which the basis for the settlement of transport is a taximeter together with a cash register. In this model, the application is an addition to the basic passenger transport service and settlement rules. The mobile application connected with the special cash register in the form of software can be used instead of the taximeter and the classic (special) cash register – these requirements will be specified in the executive acts that are currently underway. As a result, LexUber makes it harder for drivers to make extra money. To continue to perform services car has to be equipped with a cash register and taximeter, which induces further costs.

In Poland, the lack of regulation of the platform work results not only in precarious working conditions, but also in limited protection of health and safety regulations. On March 2021, the Polish Ombudsman requested the Minister of Development, Labour and Technology to undertake appropriate exploratory and regulatory activities with the participation of entities representing the government side, employers and employees, and using the expertise of experts in the field, in order to initiate discussions on the regulation of work through platforms. The Ombudsman argued that:

both the nature of the tripartite relationship between those commissioning the work the persons performing the work and the owners of the online platform are not defined, nor the status of those working via the platforms is not clear – in particular, there In particular, the question of subordination raises doubts, also in the context of European law, where the distinction between employees and self-employed persons is particularly crucial for determining the scope of EU competition law. Classifying work on platforms as self-employment restricts the possibility of giving such workers the protection enjoyed by employees under employment law. Job insecurity, irregularity of income and lack of adequate social security guarantees make such work precarious[24].

In response, the Minister pointed out that in Poland there is freedom of contract within the scope limited by law, which can be examined by the National Labour Inspectorate[25]. Yet the non-regulation of labour relations of people performing work via platforms makes it impossible for the National Labour Inspectorate (*Państwowa Inspekcja Pracy*-PIP) to carry out inspections. For example, at the request of the NSZZ "Solidarność", the National Labour Inspectorate was able to check compliance with the health and safety regulations, but only for office workers directly employed by Uber Eats[26]. As a result, the National Labour

[24] 17.03.2021, Adam Bodnar to Jarosław Gowin, III.7041.6.2019.LN.

[25] 14.04.2021, Jarosław Gowin to Adam Bodnar, DPP-III.057.1.2021.

[26] https://www.opzz.org.pl/aktualnosci/swiat/polsko-niemieckie-seminarium-na-temat-pracy-platformowej-wymiana-doswiadczen-w-zakresie-regulowania-cyfrowego-rynku-pracy-i-organizowania-pracownikow-platformowych.

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Inspectorate during its audits has not yet recorded legal areas particularly violated in the construction of employment via platforms.

3.4. *Industrial Relations Players Response to the Platform Work in Poland*

In its programme for 2018-2022, the NSZZ Solidarność pointed out the challenges of platform work, stating among other things: "(...) *that there is a need to introduce legal solutions which, on the one hand, would protect workers from the negative effects of digitisation, on the other, would control these processes and also serve the interests of workers. Such actions could consist, among others, in: recognising various platforms such as Uber as employers and those working for them as employees*." Also, the council of OPZZ has listed the digitalisation and the need for the European Union to take action to ensure that the platform workers' working conditions are equivalent to those of standard workers among the most important trade union priorities.

In the OPZZ opinion: "*Technological progress should primarily benefit employees, their families and local communities. Technological progress has resulted, among other things, in the spread of work through internet platforms and mobile applications such as Uber, which will change the world of work, with many risks for workers such as reduced quality of work, lower wages, lack of social protection and lack of health and safety protection. We cannot allow unstable forms of employment in the emerging jobs in the digital economy and existing jobs to continue as digitisation progresses*".

Polish trade unions recognize the need to standardize the process of work performed through platforms. However, it should be borne in mind that due to the underdeveloped social dialogue their demands do not have the chance to be transformed into real legal solutions. The voice of the trade unions should therefore be considered important, but not as a breakthrough at the process of preparing legal regulations on platform work.

3.5. *The Future of Platform Work in Poland*

In 2019 a Parliamentary Group for the Future of Work [27] was established. Currently it analyzes, among others, issues related to employment via online platforms, a model that is spreading into new economic relations (*e.g.* taxi corporations are starting to use quasi-Uber solutions). Representatives of employees, employers and the Ministry of Family, Labour and Social Policy take part in the Groups 'meetings. During one of the meetings [28] two ways of work development via platforms were discussed. Accordingly it was proposed:

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[27] https://www.sejm.gov.pl/Sejm9.nsf/agent.xsp?symbol=ZESPOL&Zesp=648.

[28] https://www.sejm.gov.pl/Sejm9.nsf/transmisje_arch.xsp?unid=7E82CE2A7E61A825C12584EB004E02D0.

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1) to regulate employment relations arising through platforms under a classic employment relationship;

2) to prepare a series of regulations that would cover the most sensitive areas of employment through platforms that require the intervention of the legislator to protect the rights of employees.

Some trade union representatives do not agree with the proposed regulatory direction. In their opinion, the mechanisms existing in the Polish legal system aimed at regulating the legal situation of persons employed under civil law contracts may even set an example for other European countries how to regulate the legal status of persons employed through platforms. By indicating which areas of legal regulations relate to persons currently employed under civil law contracts (such as the right to safe and hygienic working conditions, the right to minimum remuneration for work, the right to associate in trade unions, the right to be covered by collective agreements) they rather support an idea of including the same regulations to cover persons employed through platforms.

In the course of discussions within the Group the need to adapt the current regulations to the Directive on transparent and predictable employment conditions, which sets directions in many matters related to regulating also the platform work, was signalized. It was also found that the Polish specificity requires rather an analysis detached from the foreign solutions, because national realities are definitely different than those observed in other countries. The relevant conclusion is rather surprising, as the market of employment via platforms is a global one and the Polish legal system does not operate in a legal vacuum detached from other European legislation.

According to representatives of some trade unions, state supervision over working conditions is definitely insufficient, and as a consequence persons employed through platforms are deprived of their social rights. Changes regarding the organization of the labour market should be robust and comprehensive in order to clearly systematize the legal basis for platform work. Yet, trade union representatives notice that their organizations have troubles in reaching people employed through platforms and in encouraging them to join trade unions. The solution to abovementioned problem could provide mobile application technologies which should but are not yet used by national trade unions.

4. *Remote Work*

4.1. *Implementation of Framework Agreement on Telework in Poland*

The regulations concerning telework generally implement the provisions of the European framework agreement on telework of 16 July 2002 concluded on the basis of Article 139 of the Treaty establishing the European Community. Telework is regulated in the Polish Labour Code in Chapter IIb titled *Employing workers in*

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the form of telework (Articles 67^5-67^{17}). The relevant provisions were introduced on 16 October 2007 by the Act of 24 August 2007 amending the Act – Labour Code and certain other acts. This date can by no means be considered as the beginning of the telework in Poland. The idea of telework and the transfer of work results by electronic means had emerged many years earlier[29].

Before the institution of telework appeared in the Labour Code, it was recognised in the literature that telework could be performed both on the basis of an employment contract, and on the basis of a contract for the provision of services or a contract for specific work, as well as by self-employed entities. It was noted that Article 128 of the Labour Code, defining working time as the time during which an employee is not only at the employer's disposal at the workplace, but also in another place designated for work performance, although it does not apply directly to telework, indicates that the idea of working outside the office of the entrepreneur is known to Polish law[30].

As a result of the amendment of the Labour Code by the Act of 2007, a definition of telework was formulated and certain conditions of its performance based on employment relationship were determined. Telework under the conditions set out in the Polish Labour Code can be therefore provided only by the employee (teleworker) within the employment relationship. However, the introduced changes do not mean that telework can be performed only on the basis of an employment relationship[31]. Telework is not a new type of employment relationship or changes in any way the characteristics of the employment relationship specified in Article 22 § 1 of the Labour Code. If a teleworker performs for remuneration work of a specific type for the employer and under his direction and at a place and time designated by him, this will be employment based on an employment relationship regardless of the name of the contract concluded between the parties. It should be noted that subordination as regards the place, time and method of performing work is less important in the case of telework[32]. As a result, the borderline between telework performed within and outside of an employment relationship is blurred, which is in fact a characteristic feature of the currently noticeable trend in the Polish labour law.

According to Article 67^5 § 1 of the Labour Code, telework is work performed regularly outside the company, using means of electronic communication. What distinguishes telework as an atypical organizational form of contractual

[29] See generally: M. LATOS-MIŁKOWSKA, *Telepraca jako sposób upowszechnienie zatrudnienia*, in L. FLOREK (ed.) *Prawo pracy a bezrobocie*, Wolters Kluwer, Warszawa, 2003; A.M. ŚWIĄTKOWSKI, *Telepraca – specyfika zatrudnienia na odległość*, in *Monitor Prawa Pracy*, 2006, 7.

[30] L. MITRUS, *Telepraca jako nowa forma zatrudnienia*, in: *Transformacja prawa prywatnego*, 2001, 3, pp. 14-15.

[31] S.W. CIUPA, *Zatrudnianie pracowników w formie telepracy według Kodeksu pracy. Część 1*, in: *Monitor Prawa Pracy*, 2007, 11, p. 566.

[32] A. PISZCZEK, *Odrębności podporządkowania pracownika w nietypowych umownych stosunkach pracy*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź, 2016, pp. 211-222.

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employment is the workplace. The place of employment of a teleworker is established at least outside the company. It follows from the above that a teleworker will be both an employee working exclusively outside the company (at home, in a teleworking centre, in another place) and an employee combining work in the company with work outside it. The Polish legislator does not determine in an exclusionary manner in which places outside the workplace the employee may perform work in the organizational form, which is telework. An additional condition for recognizing the employment relationship as meeting the conditions of the organizational form of telework is the regularity of work outside the company (Article 67^{5} § 1 of the LC). The indicated regularity should be understood as performing work outside the company at constant intervals. The legislator did not specify what part of the working time should be performed under the conditions provided in the Article 67^{5} of the Labour Code, leaving it to the will of the parties. This means that the provision of work under the conditions specified in Article 67^{5} of the Labour Code, even for a small part of the time in relation to the full time of such work, determines that the work is performed in the form of telework, and the person performing it – as a teleworker. It is not possible to treat a person within the same employment relationship once as a teleworker and another time as a "regular" employee. Additionally, telework is characterized by the obligation to provide the employer with the results of work, in particular by means of electronic communication (Article 67^{5} § 2 of the LC).

The parties may agree that work will be performed in the form of telework when concluding the employment contract or during employment (Article 67^{7} of the LC). In each of these cases, the introduction of telework is voluntary for both parties, and the employee's lack of consent cannot become a reason justifying the employer's termination of the employment contract. It is not possible to entrust an employee to perform work in the form of telework on the basis of the employer's order. Article 67^{7} § 3 of the LC imposes an obligation on the employer to take into account, as far as possible, the employee's request to perform work in the form of telework. Since persons susceptible to exclusion from the labour market apply for work in this form, the employer, preventing an employee from teleworking, will often be accused of discriminating against the employee.

The employment contract concluded with a teleworker, apart from the obligatory elements listed in Article 29 § 1 of the Labour Code, must also determine the conditions for performing work in accordance with Article 67^{5} of the Labour Code. The parties must therefore determine the means of electronic communication to be used in the performance of work, as well as the manner in which the results of work will be transmitted to the employer. The electronic means of communication referred to in Article 67^{5} § 1 of the LC (*e.g.* e-mail) must be used in the performance of the telework, but not necessarily for the transmission of its results. The use of the words "in particular" in Article 67^{5} § 2 of the LC indicates an open catalogue of ways of transferring the work results. This transmission may therefore take place in direct form.

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The conditions for the use of telework are specified in the agreement concluded by the employer with the company trade union organization (Article 67^6 § 1 of the LC). In the case when there are no enterprise trade unions acting at the employer, the conditions for the use of telework are specified in the workplace regulations, after prior consultation with a representative of the employees chosen in the standard method adopted at a given employer (Article 67^6 § 4 of the LC). In this context, it is worth to bear in mind that due to the low level of unionisation in Poland (vide supra s.1), telework agreements between trade union organizations and employers are generally not very common, thus precluding in fact the development of model solutions and policy regarding telework agreements. The failure to apply the procedure mentioned above does not result in the invalidity of employment contracts under which the work is to be provided in the form of telework, or in the recognition of the transformation of a typical employment relationship into this organizational form as not being possible. This represents only a formal violation.

The scope of relevant agreement/workplace regulations should include such elements as *i.e.*: an exemplary indication of the place (outside the company) where the work is performed; determination of the scope (type) of work that can be performed in this form; determination of the working conditions and environment; determination of the work system and working time, regular periods and form of contact, control (without violating the special rules contained in the LC) or the performance of work by teleworkers, the conditions under which the teleworker can stay in the company.

In a special way, in comparison to a typical employment relationship, additional conditions which must be met before an employee can start performing work in the organizational form of telework are regulated. Article 67^{11} of the LC requires the employer to (1) provide the teleworker with the equipment necessary to perform work in the form of telework, meeting the general requirements set out in the LC; (2) insure the equipment; (3) cover costs related to installation, service, operation and maintenance of the equipment; (4) provide the teleworker with technical assistance and necessary training in the use of the equipment. It is debatable in this regard whether the employer should limit the abovementioned obligations to equipment understood as computer hardware (computer, printer, Internet connection, etc.) or whether he is obliged to provide and perform further actions with respect to equipment (desks, chairs, etc.).

The provisions of the Labour Code concerning non-discrimination and equal treatment apply to all employment relationships. Accordingly, they also cover all atypical contractual employment relationships. In addition, Article 67^{15} § 1 of the LC as complementary to this matter, prohibits less favourable treatment of a teleworker compared to employees performing similar or identical work outside the form of telework. Article 67^{15} § 2 of the LC, in turn prohibits discrimination on two levels. The first is the prohibition of discrimination based on taking up work in the organisational form of telework. The second is a situation where a refusal to take up employment in the form of telework constitutes a discriminatory criterion. It should

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be noted that Article 67^{15} of the Labour Code does not regulate the issue of discrimination of a teleworker in a comprehensive manner. In particular, it does not indicate sanctions for violation of the prohibition of less favourable treatment and discrimination of a teleworker, does not define direct and indirect discrimination, duplicates the regulation of the provision of Article 18^{3a} § 1 of the Labour Code, having only informative value. Article 67^{15} of the Labour Code is a transposition of the prohibition of discrimination against an employee for any reason included in Article 11^{3} of the Labour Code and in Chapter IIa of Section One of the Labour Code[33].

The legislator has clearly regulated the employer's right to control the performance of work by teleworkers at the place of work (67^{14} § 1 of the LC). This provision does not create a new right for the employer, as the employer's control rights result from the employee's subordination in the work process. It only confirms that the employer is entitled to these rights also when work is performed in the form of telework. When undertaking telework, the employer is obliged to indicate persons or a body authorised to carry out controls at the place of work (Article 67^{10} § 1(2) of the LC) and to adapt the manner of control to the place of work and the nature of work. The legislator has given special attention to the control of teleworkers performing work at home, which is understandable given the possibility that exists in this case of violating the right to privacy, both of teleworkers and their family members. If teleworking is done at home, the employer has the right to inspect: (-) the performance of work; (-) for inventory, maintenance, servicing or repair of the entrusted equipment, as well as its installation, (-) for health and safety at work, only with the prior consent of the teleworker expressed in writing, or by means of electronic communication. The control activities may not violate the privacy of the teleworker and his/her family or impede the use of the home premises, in a manner consistent with their purpose. The necessity to obtain the teleworker's consent to carry out a control in the case of teleworking at home and the obligation to protect the privacy of the teleworker and his/her family support the conclusion that the control of work at home should be an extraordinary activity. In principle, an employer should carry out control activities at the employee's place of residence only if it is impossible or highly difficult to carry out such control activities by means of electronic communication.

Notably, prior to the entry into force of the telework regulations, there were questions as to how health and safety protection standards could be applied to teleworkers. Some doubts appeared on the basis of Article 207 § 1 of the Labour Code, according to which the employer is responsible for the state of health and safety at work in the company. It was not clear whether this provision obliges the employer to ensure safe working conditions also at the teleworker's home, and if so, how, apart from providing appropriate equipment, he could do it[34]. This issue

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[33] See more: A. PISZCZEK, *Zakaz dyskryminacji telepracownika*, in *Wiedza Prawnicza*, 2012, 2, pp. 43-55.

[34] L. MITRUS, *op. cit.*, pp. 19-21.

was finally resolved in Article 67[17] of the Labour Code. First of all, when a teleworker performs work in his or her home, the employer is not obliged to take care of the safe and hygienic condition of rooms and technical equipment, as well as the efficiency of collective protection measures and their application as intended. Secondly, with regard to work provided in the form of telework, the provisions of Chapter III of section ten of the Labour Code concerning the employer's obligations in the scope of reconstruction of work rooms and provision of work rooms appropriate for the performance of a given work are not applicable. Thirdly, an employer is not obliged to fulfil the disposition of Article 233 of the LC in relation to a teleworker, *i.e.* to provide hygienic and sanitary facilities. The Act does not regulate how health and safety is to be ensured to a teleworker when performing work outside home. Therefore, it seems that in such a situation the employee is entitled to safe and hygienic working conditions under the general rules applicable to employees performing work outside the workplace.

In general, the Polish Labour Code can be perceived as the act which met the most part of the European framework agreement on telework. The issue of control of health and safety at work, which is currently of an illusory nature in practice, can be considered as issues requiring additional regulation.

4.2. *Forms of Remote Work Before and During Pandemic*

Teleworking has not been accepted so far as a popular solution on the Polish labour market. The reasons for this state of affairs can be found in the extensive procedure preceding the employment of a teleworker (conclusion of an agreement/regulation), the definition of telework indicating the regularity of performing work outside the workplace, or the statutory solution related to the possibility of resignation from telework by each party of the employment relationship even after 4 months from its implementation (Article 67[8] of the LC).

Figures concerning the popularity of telework are yet inconsistent due to different definitions of telework. Sometimes the term "telework" is understood as a form of providing work regulated in the Labour Code according to legal definition of telework, sometimes as all forms of providing work outside the employer's office, including ad hoc remote work or "home office". For example, the Statistics Poland (GUS) assumes that telework is a type of work performed by an employee outside the traditional workplace. It is devoid of all or part of personal contact with the employer, it is provided remotely by electronic media such as the internet or telephone, and its partial or total output is communicated through these media[35]. According to Yearbook of Statistics Poland, publication which presents data for 2017 and 2018 on the economic activity of the Polish population, in 2017 only 0.12% people were working in the form of telework. In 2018 – 0,13%. Vast

[35] https://stat.gov.pl/metainformacje/slownik-pojec/pojecia-stosowane-w-statystyce-publicznej/1899, pojecie.html (24.01.2022).

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majority of those who were performing work in the form of telework were working in private sector.

The epidemic situation in March 2020 indubitably influenced employers to be more open to forms of employment that allow for social distance, including remote work. In 2020, the share of remote workers was highest in Q1 (11%) and lowest in Q3 (5,8%), when some previously introduced restrictions related to the spread of the SARS-CoV-2 virus were reduced. At the end of Q4 2020, the share of people working remotely due to the restrictions on the economy introduced due to Covid-19 increased again to 10,8% [36]. A record share of those working remotely was recorded in Q1 2021. – 14,2%. The latest figures relate to Q3 2021. At the end of September 2021, the share of those who worked remotely due to an epidemic situation in the total number of workers was 5,0%. In the third quarter, the scale of use of remote working in the private sector was higher than in the public sector. An analogous situation occurred in Q3 2020, while remote working in the public sector dominated in all other periods, which should be linked to the functioning of remote education. At the end of September 2021 on the scale of the whole economy the use of remote work to reduce epidemic risk remained highest in units employing with more than 49 people. In this category of units 6,8 percent of the working population was working remotely due to the epidemic situation, while in smaller units about 2,5%. The performance of remote work in the third quarter of 2021 varied according to the type of activity. For example, in the sections of Polish Classification of Activities covering the information and communication, remote work was carried out by almost 51% of employees. In relation to the other sections, a relatively high share of employees covered by this form of work also occurred in the section financial and insurance activities and professional, scientific and technical activities [37].

Interestingly enough, the remote work concept was present in Polish companies already before the pandemic, occurring next to the less popular telework. It functioned as a kind of non-wage benefit, enabling flexible performance of professional duties. It was commonly referred to as "home office". Remote work, understood in this way, was performed outside the workplace with more or less regularity, usually no more than one day per week. It allowed the employee to provide work outside the workplace on an occasional basis. Although, the Labour Code did not provide for a specific legal regulation related to this form of work provision, many employers specified the principles of remote work in their work regulations. The

[36] Wpływ epidemii Covid-19 na wybrane elementy rynku pracy w Polsce w czwartym kwartale 2020 r., https://stat.gov.pl/obszary-tematyczne/rynek-pracy/popyt-na-prace/wplyw-epidemii-covid-19-na-wybrane-elementy-rynku-pracy-w-polsce-w-czwartym-kwartale-2020-r-,4,4.html (24.01.2022).

[37] Wpływ epidemii Covid-19 na wybrane elementy rynku pracy w Polsce w trzecim kwartale 2021 r., https://stat.gov.pl/obszary-tematyczne/rynek-pracy/popyt-na-prace/wplyw-epidemii-covid-19-na-wybrane-elementy-rynku-pracy-w-polsce-w-trzecim-kwartale-2021-r-,4,7.html (24.01.2022).

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concept of remote work was introduced into the Polish legal system by the Act of 2 March 2020 on special solutions related to the prevention, counteracting and combating of Covid-19, other infectious diseases and crisis situations caused by them (Journal of Laws, item 374, as amended).

Contrary to telework, the regulation on remote work is, so far, rather perfunctory. Pursuant to Article 3 of the Act, in order to counteract Covid-19, the employer may instruct an employee to perform, for a fixed period of time, the work specified in the contract of employment, outside the place of its permanent performance (remote work). The concept of counteracting Covid-19 is defined in Article 2(2) of the Covid-19 Act. In essence, it encompasses all activities related to the control of the infection, preventing the spread of the disease, counteracting and combating its effects, including social and economic ones. Thus, remote work generally can be ordered (unlike telework, which must be determined as an agreement of both parties to the employment relationship) both to reduce the direct threat of Covid-19 and its indirect consequences, having primarily socio-economic and social dimensions.

The originally rather cursory regulation on remote work was further particularized in the provisions of the so-called Anti-Crisis Shield 4.0, which entered into force on 24 June 2020. First of all, the new wording of Article 3 further specified the conditions under which the employer may instruct an employee to perform remote work. The criteria for the assessment of "admissibility" of remote work include: the employee's skills, his or her technical and housing capabilities, as well as the type of work. In this context, the relevant provision provides that remote work may be performed, in particular, using means of direct remote communication or concerns the performance of manufacturing parts or material services. This exemplary enumeration is of an open nature and thus does not restrict the type of permitted remote work or the means by which this work may be performed. Moreover, since the law does not specify what skills an employee should have in order to work remotely, it is up to the employer to assess whether the employee in question has the appropriate characteristics, knowledge and skills that will allow him or her to effectively carry out his or her professional activities at a remote location. Based on the assumption that the employee should not be obliged to organize on his own the means and materials needed to perform remote work and its logistic service, the relevant regulation imposes this obligation on the employer. At the same time it is acceptable for an employee to use means of work not provided by the employer when performing remote work, as long as this allows for the respect and protection of confidential information and other legally protected secrets, including company or personal data, as well as information the disclosure of which could expose the employer to damage. Remote work is generally associated with restricted ability to control the way the work is done and account for its effects. Therefore, the employer is granted the right to instruct the employee to keep records of the activities performed. The records may include in particular the description of these activities, as well as the date and time of their performance. As far as

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the manner, form and frequency of the record keeping is concerned, the employee should comply with the employer's order in this respect. Regrettably, despite earlier announcements, the Covid-19 amendment does not regulate the employer's obligations related to financial compensation due to the employee for performing remote work on their own, private equipment. In the course of legislative works, also the provision providing for limited responsibility of the employer in the field of health and safety at remote work and accidents at this work was also removed.

In addition, the legislator has created the possibility for employee or other employed person in the case of quarantine or staying in home isolation due to a positive SARS-CoV-2 test result, to perform remote work. Quarantine is the isolation of a healthy person due to exposure to infection, such as after contact with a person with coronavirus. Isolation is generally applied to people who are known to be infected with SARS-CoV-2. Importantly, an isolated infected person is not always a so-called "symptomatic person", which means that he does not necessarily have to show any signs of infectious disease or the course of the disease is scarcely symptomatic. These circumstances justify the introduction of the possibility for such persons to perform remote work, with the consent of the employer, while maintaining a sanitary regime.

The solutions introduced for remote working are episodic. The Covid-19 Act provides that the employer may recommend remote work during the period of the epidemic emergency or state of epidemic, announced due to Covid-19, and within 3 months after their cancellation. In connection with the fifth wave of the Covid-19 pandemic in Poland, it was decided to introduce an obligatory transition to remote work in public administration. On 24 January 2022, a regulation (Journal of Laws, item 149) entered into force, providing that employees in public administration offices or organisational units performing tasks of a public nature should be directed to undertake remote work by 28 February 2022. The provisions of the regulation do not apply to organisational units of courts and prosecutor' offices and universities.

4.3. New Regulatory Initiatives and Practices v. Post-Covid Perspectives

In 2021 the Ministry of Family, Labour and Social Policy has announced an amendment to the Labour Code, as a result of which remote work is to form a part of labour law framework for longer than the period of an epidemic emergency or state of epidemics, as stated in the current Covid-19 Act. According to the ministerial proposal, the new regulations are to repeal the provisions of telework from the Labour Code. The project, as such, is not a new idea, in fact most of the remote work provisions duplicate to considerable extent the constitutive elements of teleworking regulation.

According to the latest draft from 16 July 2021[38], remote work may be

[38] https://legislacja.rcl.gov.pl/projekt/12346911/katalog/12789150#12789150 (24.01.2022). Legislative work list number of both drafts: UD210.

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performed wholly or partly at the place indicated by the employee and agreed with the employer in each case, including at the employee's address of residence, in particular by means of direct remote communication. An agreement between the parties to the employment contract on remote work may be agreed upon at the conclusion of the employment contract or during the employment. The agreement during employment may be made at the initiative of the employer or at the request of the employee, submitted in paper or electronic form. The employer will be able to recommend the employee to perform work remotely only in two cases. Namely, when an emergency state, epidemic risk or epidemic state is introduced (and for a period of 3 months after their cancellation), or during a period in which, due to force majeure, it is temporarily impossible for the employer to provide health and safe working conditions at the employee's current place of work. The change in relation to the previous version of the draft is that the order will be possible only if the employee, immediately prior to the order being issued, makes a statement that he/she has the housing and technical conditions to perform remote work. Therefore, a prior submission of such a declaration is not sufficient (*e.g.* at the stage of concluding an employment contract or signing declarations on becoming acquainted with the content of the work regulations, remuneration regulations, etc.). In the case of a change in the premises and technical conditions which makes it impossible to remote work, the employee shall inform the employer immediately. In such a case, the employer shall immediately withdraw the remote work order. An additional solution is to allow remote work also at the request of an employee raising a child under 4 years of age or caring for a householder with disability. The employer is obliged to consider such a request unless it is not possible due to the organisation of work or the type of work performed by employee.

It is stipulated that the place of remote working must be agreed with the employee in each case. The employer may not impose it on the employee unilaterally, even by means of a business order in extraordinary circumstances. If it turns out that the employee does not have the premises or technical conditions to perform work at home or in another convenient place, and work in the office would not be possible, then in such a situation the employer is left with the task of providing him with alternative premises[39].

According to the draft proposal, the rules for remote work are to be set out in an agreement between the employer and the company trade union or representative organisation if it is not possible to conclude an agreement with all the unions. However, if no agreement is reached within 30 days from the date of presentation of the draft agreement by the employer, then the employer will be able to specify the rules for performing remote work in the regulations, "taking into account the arrangements made with the company trade unions in the course of concluding the agreement". In the case when there are no enterprise trade unions acting at the employer, the rules for remote work are specified by the employer in the regulations, after

[39] M. MĘDRALA, *Praca zdalna - nowe zasady w kodeksie pracy*, LEX/el. 2021.

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consultation with a representative of the employees chosen in the method adopted at a given employer. Such an agreement, as well as the regulations, should specify in particular: 1) groups of employees covered by remote work; 2) rules on the payment of costs directly connected with the performance of remote work; 3) principles for determining the monetary equivalent or lump in the case of using by the employee performing remote work materials and tools constituting his property; 4) the rules of communication between the employer and the employee performing remote work, including the manner of confirming the presence of the employee performing remote work on the work position; 5) the rules of control over the performance of work by an employee performing remote work; 6) principles of health and safety control; 7) principles of installation, inventory, maintenance and servicing of the work tools entrusted employee's, including technical equipment. The draft also provides for the possibility to perform remote work in a situation where no agreement has been concluded or no regulations have been issued. In such a situation, the employer could define the rules for performing remote work in an order to perform remote work or in agreement with the employee.

In case remote work is agreed during employment, either party will be able to submit a binding application to cease remote work and to reinstate the previous working conditions. The parties will set the date from which the previous conditions of performing work will be restored, not longer than 30 days from the date of receiving the application. Lack of an employee's consent to change the working conditions, as well as discontinuation of remote working under the rules specified supra, could not constitute a reason justifying termination of the employment contract by the employer.

The employer will be obliged not only to provide the employee performing remote work with materials and tools necessary for performing remote work and to cover the costs related to the installation, service, operation and maintenance of these tools, but also to provide the employee with technical assistance and necessary training in the use of tools. There is no doubt that the employer will be obliged to cover certain costs related to the performance of remote work by the employee, however, specific regulations concerning the payment of particular benefits are still imprecise. Therefore, it is important to regulate them in internal company regulations.

The draft also decides to regulate issues related to the protection of personal data provided to an employee working remotely, the right to control the performance of remote work, the prohibition of less favourable treatment of an employee working remotely, regulations related to health and safety at work and proceedings in the event of an accident at work. The draft provides for the possibility to perform remote work occasionally (*i.e.*, among other things, without the need to conclude an agreement or establish regulations of remote work), to the extent of 24 days per calendar year (the previous draft provided for the extent of 12 days). This means acceptance of the existing practice of occasional work from home (home office) usually treated as a benefit for the employee. An employee's request for such work under the draft is not binding. Intra-company practices will play an important role in the application of this form of remote work.

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The draft significantly changes the definition of remote work, which becomes a combination of the existing telework, as well as remote work modelled on the Covid-19 regulations and temporary work from home (home office). It may therefore be argued that in this respect it constitutes a certain compromise of the current normative solutions and those applied in practice.

The social side of the Social Dialogue Council, *i.e.*: NSZZ "Solidarność", OPZZ and the Main Trade Union Forum, expressed strong opposition to the relevant draft. They also objected to the manner and time of the procedure of the project, which the government party directed to the legislative path during advanced tripartite negotiations, without waiting for the results of the conducted discussions. According to NSZZ "Solidarność", remote working requires the introduction of new, permanent legal regulations, which should be developed taking into account the experience of its use during the pandemic period and by means of an agreement between trade unions and employers' organisations and the government party. The statement emphasises that remote work emerged in exceptional circumstances, in which it was possible to agree on certain shortcomings in terms of employee protection. However, the proposed legal regulation will refer to the situation after the end of the epidemic, in which there should already be space to provide adequate protection for employees working remotely.

Notably, OPZZ and NSZZ Solidarność opposed to total remote working solutions (due to the burden on the mental health of employees) and questioned the introduction of occasional remote working. Among the shortcomings was also the lack of standardisation in the draft of the minimum rate of the monetary equivalent for performing remote work. According to NSZZ "Solidarność", attention should be also paid to the necessity to establish an upper limit for the amount of the equivalent, due to the risk that this benefit could be used as a form of paying the employee a part of his remuneration for work in an untaxed and non-contributed form. The necessity for the employee to make a declaration that the remote workstation in the place indicated by the employee and agreed with the employer ensures safe and healthy working conditions was criticised by both trade union organisations. OPZZ pointed out that in view of the applicable regulations, the obligation to prepare the workstation in a manner ensuring safe and healthy working conditions cannot be imposed on the employee. The employee does not have to have the knowledge or capacity to carry out these activities. Many doubts were also raised by OPZZ with regard to the other proposals related to health and safety regulations in the performance of remote work and failure to include the postulate that the employer should be obliged to insure the work tools necessary to perform remote work that have been provided to the employee. OPZZ pointed out also that if there is no trade union in a given company, then an appropriate agreement should be concluded with a trade union representative, indicated by the trade unions that are part of the given Provincial Social Dialogue Council. This postulate is related to the need noticed by OPZZ to rapidly revive and implement social dialogue in Poland.

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Not surprisingly, employers' organisations drew attention to other aspects of the proposed regulation. Employers of Poland (Pracodawcy RP) pointed primarily to the need to clearly define the possibility of performing remote work from more than one location. Moreover, in their view, the catalogue of situations in which remote work is performed at the order of the employer is too limited. It was proposed to supplement it with a third premise – necessity due to the justified needs of the employer, when ordering remote work is possible due to the organisation or type of work performed by the employee. Moreover, Employers of Poland opted against the solution according to which the employer may issue an order for remote work only if the employee had previously submitted a declaration that he has the premises and technical conditions to perform such work. The reason for this is that the decision to work remotely would lie entirely with the employee. On the other hand, they allow for the opposite situation – the employee makes a statement about the lack of premises and technical conditions for performing remote work immediately after being ordered to do such work. The possibility of discontinuation of remote work (draft Article 67^{22} of the LC) was proposed by Employers of Poland to be conditioned "if it is justified by the specific interest of the employee and is not opposed to an important interest of the employer". The purpose of the proposed amendment is to limit the employee's free resignation from remote work in a situation where the employer has made expenditures or reorganised work significantly to accommodate the employee's remote work. They also called for clarification of the category of costs related to remote working and borne by the employer in order to avoid interpretation disputes on this issue. It was proposed to introduce a clear definition of a remote work accident, so that the employer should not be liable for incidents that may occur at the employee's place of residence regardless of whether the employee is at the same time in the remote work regime. Moreover, the employer should not bear the costs of accidents caused by poor organisation of the workplace. Employers of Poland postulated that the dimension of "occasional remote work" should be increased to 36 days. The Lewiatan Confederation submitted comments converging with the above.

Finally, after the agreements, public consultations and the opinion stage, the draft (UD210) was combined for joint proceedings with the draft law on amendments to the Labour Code Act and some other laws (UD211)[40]. On 8 December 2021, the draft was referred to the Standing Committee of the Council of Ministers for consideration. The draft provides that the Act, in the scope of remote work, will come into force after the period of 3 months from the date of cancellation of the epidemic status. This means that the proposed regulations will become law as soon as the current possibility for employers to order employees to perform remote work under Article 3 of the Act of 2 March 2020 on special solutions related to the prevention, counteracting and combating of Covid-19, other infectious diseases and crisis situations caused by them is exhausted.

[40] https://legislacja.rcl.gov.pl/projekt/12354104 (24.01.2022). Further work on these drafts will be carried out under legislative work list UD318.

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5. Workplace Automation and Social Partners Strategies

5.1. Setting the Scene. Poland in the Wake of Industry 4.0

Industry 4.0, *i.e.* the basing of industrial processes on advanced data processing systems, automation, the Internet of Things and smart technologies, is a concept that is increasingly present in Polish media, yet, as the National Statistical Institute (NSI) aptly observes so far there is no comprehensive research available about Industry 4.0 and its impact on Polish enterprises. In fact it was not until 2019 that the National Statistical Institute carried out pilot research: *Development of methodology and examination of the degree of adjustment of selected enterprises to economic requirements set by the fourth wave of the industrial revolution* (Industry 4.0) in order to develop statistical survey methodology to assess the state of adaptation of enterprises to economic requirements posed by the fourth wave of the industrial revolution. The data obtained as part of the pilot study, although not representative due to its limited budget, clearly confirm that the Polish companies are at the beginning of the road to Industry 4.0.

In essence, the innovation and process sophistication are generally low. 58,3% of the surveyed enterprises used at least one of the technologies such as cloud computing, the Internet of Things, Big Data analysis, artificial intelligence. Among entities using at least one technology, only 18,5% declared the impact of its application on the employment level, where 6,2% showed reduction of employment, 9,2% – an increase of employment, and 8,5% – employment of highly qualified specialists. The phenomenon of the increase in the total employment and the employment of highly qualified specialists occurred most often in the enterprises conducting Big Data analyses (12,3% among enterprises conducting Big Data analyses). At the same time only 2,0% of the surveyed enterprises were equipped with production lines processing individually composed orders without human intervention, while 0,4% had a production line on which the machine was reinforced in order to carry out individually composed orders in the series production mode without human intervention [41].

In a similarly nascent stage in Poland seems to be the overall awareness of the concept and its potential implications. According to PSI study: *Is Polish manufacturing ready for Industry 4.0* [42] (nota bene covering companies operating in four sectors: machinery and equipment, cars and transport equipment, furniture, and metal products) [43], more than half (52%) of manufacturing companies in Poland have

[41] Development of methodology and survey of the degree of adjustment of selected enterprises to the economic requirements of the fourth wave of the industrial revolution (Industry 4.0), Warsaw 2020, p.19-20.

[42] PSI Polska, https://www.psi.pl/pl/blog/psi-polska-blog/post/polska-produkcja-gotowana-przemysl-40/.

[43] In order to find out the opinions of representatives of manufacturing companies in Poland on Industry 4.0 and technology, but also their needs and challenges, PSI Poland conducted a

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encountered the term Industry 4.0. As many as 70% of companies knowing the concept of Industry 4.0 were planning or had already started to implement its constitutive solutions. Large companies were the leaders in this regard, as over 3/4 of them (77%) took such actions. Among medium players the relevant index amounted to 59%, yet both groups were equally eager to implement these technologies in the future. The most enthusiastic about this process were machine and device producers (87%), as well as car and transport equipment producers (70%).

Notably, when asked about the most strategic solutions from the area of Industry 4.0, the surveyed companies first of all indicated advanced IT systems (57% of the surveyed entities in general, including as many as 70% of large companies). It was also the most commonly used element of this concept – such systems were functioning in almost every third company (29%) in total and in 41% of large enterprises (mostly companies producing cars and transport equipment, as well as furniture). As the second key solution of the Industry 4.0 the companies indicated technologies enabling cooperation between people and robots. Their importance was recognized by 52% of the surveyed, 22% of companies have already implemented them, and almost 1/4 planned to implement them within the next 2-3 years. At the same time, the low position of other areas of Industry 4.0 is rather puzzling. Artificial intelligence was considered a strategic solution by 24% of respondents, and Big Data technologies by only 8%.

Intriguingly, a similar picture of industry 4.0 transformation progress conveyed the survey "*On the way to economy 4.0*" conducted by IDG (publisher of Computerworld magazine) in partnership with ABB[44], on 108 respondents from enterprises operating on the Polish market representing manufacturing and mining sector (40%), FMCG and trade (15%), telecommunications (10%) and the broadly defined utilities sector (8%). The survey demonstrated that only 14% of companies have a strategic transformation plan for activities within Industry 4.0 and have started to implement it. Almost half (48%) declare that activities related to the digitalisation of production processes are not anchored at the level of the enterprise's strategy, although smaller projects in this area are conducted[45].

The Covid-19 pandemic has indubitably already proven to be an impetus for companies to accelerate their digital transformation. In a recent Deloitte survey, 58 percent of senior managers (one-third of whom represented the manufacturing industry) indicated that digital transformation is a top strategic priority in their organization. As many as 86 percent believe that implementing new technologies is critical to maintaining their company's market advantage. Yet, as "Smart Industry Poland"

market research study which covered large and medium-sized manufacturing companies. As part of the survey, telephone interviews using CATI technique were conducted among decision-makers from 228 companies operating in four sectors: machinery and equipment, cars and transport equipment, furniture, and metal products.

[44] https://resources.news.e.abb.com/attachments/published/26874/pl-PL/D90B088210B7/ABB_RAPORT_GOSPODARKA40.pdf.

[45] https://przemysl-40.pl/index.php/2019/11/04/cztery-raporty-o-przemysle-4-0-w-polsce/.

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report indicated 60% of companies do not have the right people[46]. In the next few years the demand for specialists will reach 200 thousand[47]. Such a demand poses considerable challenges connected with the adaptation of employees and their competences to the new labour market realities.

5.2. *Social Partners' Strategies*

The growing impact of artificial intelligence on the functioning of different areas of society is more and more often reflected in the activities of social partners. The creation of preliminary studies indicating the recognition of the multifaceted nature of this socially significant phenomena, is certainly the first step towards establishment of an adequate regulatory strategy[48]. However, given the pace of development of Industry 4.0-related phenomena, these activities should be regarded as far too lacking in dynamism, especially that they still take form of an ad hoc rather than regular debates.

For instance, during the European Forum for New Ideas in 2019, organized since 2011 by the Konfederacja Lewiatan in cooperation with BusinessEurope and the City of Sopot, a special panel called "Industry 4.0 or already 5.0" was devoted to finding an answer to the question whether the 5.0 revolution is already a fact, or whether artificial intelligence and automation, which represent constitutive elements of this revolution, will only be a factor supporting the progressive digitalization in industry within the 4.0 economy. Not surprisingly, according to all the panellists taking part in the debate, the 5.0 revolution seems still far away: "Today we cannot talk about Industry 5.0 when Industry 4.0 is in the middle of the road and affects only a part of our society". The most important challenge that faces the actual development of technologies in the field of Industry 5.0, according to panellists, is education: "If there are no proper human resources, we will not go further. There is already a shortage of skilled workers in Poland. It is easy to buy a modern machine, but it is more difficult to find a properly trained employee to repair it"[49].

On 26 April 2021, the Working Group for European Social Dialogue of the Social Dialogue Council in cooperation with the Centre for Social Partnership Dialog organised a seminar aimed at launching a debate on the implementation of the

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[46] https://crn.pl/aktualnosci/brakuje-ludzi-do-rozruszania-przemyslu-4-0/.

[47] https://www.parp.gov.pl/component/content/article/58357:do-2025-r-polska-bedzie-potrzebowac-ok-200-tysspecjalistow-zajmujacych-sie-sztuczna-inteligencja.

[48] See *e.g.* 01.07.2021 – Europejskie związki: pracodawcy wykorzystują sztuczną inteligencję do szpiegowania pracowników (European unions: employers use artificial intelligence to spy on workers) published by the All-Poland Alliance of Trade Unions (OPZZ), https://www.opzz.org.pl/aktualnosci/swiat/europejskie-zwiazki-pracodawcy-wykorzystuja-sztuczna-inteligencje-do-szpiegowania-pracownikow.

[49] http://konfederacjalewiatan.pl/aktualnosci/2019/1/efni_219_przemysl_4_czy_juz_5_najpierw_edukacja_potem_hasla.

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European Social Partners' agreement on digitalisation in Poland. The main objectives of the agreement signed in June 2020 focus on developing a partnership approach between employers and employee representatives within such areas as: digital skills and employment security, ways to connect and disconnect, AI and guaranteeing the principle of human control, respect for human dignity and surveillance.

The agreement is generally perceived as a joint, dynamic, ongoing process of building awareness of the fact that digital technology comprehensively affects working conditions or employment bases. As Sławomir Adamczyk from NSZZ Solidarność observes: "This is a very complex agreement, which is multi-threaded and will require a variety of measures to implement. Notably, the implementation of European framework agreements in Poland until recently was not an easy matter, among other reasons because of lack of properly developed bilateral dialogue in Poland. For many years, the implementation of European agreements was carried out in an ad hoc formula. It is only few years ago, when the bipartite Working Party on European Social Dialogue was set up within the Social Dialogue Council, that the meetings have been formalised in a way that enables group representatives of all social partner organisations at national level to meet to prepare implementation negotiations.

The first step has been taken so far in the context of agreement on digitalisation in Poland was agreeing on the Polish translation of the text. The European Social Dialogue Group will try to work out recommendations for the Social Dialogue Council(*Rada Dialogu Społecznego*) teams on the areas in which they can undertake work on particular elements of the agreement". In the opinion of Fedorczuk from Konfederacja Lewiatan: "We need an accurate mapping of those areas where digitalisation can lead to changes in the scale of employment. Technological change affects different sectors of the economy in different ways. Such an approach will allow for effective work on the implementation of the Agreement." In the opinion of Wojciech Ilnicki, moderator of the working group on behalf of the trade unions, especially challenging for the Polish social partners is addressing the issue of employment through online platforms. Yet, the agreement on digitalisation should provide an impulse in this area [50].

5.3. *Policy for the Development of Industry 4.0 in Poland*

In Poland the efforts connected with the process of reshaping the broadly understood regulatory landscape in the wake of Industry 4.0 so far are mainly centered around the formulation of policies and guidelines for the future. These are very much in line with the current trends, yet seem to overlook in particular the rapidly growing importance of issues relating inter alia to artificial intelligence. What emerges from those still rather moderate actions, in particular in light of the

[50] https://www.solidarnosc.org.pl/aktualnosci/wiadomosci/zagranica/item/20389-seminarium-dotyczace-cyfryzacji-w-swiecie-pracy.

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Covid-19 pandemic accelerated digital revolution of work, is an image of AI as a process to occur in the future, rather than the one that is already present and current.

It was not until 2019 that the Polish government having acknowledged the key importance of AI for Industry 4.0 and more broadly for Economy 4.0, submitted for public consultation a draft Strategic Policy for the Development of Artificial Intelligence for 2019-2028[51]. In July 2020 "Policy for the development of artificial intelligence" was included in the list of legislative works of the government with a positive opinion of the Centre for Strategic Analysis. In September 2020, it was adopted by the Committee of the Council of Ministers on Digitalisation. On 28 December 2020 the Council of Ministers adopted Resolution No. 196 on the establishment of the Artificial Intelligence Development Policy in Poland from 2020[52]. The latter forms part of the planned new Polish Productivity Strategy and the strategy "Efficient and Modern State 2030".

Notably, one way of gaining knowledge directly from the industry community about the challenges to be addressed was through the Industrial Development White Paper. Entrepreneurs, organisations gathering representatives of industry, sectoral scientific units and non-governmental organisations were invited to participate in consultations, which in an open dialogue and through online consultations were to propose solutions to improve the situation of industry. In this way, the government wanted to activate industries, structure the discussion on specific barriers and learn from the experience of active participants of economic life. As part of the online consultation, the Ministry of Development, Labour and Technology received 333 questionnaires, through which stakeholders sent their remarks, ideas and comments. It should be noted that the entire consultation process related to the elaboration of the provisions of the Industrial Development White Paper took place during the Covid-19 pandemic, which meant that the consultations were mainly maintained in the online formula and by correspondence. In addition, on 12 January 2021, the Chambers and industry associations, as well as the Ombudsman for Small and Medium Enterprises and employer organisations (Business Centre Club, Confederation Lewiatan, National Chamber of Commerce, Employers of the Republic of Poland, Union of Polish Employers, Union of Entrepreneurs and Employers) were invited to consult the White Paper. The conclusions and recommendations adopted in the White Paper on Industrial Development were supposed to provide the basis for launching necessary legislative changes (including deregulatory changes within the so-called Legal Shield for

[51] Polityka Rozwoju Sztucznej Inteligencji w Polsce na lata 2019-2027 (2019), https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjW0ZWJkdDqAhWuioKHQxxCR4QFjAAegQIBBAB&url=https%3A%2F%2Fwww.gov.pl%2Fattachment%2F0aa51cd5-b934-4bcb-8660-bfecb20ea2a9&usg=AOvVaw1vLr1Fpzpp7MpOdrcs6zDO.

[52] Uchwała nr 196 Rady Ministrów z dnia 28 grudnia 2020 r. w sprawie ustanowienia "Polityki dla rozwoju sztucznej inteligencji w Polsce od roku 2020" (M.P. z 2021 r. poz. 23).

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Polish entrepreneurs) and building the fullest catalogue of instruments supporting individual industries[53]. They also served to develop the final provisions of the Industrial Policy. As the latter document reads, the development axes of the post Covid world among Green Deal, Security, Localisation and High Competence Society will constitute also Digitalization. The latter axis is generally based upon four dimensions of digital transformation: 1. Collection, networking and use of data (aiming at increasing the number of enterprises collecting and processing of digital data on the basis of their activities); 2. Industry 4.0 (aiming at increasing the use of robots in industrial production in Poland); 3. Human resources for the industry of the future (aiming at raising the digital competences of persons working in industry); 4. New business models (largely based on e-commerce)[54].

5.3.1. *Institutional Building Blocks of Polish Industry 4.0 Ecosystem*

Industrial development does not occur in isolation, but rather in an integrated and complex ecosystem. Building the broad institutional support of the latter seems to be currently one of the key direction of policymaking in Poland. In this context, *Policy for the development of Industry 4.0 in Poland* provides inter alia for the establishment of several auxiliary public administrations, stimulating and controlling AI activities, i.e.:

1. *AI Observatory for the Labour Market*, responsible for: "continuous monitoring, research and analysis of the impact of AI on the labour market and social policy and recommending legislative or regulatory intervention for social policy, including migration policy, and competence enhancement or livelihood provision". (At the time of writing, there was no information about the work on the establishment of the Observatory).

2. *Observatory for International Artificial Intelligence Policy and Digital Transformation*, endowed with the task of carrying out: "continuous monitoring of international policies or regulations in the EU dimension, but also in the multilateral dimension (UN, Council of Europe, OECD, WTO), plurilateral dimension such as V4, Digital3Seas, Eastern Partnership, D9+, D5+, G7, G20, and bilateral dimension, which may be important for the development of science, information society, economy and international cooperation. The task of the Observatory is to coordinate and formulate recommendations for international initiatives supporting Poland's strategic policy on AI and digital transformation. Substantive and diplomatic support for the Observatory should be provided by every foreign institution of the Polish state. The Observatory's seat is in Warsaw, but it may set up mobile local offices within existing foreign missions depending on the needs of international policy or science and technology diplomacy"[55]. (At the time of writing there was no information about the works on the establishment of the Observatory).

[53] https://www.gov.pl/web/rozwoj-technologia/polityka-przemyslowa-polski.

[54] Polityka przemysłowa Polski, Warszawa, 9 czerwca 2021 r., pp.5-10.

[55] Polityka Rozwoju Sztucznej Inteligencji w Polsce na lata 2019-2028 (2019), pp. 52-53.

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3. *Future Industry Platform* with statutory task of "strengthening the competitiveness of Polish enterprises by supporting their digital transformation, including with the use of AI. The Platform, that became operational in March 2019 in Radom, shall achieve this goal by creating mechanisms of cooperation, sharing of expertise and building trust in relations between market players involved in the digital transformation process"[56].

Another institutional pillar of the development of competitiveness of Polish enterprises towards Industry 4.0 provided the Act on the establishment of the *Future Industry Platform Foundation*, which entered into force 9 March 2019. The establishment of the foundation is a consequence of the implementation of the project "Polish Industry 4.0 Platform" included in the "Strategy for Responsible Development until 2020 (with an outlook until 2030)". The tasks of foundation include, among others, strategic consultancy and building cooperation networks, proposing business solutions, taking care of the legal and regulatory environment and giving an impulse to raise the level of technological advancement of Polish enterprises so that they strengthen their market potential. As part of the implementation of one of the main objectives of the Foundation, which is to strengthen the integration of the Polish Industry 4.0, a project supporting the creation of Digital Innovation Hubs has been launched. The key activities of the hubs will include the creation of one-stop shops that will help enterprises to become more competitive through the use of digital technologies.

In addition to the above, the Academy for Innovative Digital Applications (AI Tech) project was proposed, which aims to educate top-notch specialists in artificial intelligence, machine learning and cyber security, thus key areas for the modern economy and diverse applications. Project participants will acquire advanced digital competences that will enable them undertake a variety of activities in the area of key digital technology challenges, including initiating and leading innovative implementation projects. In addition, a strong link to the needs of the economy and administration is foreseen. The Academy will prepare project participants to support institutions of key importance to the Polish economy. As a result of the project, an innovative model of scientific and didactic work combining the needs of science and business will be implemented at Polish universities. The project is addressed to universities, including directly to students of second-cycle full-time studies in fields such as artificial intelligence machine learning, cyber security. Approximately 1,000 students will be covered by it. It is expected that the best students of the launched majors will continue their education, pursuing, among others, the so-called "implementation doctorates"[57]. At the end of 2019, the Minister of Digitalisation signed letters of intent with the 5 universities in the consortium, which are to create the Academy. The value of the project in 2020-2023 is PLN 51,5 million.

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[56] Polityka Rozwoju Sztucznej Inteligencji w Polsce na lata 2019-2028 (2019), p. 46.

[57] Polityka Rozwoju Sztucznej Inteligencji w Polsce na lata 2019-2028 (2019), p. 61.

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5.3.2. *Towards Better Understanding of the Impact of Ai on Polish Labour Market*

The "Policy for the development of artificial intelligence in Poland from 2020" clearly indicates that services such as call centres, accounting, travel agencies, diagnostic laboratories and financial advice are already increasingly supported by solutions based on AI, and thus – traditional jobs are gradually being replaced by intelligent software. It is therefore necessary to provide conditions for the professional conversion of society in order to combat technological unemployment.

Among the short-term goals, which are to be achieved by 2023, the Policy listed effective prevention and counteraction of the negative consequences of the development of artificial intelligence for the labour market, *i.e.* implementation of labour market protective measures in dialogue with the market, preceded by a socio-economic analysis. This goal is to be achieved by:

1) identifying which professions are potentially at risk of disappearing in the near future and preparing re-qualification programmes for people in these professions;
2) regular preparation and improvement of sectoral and thematic forecasts to assess potential threats and opportunities for job creation;
3) a systematically updated analysis of labour market risks associated with smart automation;
4) a methodical approach to monitoring the impact of technological change on the labour market by producing reports and publishing the results;
5) promotion of conscious career choices adapted to the conditions of the economy of the future;
6) effective career guidance, coaching, education, targeted grants, soft loans or tax amortization;
7) preparation of human resources for new professions related to the application of solutions based on artificial intelligence;
8) preparation of law in terms of flexible forms of work and virtualization of the work environment (remote work).

Medium-term goals (until 2027) assume, among other things, analysis and elimination of legislative barriers and administrative burdens for new enterprises dealing with AI. This goal is to be achieved by creating conditions for increasing labour market flexibility through appropriate changes in legislation and consultations with employers and trade unions in this regard.

5.4. *Speculations on the Degree of Preparedness of the Regulatory Landscape to the Industry 4.0*

The unprecedented complexity of the Fourth Industrial Revolution necessitates reshaping the regulatory approach so that it supports and stimulates innovation that benefits both the citizens and the economy. Thus the rather static nature of Polish regulatory landscape does not bode well for the future. It is rather

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symptomatic that the building block of the labour law functioning in Poland dates back to the era of real socialism. Indeed as surprising as it may seem, the Labour Code enacted in 1974 has survived the transformation of the socio-economic system and Poland's accession to the European Union, although it is impossible to ignore the fact that both these events resulted in the introduction of numerous changes to its structure. Of course, one can speculate that since the basic assumptions of the Polish Labour Code have not been reformed by either transformation of the socio-economic system or the accession to the European Union, it is an act of such far-reaching regulatory universalism that it can be successfully applied also at a time when labour law is being challenged by Industry 4.0. Yet, it is rather self-evident that its almost 50 years of binding force accompanied by the dynamically changing, under the influence of new technologies, work environment/realities, constitute a strong rationale supporting its long awaited – at least since 2002 – recalibration. In that year, the Labour Law Codification Commission, was established in order to develop assumptions/projects/drafts for the recodification of individual labour law, as well as for the codification of collective labour law[58]. The Commission completed its work in 2006 by presenting two proposals: Labour Code and Collective Labour Code (CLC). These were presented to the public in 2008[59], still never came into force.

It would seem that the failure to implement the draft of the Labour Codes from the first decade of the second millennium would put off further attempts to codify Polish labour law for many years. However, this was not the case and already in 2016 another codification commission was established. The Commission was to operate in two sub-groups – the team that was to prepare the draft of the Labour Code and the team that was to prepare the draft of the Collective Labour Law Code. A timeframe given to the Commission to carry out its work by delivering drafts of two codes was very short – has been fixed at 18 months. On 14 March 2018 the Commission adopted a resolution on the draft law – Labour Code and the draft law – Collective Labour Law Code. According to the press note of the Ministry of Family, Labour and Social Policy, it was to be noted that the draft Codes were proposals by labour law experts. After the Minister of Family, Labour and Social Policy had familiarised herself with them and the necessary consultations had been held, a decision was to be taken on further work on these drafts[60]. Notably, the drafts prepared by the Commission were neither supported by the OPZZ, NSZZ "Solidarność", nor the Employers of Poland. That is, the two largest

[58] Regulation of the Council of Ministers of 20 August 2002 on the creation of the Commission for the Codification of Labour Law (J.L. No. 139, item 1167 as amended).

[59] See: https://archiwum.mpips.gov.pl/prawo-pracy/projekty-kodeksow-pracy/, accessed 16.10.2021.

[60] See: https://archiwum.mpips.gov.pl/bip/teksty-projektu-kodeksu-pracy-i-projektu-kodeksu-zbiorowego-prawa-pracy-opracowane-przez-komisje-kodyfikacyjna-prawa-pracy/, accessed 23.01.2021.

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trade union centres and one of the largest employers' organisations [61], which were represented in the Commission. Officially, no information was ever given that the projects would not be adopted.

The relevant specificity of the work on the most important legal acts regulating the functioning of labour relations in Poland reveals the organisational powerlessness related to the preparation of legal acts. What is also symptomatic – despite the works of both Commissions taking place temporarily already in the current millennium, neither of them, at least to a residual extent, took into account in their works the challenges faced by the labour law in light of visibly growing in Europe Industry 4.0.

At the same time it should be very clearly pointed out that the Polish social dialogue between workers' representatives and employers, which has been in crisis for many years, is currently in an even worse situation, largely related to the increasing, more and more politicised role of the largest workers' organisation in Poland, *i.e.* NSZZ Solidarność, whose glaring manifestations are actions aimed at supporting organisations of nationalist character. The public perception of trade unions as political organisations is not conducive to the creation of a positive image of social dialogue at both workplace and central level. This increases the polarisation of interests presented as "employee" and "employer", while at the same time decreasing interest of employees themselves in any trade union activity.

Notably, the rather poor situation of Polish trade unionism is reflected well in the new programme of the ruling party, which is supposed to put Poland back on its feet after the difficult period of the pandemic. The phrases "trade union" and "collective agreement" do not appear even once in the text of the "Polish Deal". The document is completely silent on the issue of workers' organisations and their influence on shaping relations on the labour market. Simultaneously, while drafting the new Industrial Policy, under the catalogue of key instruments supporting entrepreneurs in their development activities, the government mentions, among others, deregulation. More specifically, the White Paper on Industrial Development is supposed to indicate how the existing barriers to industrial development can be eliminated with the use of legal regulations. The established *Zespół ds. Doskonalenia Regulacji Gospodarczych* (Economic Regulation Improvement Group; nota bene originally named as Deregulatory Group), in which Konfederacja Lewiatan (the most influential Polish business organisation, representing the interests of employers in Poland and the European Union) participates will also play a key role in this respect. Such a solution is difficult to be categorised as providing adequate participation mechanisms to ensure adequate level of workers involvement in organizational change.

[61] See: https://ozzpt.org.pl/sa-juz-dostepne-nowe-projekty-kodeksu-pracy/, accessed 23.01.2021.

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6. Conclusions

Digital transformation of work in principle should be seen as a positive process, providing new employment opportunities, modifying currently outdated and incompatible working conditions and ways of organising work to the exigencies of new socio economic realities. This transformation will most certainly be accompanied by the elimination of some jobs (above all those where repetitive activities can be replaced by automation and robotisation), and considerable remodelling of working terms and conditions. That is why it is so important to remain flexible, open to changes, forward thinking and, above all, participatory regulatory approach. The latter is still absent on the side of Polish policy makers, which for years remained visibly detached from the developments of the more and more digitised world of work. Indeed, the obstacles to regulating new phenomena in the Polish labour market, as revealed in this chapter, stem from its overall unsatisfactory condition. These include, in particular, the lack of legislation which takes into account the prospect of forthcoming changes (in favour of laws improving existing mechanisms and eliminating undesirable phenomena which occur on an ongoing basis) and of a large-scale systemic debate between the government and social partners. The state does not support social dialogue (or at least one can doubt whether it supports it). A good example of such an ambivalent approach constitute described in this chapter recent works on regulation of remote work in Poland.

As a result, despite the generally satisfactory level of awareness among the social partners, both on the trade union side and among employers' organisations, regarding the inevitability of technological changes and the need to adapt both the competences of employees and the ways of organising work, Poland is still at the very beginning of the road towards digitalized world of work. At the same time, this road already seems to be taking rather questionable directions for bottom-up initiatives and dialogue between employees and employers as the main driving force behind relevant legislative changes aimed at adapting legal mechanisms to the challenges associated with the development of Industry 4.0. Quite the opposite their potential regulatory role in the digital transformation of the world of work seems to be marginalized. For instance one of the most strategic documents, *i.e.* the Polish Industrial Policy, instead puts its trust in new tools, such as the industry contracts ("*kontrakty branżowe*"), concluded between the government and representatives of a given industry branch. This contract will have its precisely defined objectives, expected results and duration. Both parties will commit themselves to actions which are an answer to barriers faced by industry and fit into the development strategy for the Polish economy. In view of the policy makers, in the process of creating an industry contract it will be possible to achieve better synergy between the pro-development activities of the private and public sectors. The benefit for the industry is the design of public sector actions tailored to the specific needs of the sector, which may not be sufficiently addressed by horizontal policies. The work on the contract is also intended to serve the self-organisation of the sector and joint reflection on its needs, as well as to encourage business cooperation

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aimed at long-term development. The starting point for the negotiation of an industry contract is the selection by the industry of a representative body, representing all the companies operating in a given branch of the economy, which will present a contract proposal containing the obligations of both parties, which will then be negotiated[62]. The relevant shift of the focus away from the social dialogue instruments does not bode well for the revitalization of the industrial relations in Poland. The latter is not a one-dimensional process that cannot simply be encapsulated in a quantitative increase of the trade union membership base. Quite the opposite the effective revival of industrial relations in Poland seems very much dependent upon the adequate institutional support, also in the form of inclusion of representative of each sides of the social dialogue in the newly established consultative bodies to be involved in the process of digital transformation of the Polish economy. The successful integration of digital technologies in the workplace in the end requires not only investment in digital skills, updating skills and the ongoing ability of employees to keep their jobs (all of which constitute the main policy directives in Poland), but also safeguarding improvement of working conditions and new (human centric) ways of organising work. The latter requires reinstating a partnership approach, in which employers, employees and their representatives jointly commit to making the most of opportunities that the digitalisation of the world of work brings, while respecting the different roles of stakeholders. In this context, it is equally necessary to break sui generis "vicious circle" stemming from the perception of statutory regulations as a "complete" construct that due to the generally low level of trade unionisation at company provides little/no room for dialogue with workers representatives.

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[62] Polityka przemysłowa Polski, Warszawa, 9 czerwca 2021 r., p. 36.

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