HUNGARIAN LABOUR LAW
E - J O U R N A L

The Right to Collective Bargaining of the Self-Employed at New Digital Economy[1]

Emma Rodríguez Rodríguez*

1. Introduction

The proliferation of false self-employed and new professions is an ongoing issue these days. In fact, there are many companies or digital platforms that, thanks to new technologies, use fraudulently this form of subcontracted work based on the division of labour into micro-tasks and the decentralisation of services to a large number of self-employed workers hired on demand for each order.

In the context of this disruptive technological revolution, in which the digital economy transforms the organization of work and impacts labour relations, emerges the idea of "just transition" (ILO). Thus, collective bargaining may collide with the right to free competition. Nevertheless, both are in the Spanish Constitution and even form part of the essential rules of European Union law.

On the one hand, the Spanish legal system has a specific legal regulation of the rights of the self-employment: Law 20/2007, of 11 July, of the Statute of Self-Employment. As for collective rights, we find Title III, arts. 19 to 22, to which should be added arts. 3.2 and 13 on "agreements of professional interest".

On the other hand, European Union law has played a decisive role in this area given the specific features of the European system and its particular orientation. European institutions will be essential in recognising and promoting the role of social partners in the framework of social dialogue (art. 152 TFEU). Moreover, the European Unión has the power to streamline legislation related to representation and collective defense of workers' interests (art. 153.1 f TFEU).

Member States of the European Union acknowledge the right to collective bargaining within their labour regulations, showing commitment to the European project. This paper aims at studying the

* Associate Professor of Labour and Social Security Law (University of Vigo)

1 This paper is part of the research project: "Los derechos fundamentales ante el cambio del trabajo autónomo en la era digital", DER2017-83488-C4-2-R, of the Spanish Ministry of Science, Innovation and Universities.

true nature of the agreements adopted within the framework of the micro-jobs of these self-employed people that arise with the new digital economy as for offering measures aimed at social protection. Furthermore, pronouncements of the ECJ both related to the right to collective bargaining and to free competition will be addressed.

2. The Importance of Collective Rights in the Face of New Business Realities

The relentless technological development –robotisation, automation and artificial intelligence–, as well as its impact on social structures and on the reformulation of the consumption-production relationship, pose a challenge on which the design of the *future of work we want*[2] should be based. It is a fact that this "fourth industrial revolution" has brought about an important change in the professions required by the new productive model, at the expense of the less technological ones.

Statistics agree in predicting the destruction of jobs in certain sectors, but *a priori* this shall not be offset by the creation of new jobs because, according to the World Economic Forum, nearly 50 % of companies expect that automation will lead to some reduction in their full-time workforce by 2022.

Thanks to new technologies, there are numerous companies or digital platforms that use a new outsourcing production mode, called *crowdsourcing*[3], based on the division of labour into various micro tasks in order to exempt these companies from all liabilities.

The "relocation" of production brought about by digitalisation has been leveraged by employers with the main goal of increasing business competitiveness, leading to an erosion of labour rights.

The root cause for this deterioration is the outsourcing of part of the corporate purpose or of the activities with which it is closely related, giving rise to a surrounding labour market, including precarious forms of employment and illicit work. In other words, there has been a total subordination of the worker and his/her occupational status to employment and its forms, and of employment to (macro) economic policies[4], which has changed risk sharing in economic activities and assigned it to the last link of the production chain[5].

Indeed, the European Parliament resolution on precarious employment[6] focused on the surge in atypical employment relationships, with the consequent vulnerability and instability in the field

---

2 ILO: *The Future of Work We Want: A global dialogue*. https://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/publication/wcms_570282.pdf (last consulted: 08/07/2020).

3 Anna Ginès I Fabrellas: *Crowdsourcing*: una modalidad jurídicamente inviable de externalización productiva en el entorno digital. *Anuario IET de Trabajo y Relaciones Laborales,* No. 5., 2018. 134.

4 María Emilia Casas Baamonde: Precariedad del trabajo y formas atípicas de empleo, viejas y nuevas. ¿Hacia un trabajo digno? *Revista Derecho de las Relaciones Laborales*, No. 9., 2017. 867.

5 Esteban Dagnino: Uber law: perspectiva jurídico-laboral de la sharing/on demand economy. *Revista Internacional y Comparada de Relaciones Laborales y Derechos del Empleo*, No. 3., 2015. 1–31.

6 European Parliament resolution of 4 July 2017 on working conditions and precarious employment (2016/2221 (INI)); P8_TA-PROV (2017) 0290.

of social rights. During the last ten years, standard employment has fallen from 62% to 59%. The resolution even states that "if this trend continues, it may well become the case that standard contracts will only apply to a minority of workers". That is, the so-called "peripheral workers" have become so widespread that they threaten to replace standard employment relationships[7].

The concept of "precarious worker" actually lacks an unambiguous definition, but is rather characterized as the opposite to the "typical worker" who, in accordance with that Parliament resolution, holds full-time permanent contracts or voluntary part-time regular contracts.

"Atypical" or "flexible" forms of employment have become widespread in the new economic sectors, so that they encompass casual work, seasonal work, on-demand work, outsourced or subcontracted work, or freelance work, so prevalent through digital platforms[8]. Thus, although precarious work is not an unavoidable consequence of atypical work, they often go hand in hand, as evidenced by the current spread of labour and social precariousness.

In order to promote employment that provides "sufficient resources for a decent life or adequate social protection", the European Parliament calls on social partners to perform their collective representation duties with regard to all employment relationships and, more particularly, to the atypical ones.

In the same regard, ILO, in its report on poverty and employment in the world, drew attention to the proliferation of the so-called "working poor", even more so in developed countries, while condemning the widening income inequality, which implies an "inadequate" development of business structures and requires "strong social partners"[9].

Faced with this disruptive technological revolution, ILO has proposed the concept of a "just transition"[10], which involves "harnessing the fullest potential of technological progress and productivity growth, including through social dialogue, to achieve decent work and sustainable development, which ensure dignity, self-fulfilment an a just sharing of the benefits for all", an objective that must require "promoting workers' rights as a key element for the attainment of inclusive and sustainable growth, with a focus on freedom of association and the effective recognition of the right to collective bargaining as enabling rights".

The cornerstone of the ILO's mandate under the Centenary Declaration will be to examine how the international community could fulfil the commitments expressed in the Sustainable Development Goals (SDGs) to create full and decent employment for all by 2030. It seeks to reinforce the key

---

7 Silvana Sciarra: New discourses in labor law: part-time work and paradigm of flexibility. In: Silvana Sciarra – Paul Davies – Mark Freedland (eds.): *Employment Policy and the Regulation of part- time work in the European Union*. Cambridge University Press, Cambridge, 2004. 21.

8 European Parliament: *Precarious employment in Europe: patterns, trends and policy strategies.* July 2016. Available at: http://www.europarl.europa.eu/RegData/etudes/STUD/2016/587285/IPOL_STU%282016%29587285_EN.pdf (last consulted: 08/05/2020).

9 ILO: World Employment and Social Outlook 2016: Transforming jobs to end poverty. 2016. Available at: www.ilo.org (last consulted: 08/09/2020).

10 In response to these challenges and to mark 100 years since ILO's foundation, a Centenary Declaration for the Future of Work was adopted in 2019 at the 108th Session of the International Labour Conference. Available at: https://www.ilo.org/global/about-the-ilo/mission-and-objectives/centenary-declaration (last consulted: 08/05/2020).

elements of the regulation of labour relations by "strengthening the institutions of work to ensure adequate protection of all workers […] recognizing the extent of informality and the need to ensure effective action to achieve transition to formality".

The Committee on Freedom of Association is in favour of a broad interpretation of the concept of "work" [11] to extend collective rights (Convention No. 87; Convention No. 98) as the best way to ensure a minimum core of rights for any production activity.

The dysfunctional legal protection that characterises these atypical or non-permanent employment relationships implies an increase in social inequalities and the emergence of the "working poor" phenomenon. European institutions have been insisting that the management of working relations should be channelled through collective bargaining in order to monitor their evolution[12].

Also domestically, it has been claimed that the engagement of social partners should play a key role "for anticipating and governing trends of changes, which have accelerated in recent years, with the aim of propitiating a technological transformation which is inclusive in the field of employment and labour relations"[13].

Effective implementation of collective representation and bargaining rights must gain prominence, as an expression of the fundamental rights inherent to the States' democratic safeguards.

3. Free competition vs. the Right to Collective Bargaining

From a traditional perspective, the differences between the scope of the right to free competition and the space taken up by collective bargaining have placed them "in an irreconcilable position"[14]. Classic categorizations tended to consider that collective bargaining interfered unlawfully with free market forces since it altered the price of things[15] and, more particularly, the value of work and its results.

However, as will be shown below, such distortion attributed to the impact of collective bargaining has been nuanced at present, mostly through a restrictive interpretation of that inherent extension of *antitrust* rules.

The ever-present dichotomy between social (labour) and economic (freedom to conduct a business) rights became evident from the very creation of the European Union. It is a known fact that the right to free movement originally included in the Treaty of Rome was conceived as the main rationale for

---

11 Juana María Serrano García – Silvia Borelli: El necesario reconocimiento de los derechos sindicales a los trabajadores de la economía digital. *Revista de Derecho Social*, No. 80., 2018. 247–250.

12 *A New Start for Social Dialogue.* Document signed by the European Commission, UEAPME, Business Europe, CEEP and ETUC, of 27 June 2016.; file:///C:/Users/Usuario/Downloads/KE-02-16-755-EN-N%20(1).pdf (last consulted: 07/22/2020). [hereinafter: *A New Start]*

13 Spanish Economic and Social Council, "El futuro del trabajo", report 3/2018.

14 Jesús Cruz Villalón: El derecho de la competencia como límite de la negociación colectiva. *Temas Laborales*, No. 147., 2019. 14.

15 Articles 281 and 284, Organic Law 10/1995 of 23 November of the Criminal Code.

the union, and only afterwards was extended to workers[16], for the purpose of fighting *social dumping*[17] or the resulting cost differences in working conditions for workers.

That mercantilist conception was originally fostered by corporate globalisation and the strengthened power of large businesses, as key players.

Correlatively, this led to a weakening of State powers, and also of the traditional forms of trade union counterpower, as is clear from the *Laval, Viking, Rüffert* and *Luxembourg*[18] rulings, described as a *tragic choice*[19] since they challenged national laws on collective rights.

In addition, increased decentralisation during the economic crisis years has resulted in a breakdown of social cohesion[20] in Europe; the European Pillar of Social Rights[21] was adopted in an attempt to offset this situation, although it is still very far from achieving its objective to vindicate social rights.

Indeed, around the same time, the European Trade Union Confederation put forward a proposal on the adoption of a "European Social Protocol", which seeks to safeguard the role of social partners and the collective rights of workers, as guarantors of those social objectives[22]. The European institutions[23] have also insisted on the critical role played by social partners, mostly because "new forms of employment in the globalised market require new forms of social and civil dialogue". Those *soft law* provisions have been reflected in Directive 2019/1152, on transparent and predictable working conditions in the European Union[24].

In this connection, the Charter of Fundamental Rights becomes all the more important, as a binding text that is part of the primary European Union law[25]. This document categorises collective bargaining as a fundamental right in its article 28, although only after having also recognized the freedom to conduct a business – art. 16 –. Simultaneously, in its articles 2 to 6, the Charter promotes basis rights to decent working conditions, referring to collective bargaining's "essential role" in order to achieve such goals.

---

16 Concerning the European Union and its labour regulations, please see José María Miranda Boto: El hurón vuelve a Europa o algunas reflexiones inocentes sobre la cuestión prejudicial en materia social. In: J. Mª. Miranda Boto (Dir.): *El Derecho del Trabajo español ante el Tribunal de Justicia: problemas y soluciones*. Madrid, Cinca, 2018. 619 *et seq.*

17 Vicenzo De Stefano: La `gig economy´ y los cambios en el empleo y la protección social. *Gaceta Sindical: reflexión y debate,* No. 17., 2016. 160–162.

18 Edurne Terradillos Ortmaexea: Comentario. Los derechos sociales en el contexto supranacional: especial referencia a la jurisprudencia reciente del TJE y del TEDH. *Revista de Derecho Social*, No. 52., 2010. 147 *et seq.*

19 Antonio Lo Faro: Diritti sociali e libertà economiche del mercato interno: considerazioni minime in margine ai casi Laval e Viking. *Lavoro e Diritto*, vol. 22., No. 1., 2008. 63–96.

20 Joaquín Aparicio Tovar: Un pilar social de la Unión Europea carcomido por la gobernanza económica. *Revista de Derecho Social*, No. 79., 2017. 250.

21 Adopted in Gothenburg, on 17 November 2017. For more details, please see Margarita Isabel Ramos Quintana: El Pilar Europeo de Derechos Sociales: la nueva dimensión social europea. *Revista de Derecho Social*, No. 77., 2017. 19–42.

22 ETUC Resolution on Fixing the Social Foundation: *ETUC Statement on the need for a Social Protocol.* Adopted on October 25 and 26, 2017.

23 *A New Start* op. cit. (last consulted: 08/22/2020).

24 Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019, on transparent and predictable working conditions in the European Union.

25 María del Carmen Salcedo Beltrán: La Europa Social armonizada: ¿realidad o quimera? In: Miranda Boto (Dir.) op. cit. 146–150.

As laid down in the preamble of Directive 2019/1152, the Treaty on the Functioning of the European Union recognizes the role of social partners in relation to the collective defence of the interests of workers (article 152) and that they may even exercise harmonization powers (article 153.1). Article 101.3 declares "inapplicable" any competition provision on agreements between undertakings, or on decisions by associations of undertakings, or on any other similar practice "which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit".

Therefore, does it mean excluding from the limitations to competition law, in general terms, the social rights articulated through social partners? And even more so, will it be possible for self-employed workers to reach collective agreements on the conditions under which their services are provided? To answer this question, we will analyse the Court's criteria developed in case-law in relation to specific cases.

4. CJEU's Criteria for Harmonizing the Implementation of two Rights that are Forced to Coexist

The first time that the compatibility between a collective agreement and the Community rules was considered was through the *Albany, Brentjen's* and *Drijvende Bokken*[26] cases, the doctrine of which has remained valid since then, becoming the *leader case* of those who have ruled on this issue thereafter[27].

In fact, in the *Albany* case, the subject of the Court's decision is the apparent contradiction between the obligation for undertakings within a sector to join specific pension funds and the right to free competition applicable to them as market subjects. The fact that these social protection instruments were established through collective agreements, adopted by employers and workers, is decisive so that they are not considered collusive clauses.

The Court proceeds from the premise that "certain restrictions of competition are inherent in collective agreements between organisations representing employers and employees". But it recognises the importance of collective bargaining in order to ensure a balanced social policy, particularly with regard to EU's economic rights, as well as to improve employment and working conditions.

In order not to jeopardise those social goals pursued by European legislation, as stated by the Court, collective agreements shall remain outside the prohibition to adopt agreements "which have as their

[26] Judgments of the CJEU of 21 September 1999, *Albany, Brentjen's* and *Drijvende Bokken*, C-67/96, C-115/97 to C117/97, C-219/997. Hereinafter referred to as Albany *et al*.

[27] Other CJEU judgments: 21 September 2000, C-222/98, *Van der Woude*; 9 July 2009, C-319/07, *Denmark and Norway*; 3 March 2011, C-437/09, *Prévoyance*. Regarding these judgments, please see Jaime Cabeza Pereiro: Derecho de la competencia, libertad de establecimiento y de-colectivización de las relaciones de trabajo. *Trabajo y Derecho*, No. 3., 2015. 36–51.

object or effect the prevention, restriction or distortion of competition" (article 101.1, Treaty on the Functioning of the European Union).

This doctrine has been called "limited" or "basic immunity" [28], since it establishes the "general principle" that collective bargaining takes place outside the restrictive free competition rules. However, it follows from this reasoning that it is "inherent" to collective bargaining to influence the rules of supply and demand within the labour market[29].

Based on the Court's response, together with the Advocate-General's conclusions[30] – more restrictive than the judgment –, some basic rules can be drawn about the aspects to be verified in every collective agreement subject to a potential exemption from the free competition rules.

First, "the nature and purpose of collective bargaining must be taken into consideration", together with the term "labour", in line with article 37 of the Spanish Constitution. The agreement should be limited to regulating working conditions, even when they cause an unavoidable impact on the evolution of other goods and services markets. The contents that directly affect price fixing are prohibited.

The Court analyses rather loosely the true nature of the agreements subject to exemption, which opens the door to more restrictive interpretations, closer to those expressed by the Advocate-General, limiting the bargaining scope to the core backbone of labour relations – salary and working hours –, leaving other usual – and necessary – aspects without proper protection.

Furthermore, the agreement must pursue "improved living and working conditions", as stated in the Treaty. This involves that they shall be subject to the prohibition on regulating discriminatory treatment, and no equal regulation shall be required for certain companies based on their own specificities. On the contrary, through collective bargaining, an attempt will be made to advance in the harmonisation of labour rights, which ultimately means avoiding competition distortions[31].

Also, the Court will not examine the collective agreement globally, but only those clauses that would apparently conflict with the right to competition. In this regard, the clause safeguarding job stability has been considered valid at the domestic level[32].

One of the most criticized aspects of the *Albany* judgment is the lack of clarification regarding in particular the protected subjective scope. In the case *Pavel Pavlov and others*[33], the Court pointed out

---

28 Adoración Guamán Hernández: Negociación colectiva, Derecho de la competencia y libertades de circulación en la Unión Europea. *Revista del Ministerio de Trabajo e Inmigración*, No. 92., 2008. 155–156.

29 Also in this regard, Cruz Villalón op. cit. 21.

30 Conclusions by Advocate-General F.G. Jacobs, delivered on 28 January 1999. He raised the relationship between collective agreements and competition law, addressing it from the perspective of "immunity", based on the North American model and the Anglo-Saxon tradition.

31 Cruz Villalón op. cit. 24–25. On the next pages, there is an in-depth study on the most significant manifestations within the domestic labour environment and on whether they infringe free competition or not.

32 Ruling of the Spanish National Court (*Audiencia Nacional*) of 30 September 2013 (procedure 349/2013). With regard to these interpretations, please see Cristóbal Molina Navarrete: *El nuevo Estatuto de los Trabajadores a la luz de la jurisprudencia comunitaria*. Madrid, La Ley, 2017. 71–91.

33 Judgment of the CJEU of 12 September 2000, C-180/98 to C-184/98.

that such "immunity" was limited to agreements entered into between employers and their workers' representatives.

However, within a few days, the same judge corrected this and allowed again collective agreements entered into by members of the liberal professions[34]. This interpretation is consistent with the general doctrine expressed in the *Albany* judgment, which refers only to "the outcome of collective negotiations between organisations representing employers and workers" and, in accordance with the Community arrangements, it is up to the States to define collective agreements more precisely for the purposes of deciding whether they fall within the exception of article 101 of the Treaty.

Finally, the relevant *FNV Kunsten*[35] judgment insists on the openness of the exclusion clause. Thus, the rules restricting the right to competition will not apply to those collective agreements which govern working conditions, such as minimum fees, when they affect subordinate workers, even if they are self-employed service providers who are members of the contracting employees' organizations.

Indeed, it goes one step further and points out that, in this case, they are not self-employed workers, in the strict sense of making them equivalent to those companies whose agreements would be subject to collusive practices, but rather describes them as "false self-employed", that is, "in a situation comparable to that of those workers". Furthermore, the Advocate-General's conclusions are very interesting, particularly regarding the essence of this interpretation to avoid "social dumping", which would mean that self-employed workers have no limitations when it comes to agreeing conditions with the company and, therefore, could affect the conditions of employed workers[36].

5. Final Comments: the Need to Protect Vulnerable Self-Employed Workers' Collective Rights

At this point, it might be wondered whether collective bargaining provides measures to protect vulnerable self-employed workers or "micro-providers" of services at new digital economy[37]. The answer requires defining the concepts of "worker" and "employer", in order to separate self-employed workers from their inherent entrepreneurial nature.

34 Judgment of the CJEU of 21 September 2000, *Hendrik van der Woude*, C-222/98.

35 Judgment of the CJEU of 4 December 2014, C-413/13.

36 Conclusions by Advocate-General N. Wahl, delivered on 11 September 2014. He also refers to the U.S court's interpretation, but in this case, to the *Sheman Act.*

37 Mark Freedland – Hitesh Dhorajiwala: UK response to new trade Union strategies for new forms of employment. *European labour Law Journal*, vol. 10., N. 3. (2019) 281–290.

The Court' expansive interpretation defines the worker as a person that "for a certain period of time, […] performs services for and under the direction of another person, in return for which he receives remuneration"[38], regardless of how national legal systems categorize their contractual relationship[39].

The European Parliament itself refers to the specific ILO indicators to determine the existence of an employment relationship[40]. Likewise, these indicators have been used by the European Commission, although it insists on the need to individualize every single case to determine whether we are dealing with digital or service provision platforms[41].

These indicators, with several variations in practice, are the dependence or subordination to a third party who decides how the work is carried out, the periodic remuneration in return for the efforts made and the lack of financial risk for the person who provides service.

It is precisely the lack of liability regarding the business and commercial risks arising from the activity that characterises the employer[42], as stated in the *FNV Kunsten*, the self-employed worker will be an "independent trader".

However, it is up to the national judge to determine the specific legal classification of the service provider and, ultimately, the question of whether the agreements concerning their working conditions are exempt from competition rules will depend on such decision. Therefore, there are still some uncertainties surrounding the concept of "false self-employed" and the risk weighting itself.

The Spanish Constitution of 1978 recognises the right to collective bargaining explicitly and separately from any other right and establishes it as the instrument under which the collective rights of workers shall be defended, but also the rights of employers, including free enterprise. That is to say, article 37 of the Constitution authorises the parties to the employment relationship to "self-regulate" while respecting the interests that are inherent to each of them. And more specifically, article 38 refers to free enterprise.

Spanish legislation on self-employment has sought to protect the regulation of certain relevant agreements from the interference of European law by expressly recognising that they are subject to free competition. However, this provision presents limitations that could easily be circumvented since they have no legal interest but, on the contrary, could make it possible to negotiate decent working conditions for many more vulnerable self-employed workers.

---

38 Judgment of the CJEU of 20 September 2007, *Sari Kiiski*, C-116/06, on pregnancy and maternity leave. Concerning collective redundancies, Judgment of the CJEU of 9 July 2015, *Balkaya*, C-229/14, and of 11 November 2015, *Pujante Rivera*, C-422/14. And regarding the concept of temporary agency work, Judgment of the CJEU of 17 November 2016, *Betriebsrat der Ruhrlandklinik gGmbH*, C-216/15.

39 Judgment of the CJEU of 11 November 2002, *Danosa*, C-232/09.

40 European Parliament resolution of 4 July 2017, *op. cit.* And ILO, regarding the Decent Work Agenda, http://www.oit.org/global/topics/decent-work/lang--es/index.htm; (last consulted: 07/20/2020).

41 *A European agenda for the collaborative economy*. 2 June 2016. COM (2016) 356 final.

42 Judgment of the CJEU of 14 March 2019, *Vantaan kaupunki*, C-724/17, on entrepreneurial liability.

It would be advisable to extend this right to all those who do not have employees, also in compliance with the provisions of article 3.1 of the Organic Law on Freedom of Association[43]. And, in this regard, why not negotiate sectoral collective agreements for them, taking into account the legitimation rules derived from articles 7 and 8 of the Organic Law on Freedom of Association [44], as well as from article 87 of the Worker's Statute[45]? Nothing prevents its, as the hospitality industry[46] has shown.

And to conclude, it should be recalled that the European Committee of Social Rights of the Council of Europe established, in its Declaration of 12 September 2018, that the right to collective bargaining for self-employed workers is protected by article 6.2 of the European Social Charter, on the basis of balancing powers between the employer and the service provider. The lack of decision-making capacity of these employees with regard to their contractual terms is seriously undermining their rights. That is the reason why the Charter provides for an updated multilevel management-protection of the social rights of workers, going beyond the doctrine of the *Albany* judgment[47].

Collective bargaining must be conceived outside of the right to free competition, since its purpose is to improve the working conditions of employees and, consequently, it is decoupled from market rules. It is a right essential to all workers, including vulnerable self-employed workers, and its realization is mainly collective, as it is connected with the right to freedom of association. Denying such recognition as a basic labour right would mean emptying it from its substance and limiting it to some kind of civil *inter partes* agreement, but without respecting the principle of "equality of arms", which is typical of agreements between private parties.

As advocated since the very creation of the ILO, "labour is not a commodity". Consequently, it must remain on the sidelines of commercial rules and be guided by the promotion of social rights, such as collective bargaining.

---

43 Organic Law 11/1985 of 2 August on Freedom of Association, BOE (Spanish Official Gazette) of 8 August 1985.

44 Antonio Baylos Grau: *Sindicalismo y Derecho Sindical*. Bomarzo, Albacete, 72019. 24 *et seq.*

45 Royal Legislative Decree 2/2015 of 23 October, approving the consolidated text of the Workers' Statute Law. BOE of 24 October 2005.

46 V National Labour Agreement for the hospitality sector, article 4, on its operational scope: "including the delivery service […] by digital platforms or through them". BOE of 29 March 2019. Miguel Rodríguez Piñero Royo: *El papel de la negociación colectiva. Contenidos a afrontar, aparición de nuevas actividades y nuevas formas de trabajo.* http://www.mitramiss.gob.es/es/sec_trabajo/ccncc/G_Noticias/Jornadas/2017_Miguel_RodriguezPinero.pdf. (last consulted: 1/20/2020).

47 To understand Spanish domestic law, the judgment of the High Court of Justice of Catalonia of 17 January 2020 (rec. 5532/2019) is very enlightening.