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

Italian Industrial Relations and the Challenges of Digitalisation[1]

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Abstract

This article presents and discusses the interim findings of a research project on the regulatory function of industrial relations practices in the context of the digitalisation of work. It focuses on the national case of Italy, addressing recent collective bargaining experiences on topics related with remote work and workplace automation. The article also examines the relationship between different levels and sources of regulation (namely law and collective agreements) in the context of technological innovation.

Keywords: Digital work, Industrial Relations, Collective Bargaining, Employee participation, Industry 4.0, Remote work, Italy

1. Rationale and methodology of the article

This article reflects on the linkages between labour law, new technologies and the employment relationship. It addresses the topic from the perspective of the regulatory role traditionally played by industrial relations instruments in the Italian labour law system, elaborating on the findings of the

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1 This article is a revised and extended version of the paper *Regulating the digital transformation: a stress test for Italian industrial relations*, presented by the Author at the LLRN5 Conference organized by the Universities of Warsaw and Lodz and held virtually on 27-29 June 2021. The article has been elaborated in the context of the research project *iRel. Smarter industrial relations to address new technological challenges in the world of work*, co-funded by the European Commission, Directorate General Employment, Social Affairs & Inclusion (VS/2019/0081). Usual disclaimers apply.

international research project "iRel. Smarter industrial relations to address new technological changes in the world of work".[2]

Collective bargaining has traditionally been a pivotal source for the definition of terms and conditions of employment in Italy,[3] whereas employee participation, particularly in the form of information and consultation, has been receiving a growing attention by social partners in recent times. Starting from this premise, the idea behind this article is that the digital transformation represents an opportunity to test the readiness of the method of industrial relations to react to a threefold challenge. First, to cope with the pressure of social innovation, which emphasizes the expectations of some categories of workers for workplace arrangements tailored on their individual interests (i.e. interests directly linked with the pursuit of personal values and goals interrelated with the working trajectories, like professional development and work-life balance) but at the same time reaffirms the need for the collective protection of fundamental rights of old and new generation (e.g. wellbeing, dignity, training). Second, to safeguard the constitutional balance between social partners' self-regulation prerogatives and the role of the State (and the law) on employment matters. Third, to preserve the unity of trade unions in the pluralistic scenario of Italian industrial relations.

The analysis will follow an "holistic" and comprehensive approach to the relationship between the digital transformation and employment relations, in line with the perspective adopted by the Social Partners' Framework Agreement on Digitalisation (hereinafter FAD), signed on June 2020.[4] The FAD qualified the digital transformation of the economy as a "multifaceted topic"[5] consisting in a range of issues that are mostly "interlinked and should not be dealt with in isolation".[6] The adherence of this article to the same approach is due to the observation that, while some issues are undoubtedly peculiar to only certain characterizations of "digital employment" (like for instance the problematic classification and the lack of protection for platform workers, or the exposure to the risk of "time porosity" for remote workers), many others are cross-cutting.

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2 The project is coordinated by the Marco Biagi Foundation, University of Modena and Reggio Emilia (Italy), and involves as main partners the universities of Aarhus (Denmark), Bari "Aldo Moro" (Italy), Bologna (Italy), Göttingen Georg-August (Germany), Lodz (Poland), Tartu (Estonia), the Institute for Social and Economic Research of Emilia Romagna, affiliated to the Italian General Confederation of Labour-CGIL, the Institute for Social and Trade Union Research affiliated to the Confederation of Independent Trade Unions in Bulgaria-CITUB and the National Federation of Workers' Councils-MOSZ (Hungary). Further information on the project is available at www.irelproject.eu.

3 Iacopo Senatori: The Precarious Balance among Hierarchy, Coordination and Competition in the Italian System of Labour Law Sources. In: Tamàs Gyulavari – Emanuele Menegatti (eds): *The Sources of Labour Law.* Alphen aan den Rijn, Wolters Kluwer, 2020. 261–280.

4 The text of the FAD can be consulted at: https://bit.ly/3DomTEq. The Social Partners' agreement has been commented by: Iacopo Senatori: The European Framework Agreement on Digitalisation: a Whiter Shade of Pale? *Italian Labour Law E-Journal*, vol. 13, no. 2 (2020) 159–175.; Leonardo Battista: The European Framework Agreement on Digitalisation: a tough coexistence within the EU mosaic of actions. *Italian Labour Law E-Journal*, vol. 14, no. 1 (2021) 105–121.; David Mangan: Agreement to Discuss: The Social Partners Address the Digitalisation of Work. *Industrial Law Journal* (2021), dwab026, https://doi.org/10.1093/indlaw/dwab026.

5 FAD op. cit., 6

6 Ibid.

For instance, algorithmic management systems that drive organizational decisions can be applied equally to the work activities mediated by platforms and to those still embedded in "traditional" workplaces, hence affecting in similar manners the patterns of powers and rights in the employment relationship. In a similar vein, digital surveillance tools can be applied indistinctly to various forms of work and hence expose workers to the same threats on their dignity and wellbeing.

Furthermore, the continuous advancement of technology is pushing further its capacity to "enable" changes in production patterns and work processes, breaking the boundaries between different forms of work and confronting them with similar problems. For instance, ICT tools that combine the powerful connectivity between the elements of an organization and the high formalization of work procedures could attract workers performing parts of their tasks remotely into the trap of insecurity, since the content of a traditional job could be dissolved into a myriad of outsourced tasks, increasing the fragmentation and the "precarisation" of the "digital labour market".

Similarly, digital training is also becoming a universal issue. Not only because the level of digital literacy is progressively raising the barriers for the access to a growing number of jobs, precluding to the least skilled workers the possibility to be hired or promoted; but also because workers with inadequate digital skills can face broadening power asymmetries vis-à-vis the employers, increasing the risk to become passive players of the work organization, incapable of governing their role in the production processes and affirming their prerogatives within the same.

The players and the practices of industrial relations are a fundamental regulatory asset to ensure that the opportunities entailed in the digital transformation are evenly and democratically distributed between workers and companies, and that the risks are correspondingly mitigated. Thus, the scope of this article, and more broadly of the research project it is part of, is functional to the goal of assessing the capacity of the social partners to cover the complexity of the phenomenon, understand its manifold implications and address all the needs and interest that stem from it.

Against such background, two fields of analysis have been selected for the discussion, namely: ICT-enhanced remote work and the automation of the workplace. The reason behind this choice is that the knowledge on the Italian developments in these two fields is probably less common to an international public than the information concerning the widely discussed matter of platform work.[7] However, it should be pointed out that, while the discussion on remote work relies on a more advanced state of investigation, the analysis of automation, as addressed and regulated by collective bargaining, is still based on a partial set of data and therefore open to further elaboration.

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7 See for example Marco Biasi: The On-Demand Work (Mis)classification Judgments in Italy. An Overview. *Italian Labour Law E-Journal*, vol. 12, no. 1 (2019) 49–64. More recently, important individual cases have been commented by Giuseppe Antonio Recchia: Not So Easy, Riders: The Struggle for The Collective Protection of Gig-Economy Workers. *Italian Labour Law E-Journal*, vol. 14, no. 1 (2021) 195–207.; Ilaria Purificato: Behind the Scenes of Deliveroo's Algorithm: in the Blindness of "Frank" its Discriminatory Potential. *Italian Labour Law E-Journal*, vol. 14, no. 1 (2021) 169–194. A comprehensive analysis of the national and international case-law on platform work, including examples from the Italian experience, has been carried out by Valerio De Stefano – Ilda Durri – Charalampos Stylogiannis – Mathias Wouters: *Platform work and the employment relationship.* [ILO Working Paper 27] Geneva, ILO, 2021.

The article is structured as follows. The next section addresses ICT-enhanced remote work, whose regulation in Italy is currently based on three different sets of provisions. Analysing each of them, the article discusses the relationship between statutory law and collective bargaining as regulatory sources, with a particular focus on the contents of the provisions on employment terms and conditions, and investigates the divergences and complementarities between the different schemes in force. Section 3 focuses on the adoption of technological innovations in workplace practices under the "Industry 4.0". It examines in particular paradigm, to examine the role played by collective bargaining and employee involvement arrangements to ensure a democratic transition to new organizational and production models. Section 4 proposes a general assessment of Italian the approach taken by industrial relations in tackling the challenges of digitalization of work, based on the findings illustrated in the previous sections.

2. ICT-enhanced remote work

Remote work[8] in Italy is currently regulated under three different sets of provisions. The first one is based on the notion of "telework", as established in the European Framework Agreement signed on 16 July 2002, transposed in Italy by a cross-industry agreement for the private sector signed on 9 June 2004.[9] The second one corresponds to the category of "agile work", enshrined in Law no. 81/2017 (articles 18 ff.).[10] The substantive differences between the two schemes will be addressed in the last part of this section.

The third scheme consists of a "simplified" version of the legal scheme of agile work, largely designed by way of derogation from the aforesaid 2017 Act in order to facilitate the use of this form of flexibility as a general health and safety measure during the pandemic.[11] This latter version is still in force but with a temporary effect, and will be dismissed at the expiry of the state of emergency related to Covid-19.

8 A general definition of remote, work drawn from the common elements of the different regulatory schemes adopted in Italy, has been elaborated by Iacopo Senatori – Carla Spinelli: (Re-)Regulating Remote Work in the Post-pandemic scenario: Lessons from the Italian experience. *Italian Labour Law E-Journal*, vol. 14, no. 1 (2021) 209–260. For the purpose of this paper, it is sufficient to recall that the basic element of the concept is the flexible choice of the workplace, to which is added the possible, but not necessary, flexibility of work hours. Remote work is thus, for the purpose of this article, the work activity performed (partially or totally) outside the premises of the company (not necessarily at the worker's home) and (possibly but not mandatorily) with a flexible organization of work hours.

9 https://www.cliclavoro.gov.it/aziende/documents/accordo_interconfederale_telelavoro_9_6_2004.pdf

10 Article 18 of the Act no. 81/17 defines "agile work" as a "method for the execution of the employment relationship established by agreement between the parties, even with forms of organization by phases, cycles and objectives and without precise constraints of time or place of work, with the possible use of technological tools for the performance of the work activity. The work activity is performed, partly inside company premises and partly outside without a fixed location, within the limits of maximum duration only of daily and weekly working hours, deriving from the law and collective bargaining".

11 This piece of legislation mainly permits to adopt agile work arrangements by a unilateral order from the employer instead of by mutual consent as provided in the ordinary legislation.

Collective bargaining has always been a very dynamic and effective source for the regulation of remote work in Italy. The substantive provisions on telework in the private sector are an exclusive outcome of the multi-level system of collective bargaining originated by the European Framework Agreement.[12] The law has rarely interfered with contractual rules, and when it did it mostly limited itself to granting economic incentives and other forms of facilitation for the employers who accepted to adopt this form of work at the company level. In such cases, it always required as a precondition that the establishment of teleworking arrangements should be mediated by collective agreements, in this way supporting the regulatory function of collective agreements in this field.[13]

The implementation of the cross-industry agreement on telework has been widespread at the sectoral level, while company-level agreements have played a significant role especially in large enterprises of the banking, finance and ICT industries. Company-level bargaining has mainly focused on specific organizational patterns like working hours and the modalities of the rotation between remote and on-site performances, adapting the standard rules by means of increasingly flexible arrangements tailored on company-specific needs.[14]

Collective bargaining agreements have also played a major role in the genesis of the agile work model. In fact, the Law no. 81/17 was largely influenced by some pioneering company agreements concluded since the early 2010's. Significantly, these texts expressly claimed the intention of establishing flexible organizational arrangements different from telework and not covered by the provisions thereof. Although the foundations of this claim are debatable in legal terms, the circumstance itself represents a telling discontinuity with the experience of telework, from an industrial relations perspective. Furthermore, one may argue that the Legislator, by supporting and institutionalizing those innovative bargaining experiences, has interfered in this systemic fracture, contributing to accelerate the erosion of the scope of telework regulations.

2.1. The influence of statutory law on collective bargaining in the regulation of remote work in Italy: the case of agile work

With the 2017 Act on agile work, the invasiveness of statutory law in the regulation of remote work (in other words, the degree of "legification") began a process of progressive growth. In the first place, the Act no. 81/17 basically limited itself to affirming some fundamental principles and guidelines to

12 Senatori–Spinelli op. cit. The contractual texts referred to in this and in the following sections can be consulted in the Archive section of the *iRel* project's web site, https://irel.fmb.unimore.it/archive/.

13 E. g. Article 23, Legislative Decree no. 80/15.

14 Senatori–Spinelli op. cit.

be implemented by the contractual autonomy of the parties.[15] The subsequent interventions, instead, have attempted to influence to a larger extent such contractual autonomy.

The reference is to an array of provisions enacted since 2019, and particularly during the pandemic emergency, which amended the original text.[16] These provisions attributed specific privileges to certain categories of vulnerable workers (like mothers returning to work after maternity leave, disabled persons, and other individuals particularly exposed to health risks related to Covid-19), stating that their requests to work remotely should be prioritized over "ordinary" workers, or, depending on the cases, even that the employer would be obliged to grant such requests, with the sole limitation of their compatibility with the organizational setting of the undertaking and the nature of the production process. Although the issue can't be addressed into further detail in this article, it is important to emphasize that such provisions introduce a relevant deviation from one of the cornerstones of the agile work scheme: the principle of free will. In fact, while Article 18, Act no. 81/17 stipulate that "agile" arrangements should be established by mutual consent, the amendments indicate to the parties that certain "qualified" interests deserve a stronger protection.

Besides increasing the "legification" rate of remote work, the legislation on agile work has also pursued (perhaps inadvertently) a strategy of marginalization of collective bargaining. On this latter point, it should be noted that the Act no. 81/17 never mentions collective agreements as regulatory sources of agile work, referring only to individual agreements as the formal means to translate the statutory indications (recalled above) into detailed operational arrangements. Hence, the law shows no specific acknowledgement of the crucial regulatory role of collective agreements on this subject, nor any attempt to support collective bargaining like it did with its past interventions on the incentives to telework.

This abstentionist approach has shown a first sign of reversal only recently, with a specific provision on the right to disconnect enshrined in Law-Decree no. 30/21 (converted into Act no. 61/21). This act represents the first statutory shift from a mere enunciation of the need to ensure the "disconnection" of the worker from the work devices[17] to the formal acknowledgment of a "right to disconnect", whose exercise should be protected against negative repercussions on pay and other employment conditions.[18] The provision expressly recognizes that the modalities for the exercise of the right can be laid down by national collective agreements for the public sector and by "agreements between the

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15 The principles concern for instance the protection of workers' health and safety and privacy and the guarantee of equal treatment between agile and on-site workers; the guidelines to be implemented by agreement between the parties address topics like work patterns, the identification of rest periods, the use of work devices and the exercise of managerial powers.

16 See for instance Article 1, paragraph 486, of the Act no. 145/18, which added a section 3-bis to Article 18, Act no. 81/17, granting a priority access to agile work to female workers returning from maternity leave, and Article 2, Law-Decree no. 30/21, converted into Act no. 61/2, granting a special entitlement to agile work to parents of children affected by school closures due the pandemic and to parents of disabled children.

17 Article 19, Act no. 81/17

18 Article 2, paragraph 1-ter, Law-Decree no. 30/21.

parties" (a broad formula which can easily encompass individual as well as collective agreements signed at any level) for private employment.

A more significant step towards the formal acknowledgement of role of collective bargaining as a normative source of agile work has been made with the signature of a tripartite agreement between the Ministry of Labour and the main workers' and employers' associations for the private sector, on 7 December 2021. The agreement, known as "National Protocol on agile work", emphasises in its Preamble the "pivotal role" of the contractual source. Furthermore, at Article 15 it expressly states the need to provide public incentives for employers that introduce agile work arrangements by means of collective agreements signed at the company level.

2.2. Statutory invasiveness and collective bargaining's resistance

In spite of the legislative ambiguity illustrated above, collective bargaining has continued to play its pivotal regulatory function in the field of agile work, being legitimized to do so by the constitutional principle of trade union freedom.[19]

A central position has been occupied by company-level agreements[20]: a fact that brings up two considerations. First, it aligns with the finding that that the functional and organizational needs arising from the integration of the individual performance in the production process (like work patterns, protection of confidential information, use of technological equipment) have been the focus and the main concern for the negotiating parties. In fact, as it is well known, agile work arrangements are part of a broader organizational scheme whose internal consistency and efficiency are usually pursued by means of company-specific instruments, like collective agreements. Second, it suggests that the adoption of agile work schemes may have been triggered by the initiative of medium and large businesses, that tend to rely on company agreements to bring forward their own HR policies.

While the prevalence of company agreements finds a rational explanation in the circumstances just pointed out, it also poses a problem of inequality and marginalization of workers employed in smaller companies that do not engage in collective bargaining. In fact, those workers are deprived of any collective mediation between the (very general) statutory provisions and the individual negotiation with the employer, which in turn normally takes place from a weaker power position.

However, it should be pointed out that recently a significant bargaining activity on agile work has been observed at sectoral level: for instance, in the metalworking agreement renewed on 5 February 2021, in telecommunications (30 July 2020), food processing (31 July 2020) and insurance (21 February 2021). These agreements lay down standard provisions to be integrated at company level, addressing

19 Article 39 of the Italian Consititution.

20 Senatori–Spinelli op. cit.

topics like the eligibility for remote work, the appropriateness of remote workplaces, the organization of working time (including the right to disconnect) and the allocation of equipment and accessory costs.

This new circumstance suggests that the abrupt acceleration in the adoption of agile work, due to the pandemic, may have increased the attention for this instrument and for the problems that stem from it, highlighting the opportunity to establish a common regulatory floor in each sector. It may also indicate an intensification of the attention for the issue from trade unions, normally better inclined than their counterparts towards multi-employer bargaining models.

2.3. The topics addressed by collective agreements under the different regulatory schemes of remote work

Speaking about the topics addressed by collective agreements on telework and agile work, a matter of interest concerns the question whether the agile work scheme, having been elaborated more recently, is actually better equipped than telework to respond to the needs and the challenges posed by the technological advancement, as it was assumed by the pioneering bargaining experiences that paved the way for the Law no. 81/17.

Indeed, more than a decade separates the cross-industry agreement on telework from the legislation on agile work. Hence, the impression that the former could have been influenced by different and now obsolete patterns of integration between technology, work organization and workers' rights may appear well-grounded. This impression could be confirmed by the several references made by the legislation on agile work to the new generation of digital rights, like the right to disconnect.[21] Another example could be the mention made by the law to new organizational paradigms like the so-called "smart work", consisting in the possibility to fulfill the work obligation and assess its output on the basis of the achievement of specific targets, going beyond the traditional model based on the measurement of work hours.[22] Following this construction, the law may be interpreted as promoting the advancement of an innovative ("smart") work paradigm, based on the workers' freedom to self-organize the working hours and execute the work performance from any suitable place, relying on the opportunities offered by the fast connectivity and on a target-oriented work organization rooted in a culture of mutual trust.

Nevertheless, collective agreements so far have carried out a "minimalist" implementation of the innovative elements proposed by the legislation on agile work.[23] On the one hand, the autonomous

21 Article 19 (1) Act no. 81/17 and Article 1-ter, Law-Decree no. 30/21.

22 The reference is to the phrase "forms of organization by phases, cycles and objectives and without precise constraints of time or place of work", contained in Article 18 (1) Act no. 81/1.

23 See detailed references in Senatori–Spinelli op. cit.

organization of work patterns is often reduced to the permission to adopt an intermittent and discontinuous schedule within a given reference time (normally the 8-20 span), coupled with an obligation to remain available for calls and to stay on duty in certain time slots. On the other hand, the adoption of a result-oriented approach to the work performance is often invoked in the preambles of the agreements but is rarely translated into a formal operational scheme, which calls into question the effectiveness of the intention of the parties who claim it.

It seems problematic, in fact, to establish a new organizational paradigm without addressing at least those topics such as the definition of measurable targets, the monitoring and evaluation of the activity and (last but not least) the guarantees enjoyed by the worker, such as the possibility to challenge and seek redress of the managerial decisions based on the result-based performance assessment.

This ambiguity is sharpened by the circumstance that many agreements expressly claim that the agile work mode does not alter the entitlement of the employer to direct and control the execution of the work performance: a remark that may seem at odds with the idea of a less hierarchical work organization.

Finally, with regard to disconnection, the issue is addressed analytically only by a small number of collective agreements. Moreover, the majority of such agreements adopts a "soft" normative approach, stipulating only that the worker is entitled to ignore calls and e-mails received outside the working hours. These agreements refuse to adopt strict enforcement mechanisms (like the automatic shutoff of devices and connections at the end of the reference period) and advocate instead that the best means to ensure the effectiveness of the right to disconnect is the development of adequate cultural conditions and good organizational practices, like the belated delivery of e-mails.

To summarize this point, the social partners have proved to be reluctant to translate into analytical operational terms the opportunities for a marked flexibilization of the employment paradigm envisioned by the 2017 Act on agile work. Such a "cautios" approach of the social partners brings to conclude that the purported functional differences between agile work and its ancestor telework are smaller in empirical terms than it could be expected by a plain reading of the law. It should also be considered, in the same line of reasoning, that the (allegedly more rigid) general framework of telework has not prevented the social partners, especially at company level, from experimenting flexible arrangements, particularly with regard to the choice of the workplace, the time schedules and the possibility to alternate on-site and remote performances.

Thus, one may maliciously argue whether the most meaningful difference between the two schemes (and the real reason for the early success of agile work) should rather be found in the rules concerning the distribution between employers and employees of the costs and responsibilities attached to the flexible work organization. In fact, the framework agreement on telework reaffirms clearly the accountability of the employer for each aspect of the employment relationship (from workplace safety to equal treatment and the coverage of the maintenance and equipment costs) whose empirical

functioning partially deviates from the standard as a consequence of its remote execution. The legal scheme of agile work is looser in this regard: by referring the settlement of various issues to the individual agreement between the employer and the worker, it exposes the latter to bear a greater share of the risks, whereas, as it has been observed above, collective agreements so far have not done much to offset the unbalanced contractual relationship between the individual parties.

3. Industry 4.0, automation and work organization

Technological advancement is not only a transformative factor for the emergence of new business models or special forms of work, but, more generally, is changing the organization of work and the production models also in traditional company contexts.[24] The challenges posed by the technological transformation from this perspective are at the center of the recent elaboration of the Italian social partners at the different levels of the collective bargaining system.

3.1. The cross-industry regulatory framework

In March 2018 the most representative confederations of the manufacturing industry, Confindustria, CGIL, CISL and UIL[25], have signed a framework agreement (hereinafter "the Pact")[26] whose opening statement emphasizes, with a markedly programmatic purpose, the necessity to enhance the transformation and digitalization processes taking place in the industry by means of a more efficient and participatory industrial relations system.

The normative part of the Pact translates these statements into detailed guidelines for collective bargaining. The guidelines reconnect the technological challenges to two specific target strategies: vocational training and skills, and workers' participation.

On the first point, the Pact insists on the need to strengthen the investments and the instruments aimed at enhancing the position of the workers in the labour market, by ensuring the alignment of skills with technological innovations. The envisaged measures encompass educational institutions, school-to-work-transition, apprenticeships, life-long learning and vocational training funds established by collective agreements.

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24 Inter alia, Max Neufeind– Jacqueline O'Reilly – Florian Ranft: *Work in the Digital Age. Challenges of the Fourth Industrial Revolution*. London, Rowman and Littlefiled, 2018.

25 Confindustria is the umbrella organization of employers in the manufacturing industry. The Italian General Confederation of Labour-CGIL, the Italian Confederation of Workers' Unions-CISL and the Italian Labour Union-UIL are the trade union confederations with the highest membership in Italy.

26 Referred to as "Patto per la fabbrica" (Pact for the Factory), signed on 9 March 2018. It can be consulted at: https://www.confindustriasr.it/public/allegati/Patto%20della%20fabbrica.pdf.

On the second point, the parties express the view that the increase of employee involvement and participation, in the framework of a "different" relationship between companies and workers, is the best way to tackle efficiently the economic, productive and technological changes. According to this construction, participation should be applied particularly in the organizational process ("organizational participation" or "partecipazione organizzativa"), while its effectiveness, that can be assessed in terms of its capacity to increase the competitiveness of businesses and the value of work altogether, depends on the availability of the parties to accept a "cultural change".

Besides the (inevitably) rhetoric accents that often characterize this kind of statements, what can be pointed out is that the Pact construes the subject of the digital transformation mainly in connection with labour market (training and skills) and work organization (participation) issues, expressing an attitude more prone to grasp the entailed opportunities than to reflect on the risks (except those related to the obsolescence of skills). In fact, no explicit mention is made of many problems that engage labour lawyers and (more recently) policymakers and EU social partners with regard to the manifold implications of technology for the fundamental rights of workers, such as artificial intelligence, data-driven management, algorithmic decisions and workers' surveillance, to name only a few.[27]

3.2. Sectoral bargaining

The influence of the Pact on the sectoral agreements concluded in its aftermath is quite evident, although each sector is characterized by specific features linked to market conditions, cultural mindset of the players and path dependency, which may entail largely different strategies and outcomes.

A paramount example is the recent renewal of the national collective agreement for the metalworking sector, which has traditionally been the "leading" agreement in Italian industrial relations. The agreement, signed by the employers' associations Federmeccanica and Assistal and the trade unions FIM-CISL, FIOM-CGIL and UILM[28] on 5 February 2021, rests on three main pillars, as long as the technological challenges are concerned: job classification, vocational training and participation.

The reform of the job descriptions, whose previous version dated back to 1973, has been a long-awaited event in the sector, particularly since the enactment in 2015 of a new piece of legislation[29]

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27 Inter alia, Michele Faioli: Artificial Intelligence: The Third Element of the Labour Relations. In: Adalberto Perulli – Tiziano Treu (eds.): *The Future of Work. Labour Law and Labour Market Regulation in the Digital Era.* Alphen aan den Rijn, Wolters Kluwer, 177–190.; Rüdiger Krause: "Always-on": The Collapse of the Work–Life Separation in Recent Developments, Deficits and Counter-Strategies. In: Edoardo Ales – Ylenia Curzi – Tommaso Fabbri – Olga Rymkevich – Iacopo Senatori – Giovanni Solinas (eds.): *Working in Digital and Smart Organizations Legal, Economic and Organizational Perspectives on the Digitalization of Labour Relations*. Cham, Palgrave Macmillan, 2018. 223–248.; Marta Otto: "Workforce Analytics" v Fundamental Rights Protection in the EU in the Age of Big Data. *Comparative Labour Law and Policy Journal*, vol. 40, no. 3 (2019) 389–404.; Aida Ponce Del Castillo: *The AI Regulation: entering an AI regulatory winter? Why an ad hoc directive on AI in employment is required*. ETUI, European Economic, Employment and Social Policy 2021.07, 2021.

28 All belonging to the umbrella organizations mentioned above, fn 24.

29 Article 3 of the Legislative Decree no. 81/15, recasting Article 2103 of the Civil Code. See Elena Gramano: Work Performance and Organisational Flexibility: At the Core of the Employment Contract. In: Tindara Addabbo – Edoardo Ales – Ylenia Curzi

that relaxed the limits to the employer's power to instruct the worker to rotate from a job to another (*jus variandi*). Without indulging in excessive detail, under the new provisions the exercise of the *jus variandi* is permitted within each level of classification, as established by collective agreements, whereas the shift between different levels is subject to a prior agreement with the worker or to other substantive and procedural limitations. Therefore, collective agreements are responsible to ensure that the job descriptions reflect both the real organizational needs and the value of the work performances, so that the rotation of workers within the same classification level does not impair the economic and professional quality of their work. To put it differently, the law has entrusted collective agreements as the sole source enabled to ensure that the exercise of the managerial prerogative respects the balance between the efficient exercise of functional flexibility at the workplace and the protection the workers' skillset.

The new classification system is based on the concepts of workers' autonomy and responsibility, which has become central in connection to the changes generated by the digitalization and the operational innovations linked to the Industry 4.0 strategy. The elements that characterize each job description consist in: hierarchical and functional autonomy; technical skills; "soft" skills; capacity to cover different positions and to interact with other functions; continuous innovation. To the different intensity of any of such elements corresponds the separation among the various levels of the job ladder.

These new classification criteria clearly attempt to meet the principles of job enrichment and flexibility of tasks that are inherent to the "enabling" nature of the digital technologies. However, the same "dynamic" character of the new workplace environment may raise problems in some cases, making it hard to define the proper allocation of particularly specialized profiles among the different levels, also in consideration of the expected professional growth of workers over time (or, vice versa, of the possible obsolescence of the workers' skillset). Therefore, a continuous maintenance of the system is necessary to ensure that workers' rights are protected not only at the entry stage but throughout their whole career in a company.

For this purpose, the agreement envisages specific instruments, established at the national as well as the company levels, inspired to the idea of a continuous dialogue between representatives of businesses and workers. At the national level, a joint commission composed of representatives of the parties who have signed the agreement has been established, with the task of monitoring the implementation of the new system, examining the needs for further adaptation and providing guidance in case of disputes. At the company level, the management and the works councils are entitled to discuss other adjustments taking into consideration the particular organizational model and the technological context of the workplace, with a view to developing the workers' skills and employability.

– Tommaso Fabbri – Olga Rymkevich – Iacopo Senatori (eds.): *Performance Appraisal in Modern Employment Relations. An Interdisciplinary Approach.* Cham, Palgrave Macmillan, 2020. 87–108.

Another instrument designed by the agreement to keep the workers' skillset consistent with the classification system is represented by the training policies. The agreement qualifies training as an individual right of the worker, who is entitled to 24 paid hours in a three-year period to attend courses intended to develop vocational or collateral skills. The training programs are elaborated by the company with the involvement of the works councils. The works councils are also entitled to entrust one of their members with a specific competence to discuss training issues with the management. Furthermore, a network of joint commissions at the different levels (national, local and in larger companies) is responsible for monitoring and assessing training initiatives, having regard to the needs expressed by the workers and the businesses.

It becomes evident from this analysis that the agreement considers industrial relations, in the form of the continuous involvement of unions and workers' representatives and the "institutionalization" of social dialogue, as a key method to address the organizational and strategic decisions which lie at the heart of the "technological challenges" faced by businesses. This goes beyond the issues of classification and training. More specifically, the agreement sketches out a comprehensive participation process involving each operational stage, based on shared objectives and oriented to finding the best solutions. For this purpose, the parties have agreed to promote new "trial" initiatives of participation that may be implemented by specific company agreements, with a view to establish a relationship "more responsive to the new needs".

The sectoral agreement does not determine into detail which form of employee participation, with what degree of intensity and what formal schemes should govern it, leaving any option available for the implementation at the company level, including the possibility of direct (i.e. not mediated by collective bodies) workers' participation. The topics on which this method can be tested are also described very broadly: every aspect of the company life can hypothetically be included, although the parties show a particular consideration for matters like innovation, continuous organizational improvement and the solution of critical situations.

Participation has always been present in Italian collective agreements, as a method for the governance of specific organizational issues or particular stages of the production process. However, the strong emphasis placed on it by the new sectoral agreement for metalworking, and the breadth and depth of its possible applications, represent a relevant discontinuity in a sector in which the relationship between the parties has traditionally been adversarial. On the other hand, this new approach seems consistent with the overall structure of the agreement and with the most important innovations it enshrines, which in turn are strongly influenced by the changes of the organizational and production patterns prompted by the technological transformation. In this sense, the complementarity between the classification system and the accent on participation emerge clearly. In fact, participation in this context seems to represent the transposition on the collective dimension of the principles that inspire

the new classification system, focused on autonomy, responsibility and the ability to cope with a "fluid" organization.

3.3. Company agreements

The innovative experience of the metalworking sector agreement is certainly emblematic, but not unique. Other sectors, like for instance food processing, are addressing the digital challenge with similar tools and strategies. However, it is at the company level that the most significant cases can be observed, albeit one should always be aware that company agreements offer a limited scope for generalization.

An interesting case is that of the automotive company Lamborghini, which employs some 1.500 workers in the production of luxury cars. The company has recently adopted a new organizational model, called "Manifattura Lamborghini" (Lamborghini manufacture), inspired to the "smart factory" principle.[30] In technical terms the model relies on an advanced artificial intelligence that can identify the priorities and schedule the process accordingly. It operates with a mix of manual and automated phases, whereby the robots are charged with the most repetitive and burdensome tasks, while the operators remain responsible for the finalization of the process.

The collective agreement in force, signed on 16 July 2019, integrates this organizational change in the context of a long established and far-reaching system of participation, which is the outcome of the mixed action of local conditions and the cultural influence of the German property. This system of "negotiated participation" consists in a detailed set of information and consultation procedures, which are carried out within a range of designated bilateral bodies, each provided with the competence on one of these specific subjects: result-based compensation; organization; time and methods of work; classification and training; health, safety and sustainable mobility; canteen.

Such "ordinary" system is then coupled with the possibility to appoint ad-hoc bilateral working groups entrusted with the task to consult and prepare proposals on issues that require specific competences (to give an example, one of these groups has elaborated the company agreement on "smart work").

One of the remarkable elements of this experience is the close strategic and functional relationship that the parties have drawn between participation procedures and collective bargaining. This relationship is undisputed in legal terms, as it has recently been acknowledged by the Court of Justice of the European Union, which held that agreements concluded in the context of a codetermination

[30] Amanda Cetrulo – Margherita Russo: Innovazione tecnologica e organizzazione del lavoro: il ruolo del sindacato nel caso Lamborghini. *Quaderni di Rassegna sindacale*, no. 3 (2019) 45–64.

procedure are protected by article 28 CFREU.[31] Nevertheless, in the Italian experience participation is often presented in opposition to collective bargaining, as the expression of a cooperative – rather than adversarial - approach to industrial relations. The Lamborghini agreement breaks this dichotomy, and emphasizes the opportunities for a "cross-fertilization" between the two methods, praising the fact that the ongoing dialogue carried out in the forms of information and consultation can significantly contribute to trigger a culture of "continuous bargaining", capable of providing swift responses to the changes in the social, economic and regulatory scenario.

4. Conclusions

The social partners are active and lively players in the regulation of digital employment issues in Italy. The analysis of the industrial relations practices (collective bargaining and employee participation) covering the issues of ICT-enhanced remote work and workplace automation shows converging regulatory patterns.

Firstly, in both cases the bargaining activities seem to aim at the adaptation of the employment relationship to the organizational changes prompted by the adoption of technological innovations (work patterns in agile work, job classification and vocational training in workplace automation). Secondly, in both cases the preservation of the conditions for an effective operation of the production process seem to prevail over the concern for the risks that the use of technologies poses on the workers. In fact, a series of urgent matters (like disconnection and the limitation of managerial prerogatives linked to data-driven management and enhanced surveillance practices) receive little if any attention in the agreements.

This finding could appear disappointing insofar as it seems to imply a "passive" approach by the social partners as if they, interpreted digitalisation as an immanent and unavoidable phenomenon rather than as the outcome of specific regulatory choices. Nevertheless, while a lot can still be done to improve the "qualitative" impact of industrial relations on the digital transformation of work in Italy, yet a more "optimistic" perspective can be drawn from the emphasis that many agreements place on employee participation.

It is commonly acknowledged that a rapidly evolving technology can affect organizations and workers in ways (and at a pace) not easily predictable in advance, requiring ongoing adaptations.[32] Against such background, collective agreements remain an essential "standard setting" instrument to ensure that the interests of workers are duly represented in the organizational processes. On the

31 CJEU, C-699/17. Allianz Vorsorgekasse AG [ECLI:EU:C:2019:290].

32 Edoardo Ales: Adapting Labor Law to "Digital" Work: Between Scholarly Interpretation, Case Law and Legislative Intervention. In: Perulli–Treu (eds.) op. cit. 225–236.

other hand, collective agreements can only establish a given balance of interests for the time to come, reflecting the conditions that exist in the moment they are concluded; conditions that could be quickly overcome by the new technological developments.[33]

In this respect, the experiences presented in this paper suggest that participation instruments, with their dynamic and responsive character, may represent the appropriate means to address efficiently those urgent matters that collective agreements so far seem reluctant or uncapable to address.[34] Thus, the point at stake is not to choose between collective bargaining and participation, but rather to find the way in which the two methods can integrate each other to accompany a democratic and balanced evolution of the digital transformation of work.

[33] Valerio De Stefano: 'Masters and Servers': Collective Labour Rights and Private Government in the Contemporary World of Work. *International Journal of Comparative Labour Law and Industrial Relations*, vol. 36, no. 4 (2020) 425–444.; Ilaria Armaroli – Emanuele Dagnino: A Seat at the Table: Negotiating Data Processing in the Workplace. *Comparative Labour Law and Policy Journal*, vol. 41, no. 1 (2020) 173–195.

[34] For an application of this general argument to a specific topic see Adrian Todolì-Signes: Algorithms, artificial intelligence and automated decisions concerning workers and the risks of discrimination: the necessary collective governance of data protection. *Transfer*, vol. 25, no. 4 (2019) 465–481.