

HUMAN-CENTERED REGULATION: THE APPROACH OF THE EUROPEAN UNION TO THE DIGITALIZATION OF EMPLOYMENT RELATIONS

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ABSTRACT

This essay analyzes the European Union's regulatory response to the digitalization of employment relations, highlighting its human-centered and rights-based approach. The EU aims to ensure that technological innovation promotes human development rather than undermines social protection. By avoiding deterministic assumptions, the EU embeds digital change within a balanced framework that attempts to reconcile economic efficiency with social justice. Key regulatory instruments such as the Platform Work Directive and the AI Act are examined for their role in redefining employment status, governing algorithmic management, and enhancing collective rights. The essay stresses the evolving role of social dialogue and highlights the EU's distinctive legal culture, rooted in fundamental rights and participatory governance. Although progress has been made, challenges remain in terms of legal clarity and implementation. The essay offers insights for comparative analysis, emphasizing the need to respect the diversity of legal traditions in shaping national responses to digital transformation.

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The Author wishes to thank the editorial team of the California Western's International Law Journal for their support throughout the editorial process, and Professor Susan Bisom-Rapp for her insightful comments on an earlier draft of this essay. Usual disclaimers apply.

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INTRODUCTION

Over the past several years, the European Union (“EU” or “Union”) has developed an increasingly structured approach to the challenges and opportunities posed by digitalization, particularly within the field of employment relations.¹

1. See generally LAW, TECHNOLOGY AND LABOUR (Emanuele Menegatti ed., 2023).

The Union has addressed these issues not only through targeted legislative initiatives but also as part of its broader social policy agenda and economic governance framework.² A landmark in this evolution was the publication of the European Commission’s publication of “A Strong Social Europe for Just Transitions,” which established the normative and strategic foundation for the Union’s long-term commitment to managing structural transformations—digital, green, and demographic—in a socially sustainable way.³

The European Commission’s Communication (“Communication”) recognizes that digital technologies are reshaping the nature of work, generating not only new opportunities but also heightened uncertainty, inequality, and fragmentation across both labor markets and the workplaces.⁴ In response to this evolving landscape, the Commission advances a policy agenda that places individuals at the center of the digital transition. Its approach emphasizes the creation of quality employment and the imperative that all workers have access to the skills, resources, and protections necessary to navigate an increasingly volatile labor market.⁵

This essay analyzes the key initiatives and regulatory instruments that emerge from the aforementioned policy framework and shape the EU’s response to critical challenges posed by technological transformation in the world of work. It addresses three central issues: the evolving concept of employment status, the legal governance of algorithmic management, and the role of workers’ representatives. Prior to exploring these themes, the paper presents a robust overview of the

2. Tommaso Grossi et al., *THE SOCIAL PILLAR AND THE FUTURE OF THE EU SOCIAL AGENDA* (Feb. 2024), <https://d1xp398qalq39s.cloudfront.net/content/PDF/2024/PS-Social-Agenda-DIGITAL.pdf>.

3. *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Strong Social Europe for Just Transitions*, COM (2020) 14 final (Jan. 14, 2020). The European Commission is one of the key institutions within the complex and unique governance structure of the European Union, alongside the European Parliament (the assembly elected by the people), the Council (the intergovernmental branch representing the governments of the Member States), and the Court of Justice. The Commission’s responsibilities range from initiating legislation to overseeing the correct application of the founding Treaties. Hence, it is the pivotal policy-making institution.

4. *Id.*

5. *Id.*

EU's legislative and policy instruments, alongside the priorities and concerns articulated by labor unions and employers' organizations, two pivotal actors within the EU's social model. The final section synthesizes the Union's principle regulatory developments, evaluates the effectiveness of current interventions, and identifies persistent gaps and future challenges.

I. THE EU POLICY TRENDS ON DIGITALIZATION AND THE WORLD OF WORK

One of the central themes of the European Commission's Communication, "A Strong Social Europe for Just Transitions," is the importance of balancing technological innovation with the social risks inherent in digital transformation.⁶ Digitalization is not framed solely as a source of growth and efficiency; it is also recognized as a structural shift that can deepen existing social inequities if left unregulated. In this context, the Commission highlights the need to prevent the emergence of a dual labor market in which some workers enjoy secure, high-quality employment in digital sectors while others remain confined to precarious and insufficiently regulated forms of platform-based work.⁷ The Commission's strategy therefore seeks to mitigate the adverse externalities of technological change through targeted policy interventions.⁸

The Commission's vision marks a clear departure from deterministic interpretations of technological change.⁹ Within this framework, technology is not treated as inherently positive or negative, but as a neutral instrument whose social and economic effects depend

6. *Id.*

7. *Id.*

8. Edoardo Celeste, *Digital Constitutionalism, EU Digital Sovereignty Ambitions and the Role of the European Declaration on Digital Rights* (Dublin City Univ., Working Paper No. 16, 2024), <https://ssrn.com/abstract=4698091>.

9. See *INDUSTRIA 4.0 OLTRE IL DETERMINISMO TECNOLOGICO* (Angelo Salento ed., Università Del Salento 2018) (2018) (ebook); Iacopo Senatori, *Regulating the Employment Relationship in the Organization 4.0: Between Social Justice and Economic Efficiency*, in *THE FUTURE OF WORK. LAB. L. & LAB. MKT. REG. IN THE DIGIT. ERA 187* (Adalberto Perulli & Tiziano Treu eds., 2020); Tommaso Fabbri, *Digital Work: An Organizational Perspective*, in *WORKING IN DIGITAL AND SMART ORGANIZATIONS. LEGAL, ECONOMIC AND ORGANIZATIONAL PERSPECTIVES ON THE DIGITALIZATION OF LABOUR RELATIONS 29* (Edoardo Ales et al. eds., 2018).

on the choices made by lawmakers and institutions as they navigate diverse and often conflicting interests.¹⁰

The Communication identifies several core policy pillars. These include investing in skills and education, with a focus on digital literacy and lifelong learning; modernizing social protection systems to ensure coverage for non-standard and self-employed workers; ensuring equitable working conditions and fair wages regardless of employment status; and the strengthening collective representation and social dialogue, particularly in sectors most affected by technological change.¹¹

The European Commission's strategy mirrors one of the defining features of the European Union: the attempt to reconcile economic competitiveness with strong social protection.¹² This model is grounded in the conviction that social justice, equality, and upward mobility are not obstacles to innovation but essential preconditions for sustainable and inclusive growth.¹³

A. The European Social Model and the Governance Structure of the European Union

The EU's strategy on digitalization both reflects and reinforces the core values of the European Social Model: the integration of economic and social objectives, the protection of fundamental rights, and the institutionalization of social dialogue.¹⁴ Trade unions and employers' organizations, (collectively referred to as ("*social partners*") play a central role in shaping legislation on social matters that fall within the EU's competence (Articles 151-155 of the Treaty on the Functioning of

10. Luigi Salvati & Pasquale Tridico, "*Technological Change, Institutions, and the Labour Market*," in *THE FUTURE OF WORK: LABOUR LAW AND LABOUR MARKET REGULATION IN THE DIGITAL ERA* 83 (Adalberto Perulli & Tiziano Treu eds., 2024).

11. European Commission, *supra* note 3.

12. Consolidated Version of the Treaty on Eur. Union art. 3(3) Oct. 26, 2012, 2012 O.J. (C 326) 13 [hereinafter TEU].

13. See TEU, art. 3(3): "*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.*"

14. *The European Social Model*, EUR. TRADE UNION CONFED. (July 2006), <https://www.etuc.org/en/european-social-model>.

the European Union).¹⁵ Moreover, the EU recognizes and protects fundamental rights including the freedom to form trade unions, to engage in collective bargaining and strikes, and to receive information and consultation on workplace matters. These rights are further reinforced through secondary legislation.¹⁶ Understanding the EU's approach to employment and digitalization therefore requires familiarity with its constitutional and institutional architecture. The Union operates as a supranational legal and political system that coexists with, and in certain contexts supersedes, the national legal systems of its twenty-seven Member States.¹⁷ Its primary mission is to promote integration and to foster convergence among national systems in areas of shared competence.¹⁸

This integration is achieved through a complex mix of hard and soft law instruments, including regulations, directives, recommendations, and communications. Binding acts of secondary legislation, such as directives and regulations, establish common regulatory standards, while non-binding instruments provide mechanisms for policy coordination and strategic guidance.¹⁹ Moreover, the Court of Justice of the European Union (CJEU) plays a pivotal role in interpreting EU law and ensuring its uniform application across all Member States.²⁰

As a consequence of this constitutional design, EU policy does not operate in isolation. Instead, it must be implemented through, and adapted to, the legal and administrative frameworks of individual Member States.²¹ This dynamic is particularly visible in the field of social policy, where the EU's competences are shared with those of

15. *Social Dialogue*, EUR. PARL.: FACT SHEETS ON THE E.U., <https://www.europarl.europa.eu/factsheets/en/sheet/58/social-dialogue> (last visited Nov. 22, 2025).

16. Charter of Fundamental Rights of the European Union, arts. 12, 27-28, 2012 O.J. (C 326) 391 [hereinafter Charter].

17. *See generally* CATHERINE BARNARD, *EU Employment Law* (4th ed. Oxford Univ. Press 2012).

18. *Id.*

19. *European Union Law: Legal Acts (Secondary Legislation)*, BODLEIAN LIBS., <https://libguides.bodleian.ox.ac.uk/law-eu/secondary> (last visited Nov. 22, 2025).

20. *The Court of Justice of the European Union*, EUR. PARL.: FACT SHEETS ON THE E.U., <https://www.europarl.europa.eu/factsheets/en/sheet/26/the-court-of-justice-of-the-european-union> (last visited Nov. 22, 2025).

21. *Implementing EU Law*, EUR. COMM'N, https://commission.europa.eu/law/application-eu-law/implementing-eu-law_en (last visited Nov. 22, 2025).

Member States.²² Accordingly, EU-level initiatives must interact with diverse national legal frameworks and constitutional traditions.

The normative foundation of EU social policy is rooted in a multi-layered system of fundamental rights established in the founding Treaties and the Charter of Fundamental Rights of the European Union (“The Charter”).²³ The Charter enshrines an extensive catalogue of civil, political, and social rights, including freedom of association, the right to collective bargaining and action, protection against unjust dismissal, and the right to fair and just working conditions.²⁴

At the policy level, a cornerstone document is the European Pillar of Social Rights (“EPSR”), jointly proclaimed by the European Parliament, the Council, and the Commission in 2017.²⁵ The EPSR sets out twenty core principles intended to promote fair, equitable, and modern labor markets and welfare systems in the digital age.²⁶ These principles include equal opportunities, secure and adaptable employment, work-life balance, social protection, and access to digital skills and training.²⁷

Although the EPSR is formally non-binding, it serves as a strategic compass for the Union’s legislative and funding mechanism, becoming the reference framework for numerous initiatives related to digital transformation. This influence is evident in major regulatory developments such as the Directive on Platform Work²⁸ and the

22. ROGER BLANPAIN et al., *THE GLOBAL WORKPLACE: INTERNATIONAL AND COMPARATIVE EMPLOYMENT LAW: CASES AND MATERIALS* (2007).

23. FILIP DORSSEMONT et al., *THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION AND THE EMPLOYMENT RELATION*, (2019) <https://www.etui.org/publications/books/the-charter-of-fundamental-rights-of-the-european-union-and-the-employment-relation>.

24. *See* Charter, *supra* note 16, arts. 27-28, 30-31.

25. Interinstitutional Proclamation on the European Pillar of Social Rights, 2017 O.J. (C 428) 10.

26. *Id.*

27. *Id.*

28. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, 2024 O.J. (L 2024/2831) (Nov. 11, 2024).

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Artificial Intelligence (AI) Act,²⁹ both of which are examined in the following sections.

Another foundational framework-setting document is the European Declaration on Digital Rights and Principles for the Digital Decade, jointly adopted by the European Parliament, the Council, and the European Commission in 2023.³⁰ The Declaration affirms the EU's commitment to ensuring that digital transformation rooted in fundamental rights, democratic values, and social inclusion.³¹ The Declaration explicitly affirms that all workers are entitled to fair, just, healthy, and safe working conditions in the digital environment on the same terms as in the physical workplace, regardless of employment status, modality, or duration.³²

The Declaration further provides that digital tools must not endanger workers' mental and physical health, that meaningful human oversight must govern all significant employment-related decisions, and that the use of AI in the workplace must remain transparent and grounded in a risk-assessment framework.³³ It reinforces workers' rights to disconnect, to maintain privacy in digital work settings, and to exercise collective rights such as association, collective bargaining, and protection from unjustified surveillance.³⁴

Crucially, the Declaration reaffirms the role of *social partners* in shaping equitable digital labor conditions,³⁵ underscoring that robust social dialogue remains a cornerstone of the European social model.

B. The "Hard Law" Instruments

The adoption of the AI Act and the Directive on Platform Work represents a significant milestone in the development of EU labor regulation. But these instruments cannot be understood in isolation;

29. Regulation (EU) 2024/1689, of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (Artificial Intelligence Act), 2024 O.J. (L 2024/1689) (July 12, 2024).

30. European Declaration on Digital Rights and Principles for the Digital Decade, 2023 O.J. (C 23) 1 (Jan. 23, 2023) [hereinafter Declaration].

31. *Id.*

32. *See* Declaration, *supra* note 30, at ch. 2.

33. Interinstitutional Proclamation, *supra* note 25.

34. *Id.*

35. *Id.*

they operate within, and must be interpreted alongside, the broader *acquis communautaire* on employment and social rights. As the following sections illustrate, these texts embed principles such as equal treatment, transparency, predictable working conditions, occupational health and safety, and participatory decision-making,³⁶ principles that remain adaptable to the realities of digital labor markets.

For example, the growing reliance on algorithmic management heightens the risk of automated bias and indirect discrimination,³⁷ concerns that can be addressed through a principled extension of existing equality law. Similarly, established worker-information and consultation rights offer a normative basis for requiring platform companies and AI-based employers to disclose the logic and impact of automated systems affecting working conditions, pay, and termination.³⁸

Yet the novel features of digital work practices, including opaque algorithmic decision-making, the reconfiguration of managerial authority, and new spatial and temporal flexibilities enabled by digital technologies, require targeted regulatory innovations. For example, the Working Time Directive³⁹ continues to rely on a rigid and outdated binary between working time and rest time.⁴⁰ Similarly, traditional criteria distinguishing employment from self-employment,⁴¹ have been

36. Deirdre Ahern, *The New Anticipatory Governance Culture for Innovation: Regulatory Foresight, Regulatory Experimentation and Regulatory Learning*, 26 EUR. BUS. ORG. L. REV. 241 (2025).

37. The European concept of indirect discrimination can be likened to the notion of “disparate impact,” which is more familiar to a U.S. audience. See FERMA, *The EU’s Artificial Intelligence Act*, EU Pol’y Note No. 2 (Oct. 2024), https://ferma.eu/wp-content/uploads/2024/10/FERMA-Policy-Note-EU-AI-Act_v0.3-1.pdf.

38. Giovani Gaudio, *Algorithmic Bosses Can’t Lie! How to Foster Transparency and Limit Abuses of the New Algorithmic Managers*, 42 COMP. LAB. L. & POL’Y J. 707 (2021).

39. Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, 2003 O.J. (L 299) 9.

40. See *id.* (opinion on the Directive).

41. According to the case law of the Court of Justice of the European Union, an employee is identified on the basis of the following criteria: the employer determines the manner in which the work is carried out — including the time and place of performance; the worker is integrated into the employer’s organizational structure; the worker does not bear any business risk or risk of loss; does not employ other persons; and has no direct access to the market. See Emanuele Menegatti, *The Evolving Concept of “Worker” in EU Law*, 12 ITALIAN LAB. L. E-JOURNAL 71, 71-81 (2019).

increasingly challenged by the business model of platform work.⁴² The digital infrastructure that supports platform work often conceals managerial control, which has resulted in the widespread misclassification of workers who, although formally labelled as independent contractors, carry out their tasks under conditions that closely resemble those of dependent employment.⁴³

Another distinctive feature of the legal architecture emerging from the AI Act and the Directive on Platform Work is the underlying tension between its market-oriented objectives and social policy goals. The AI Act, for instance, is shaped primarily by a market-oriented logic⁴⁴ that seeks to promote innovation, strengthen competitiveness, and safeguard the functioning of the internal market.⁴⁵ By contrast, instruments that rest on the “social chapter” of EU Treaties are grounded in a social protection rationale and focus on fundamental rights, fairness, and dignity in the workplace.⁴⁶ This dual orientation is both structural and intentional. It reflects the Union’s closed system of legislative competences, which requires that the legal basis of an instrument determines the substance of the measure and the degree to which social considerations can be incorporated.

This analytical perspective guides the remainder of this discussion. Regulating the digital transformation of work is inherently a continuous process that must adapt to rapid pace of technological change. As this Author noted in a previous work, it is essential that regulators maintain the systemic coherence of the broader legal framework and remain

42. Silvia Rainone & Antonio Aloisi, *The EU Platform Work Directive: What’s New, What’s Missing, What’s Next?*, ETUI Res. Paper - Pol’y Brief 2024.06 (Sept. 9, 2024), <https://doi.org/10.2139/ssrn.4957467>.

43. See generally Valerio De Stefano, *The Rise of the Just-in-Time Workforce: On-Demand Work, Crowdwork, and Labor Protection in the Gig-Economy*, 37 COMP. LAB. L. & POL’Y J. 471 (2016).

44. See Aida Ponce Del Castillo, *The AI Regulation: Entering an AI regulatory winter? Why an ad hoc directive on AI in employment is required*, ETUI Pol’y Brief 2021.07 (2021), https://www.etui.org/sites/default/files/2021-06/The%20AI%20Regulation.%20Entering%20an%20AI%20regulatory%20winter_2021.pdf.

45. Tambiama Madiega, *Artificial Intelligence Act*, EUR. PARL. RSCH. SERV. (Sept. 2024), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI\(2021\)698792_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf).

46. Yavuz Selim Balcioğlu, Ahmet Alkan Çelik & Erkut Altındağ, *A Turning Point in AI: Europe’s Human-Centric Approach to Technology Regulation*, J. RESP. TECH. (2025).

focused on the regulation of the work itself rather than on the underlying technology.⁴⁷

A recent illustration of the EU's evolving policy framework is the European Parliament's 2025 Motion on "*Digitalisation, Artificial Intelligence and Algorithmic Management in the Workplace*."⁴⁸ This Motion sets out the Union's current priorities for the digital transformation of work and issues a series of recommendations to the European Commission to guide its future initiatives.⁴⁹

At its core, the Motion advances a human-centered regulatory framework. It reaffirms the principle of "human in control," rejects any deterministic view of technological process, and calls for democratic oversight of algorithmic systems in the workplace.⁵⁰ Although the Motion recognizes that AI can improve efficiency, safety, and job quality, the Parliament also underscores the risks that accompany these technologies, including intensified monitoring, increased work pressure, diminished work-life balance, and serious concerns related to data privacy.⁵¹

The document identifies three central priorities. The first priority is to empower workers through continuous training initiatives, with particular attention to vulnerable groups and to the preservation of meaningful employment opportunities, especially for young and low-skilled workers.⁵² The second priority is to ensure workplace safety and inclusiveness by protecting employees from the risks associated with digital technologies.⁵³ To achieve this, the document calls for targeted measures that allow vulnerable individuals, including people with disabilities, to benefit from technological developments while retaining the autonomy to decide whether AI-based assistive tools are appropriate

47. *Draft Report with recommendations to the Commissions on digitalization, artificial intelligence and algorithmic management in the workplace – shaping the future of work*, EUR. PARL., COMM. ON EMP. & SOC. AFFAIRS., 2025/2080 (INL) (June 26, 2025), https://www.europarl.europa.eu/doceo/document/EMPL-PR-774283_EN.pdf [hereinafter COMM. ON EMP. & SOC. AFFAIRS].

48. *Id.*

49. *Id.*

50. *Id.* (mentions the "report" in the sentence).

51. *See id.* (mentions the "Parliament" in the sentence).

52. COMM. ON EMP. & SOC. AFFAIRS., *supra* note 47.

53. *Id.*

for their needs.⁵⁴ The third priority is to secure a regulatory environment that is genuinely “future-proof.”⁵⁵ In pursuit of this goal, the document emphasizes the essential role of social dialogue, imposes transparency obligations in sectors where digital technologies increasingly shape decisions affecting work and workers’ rights, and requires health and safety assessments before AI systems are introduced in the workplace.⁵⁶ To advance these priorities, the Motion recommends the adoption of a dedicated Directive on algorithmic management in the workplace. Such a Directive would establish a comprehensive regulatory framework and address the current fragmentation of relevant provisions across multiple EU legal instruments.⁵⁷

II. THE ROLE OF “SOCIAL DIALOGUE” IN THE GOVERNANCE OF DIGITAL WORK

As highlighted in the previous section, dialogue between rule-makers, trade unions, and employers’ organizations is a core element of the European Social Model. Negotiations between social partners⁵⁸ are an integral part of the EU labor law framework and operates alongside statutory law.⁵⁹ As a result, social partners play a direct and ongoing role in shaping the governance of digital transformation at both the EU and Member State levels.⁶⁰

54. *Id.*

55. *Id.*

56. *Id.* (referring to sections of the report).

57. *Id.*

58. *Topics – Social Partners*, EUROFOUND. <https://www.eurofound.europa.eu/en/topics/social-partners> (last visited Nov. 21, 2025).

59. The concept of “social partners” in EU Employment law refers to the representative organizations of employers and workers that participate in social dialogue at EU, national, or sectoral level. The normative references can be found in Articles 151–155 of the Treaty on the Functioning of the European Union (TFEU). See Consolidated Version of the Treaty on the Functioning of the European Union arts. 151-155, Oct. 26, 2012, 2012 O.J. (C 326) 49 [hereinafter TFEU]. Art. 151 TFEU affirms the promotion of dialogue between management and labour as a fundamental objective of EU social policy. Art. 152 TFEU recognises and promotes the role of the social partners at EU level and facilitates dialogue between them.

60. COMM. ON EMP. & SOC. AFFAIRS., *supra* note 47, at 7.

At the same time, the disruptive effects of digitalization present significant challenges to the traditional foundations of social dialogue and collective bargaining.⁶¹

A. The Challenges of Digitalization and the Response of Social Partners

New regulatory demands, including those generated by emerging professional profiles and evolving organizational models, are not always met by immediate or coherent strategies from traditional social partners.⁶² The new occupational roles and work arrangements created by the digitalization often do not align neatly with collective bargaining frameworks.⁶³ As a result, both trade unions and employers have at times struggled to develop timely and coordinated responses to issues such as algorithmic management, remote work, and platform-based labor.⁶⁴

However, in sectors such as the platform economy, new actors have emerged that operate either alongside or in direct competition with established trade unions.⁶⁵ Platform-based work is typically organized around individualized relationship, shaped by the absence of a traditional “workplace,” and are mediated almost entirely through digital infrastructure.⁶⁶ These features significantly weaken the capacity of traditional unions to organize and represent workers who are geographically dispersed, interact only through an app, and may not be formally classified as employees.⁶⁷ In response, alternative forms of

61. Stavroula Demetriades et al., *Social Partners Going Digital: Using Digital Tools and Adapting Social Dialogue Processes* (Eurofound, Publ’ns Off. Of the Eur. Union 2021), [hereinafter *Social Partners Going Digital*], <https://ddd.uab.cat/pub/infpro/2021/250151/ef21005en.pdf>.

62. See COLLANA FONDAZIONE MARCO BIAGI, *DIGITAL EMPLOYMENT AND INDUSTRIAL RELATIONS IN EUROPE* (Olga Rymkevich & Iacopo Senatori eds., 2023) (for a collection of EU-wide experiences).

63. *Id.*

64. *See id.*

65. See Anthony Forsyth, *The Future of Unions and Worker Representation: The Digital Picket Line* (Bloomsbury 2022).

66. *See id.*

67. *Gender Equality Index 2020: Digitalisation and the Future of Work* 94-103, EUR. INST. FOR GENDER EQUAL. (2020), https://eige.europa.eu/publications-resources/toolkits-guides/gender-equality-index-2020-report/new-forms-work-and-flexible-working-practices-context-ict-sector-and-platform-work?language_content_entity=en.

worker mobilization have developed, including grassroots associations, informal collectives, and various forms of “digital unions.”⁶⁸ These new actors have played an important role in advocating for fundamental rights and protections for platform workers, yet their emergence raises complex questions about how diverse forms of representation can be integrated into the broader system of social dialogue.⁶⁹

Despite this initial displacement, traditional social partners have succeeded in reclaiming a meaningful role in shaping labor regulation in the digital economy.⁷⁰ One notable example is the rise of strategic litigation as a central tool through which trade unions representing platform workers seek to secure recognition of employment rights.⁷¹ Through coordinated legal strategies, social partners have provided legal assistance, resources, and public visibility to claimants, to secure favorable judicial outcomes that highlight the informal subordination hidden behind formal independence.⁷²

These efforts have produced landmark rulings in jurisdictions such as Spain, Italy, and the UK, where courts have reclassified platform workers as employees or dependent contractors. As a result, these workers have gained access to core labor protections, including minimum wage, equal treatment, health and safety, and collective bargaining rights.⁷³ These cases not only secure relief for individual outcomes and serve as catalysts for both the mobilizing capacity of trade union and legal and policy reform, growing momentum in favor

68. *Work In The Digital Age: Challenges Of The Fourth Industrial Revolution* (Max Neufeind, Jacqueline O’Reilly & Florian Ranft eds., Rowman & Littlefield Int’l 2018); Hannah Johnston & Chris Land-Kazlauskas, *Organizing On-Demand: Representation, Voice, and Collective Bargaining in the Gig Economy* (Int’l Labour Org., Inclusive Labour Mkts., Labour Rels. & Working Conditions Branch, Working Paper No. 94, 2018).

69. Social Partners Going Digital, *supra* note 61.

70. *Id.*

71. Giovanni Gaudio & Caterina Giulia Guidetti, *Trade Unions, Strategic Litigation and Digital Labour Platforms: A Case-Study of the CGIL*, AMBIENTEDIRITTO (2024), https://www.ambientediritto.it/wp-content/uploads/2024/06/TRADE-UNIONS-STRATEGIC-LITIGATION-AND-DIGITAL-LABOUR-PLATFORMS-A-CASE-STUDY-OF-THE-CGIL_-Gaudio_Guidetti.pdf.

72. EUROGIP, *Travailleurs des plateformes: Quel statut pour quelle protection sociale?* (Mar. 2022), https://eurogip.fr/wp-content/uploads/2022/03/EUROGIP_Rapport-plateformes-Europe-2022-EN-summary-1.pdf.

73. *Id.*

of a regulatory framework that provides stronger and more coherent protections for workers.⁷⁴

Alongside litigation, established trade unions have also begun to reassert their influence through collective bargaining.⁷⁵ Although the platform economy presents significant structural and legal obstacles to collective representation, collective agreements are increasingly emerging in sectors such as food delivery and ride-hailing.⁷⁶ These agreements remain limited in scope and tend to address only specific aspects of employment, such as pay, health, and safety.⁷⁷ However, their growing presence signals a renewed regulatory role for traditional unions in a domain once considered resistant to collective bargaining.⁷⁸

In the context of traditional employment sectors, the Italian experience provides a clear illustration of these evolving dynamics. In industries such as logistics and metalworking, collective agreements have begun to incorporate protections that directly address algorithmic management, flexible working time arrangements, and remote work.⁷⁹ Trade unions have succeeded in integrating provisions on digital skills into collective bargaining frameworks, which has led to a substantial reconfiguration of professional profiles and job descriptions.⁸⁰ These developments are particularly visible in recent agreements negotiated within the metalworking sector.⁸¹

74. *Id.*

75. Anthony Forsyth & Shae McCrystal, *Collective bargaining and collective action in the platform economy: A 2024 update of developments in legislation, case law and collective agreements* (Int'l Lab. Org., Working Paper No. 143, 2025); Mariagrazia Lamannis, *Collective bargaining in the platform economy: A mapping exercise of existing initiatives* (ETU, Report 2023.02, 2023); Salvo Leonardi, *The impact of digitalisation on social dialogue. A comparative cross-country and cross-sectoral analysis* (European Soc. Observatory, Deliverable D4.2, Aug. 2023).

76. Forsyth & McCrystal, *supra* note 75; Lamannis, *supra* note 75.

77. Forsyth & McCrystal, *supra* note 75; Lamannis, *supra* note 75.

78. Forsyth & McCrystal, *supra* note 75; Lamannis, *supra* note 75.

79. Iacopo Senatori, *Italian Industrial Relations and the Challenges of Digitalisation*, 2 HUNGARIAN LAB. L. E-J. 1 (2021).

80. *Id.*

81. *Id.*

B. The European Social Partners' Framework Agreement on Digitalization

At the European level, the most significant initiative by the social partners in this field is the European Framework Agreement on Digitalisation (EFAD). Signed in June 2020 by the cross-sectoral employers' association (BusinessEurope), the representatives of small and medium enterprises (SMEUnited), the organization of public employers and enterprises providing services of general interest (CEEP), the European Trade Union Confederation (ETUC), and the liaison committee (EUROCADRES/ CEC).⁸² To date, this agreement is the most comprehensive effort undertaken by the European social partners to address the regulatory challenges posed by the digital transformation in the workplace.

The Agreement identifies four core areas of intervention: digital skills and employment security, modalities of connecting and disconnecting, human control over artificial intelligence, and the protection of human dignity in the context of digital surveillance.⁸³ Across these domains, the Agreement sets out a shared understanding of the challenges and outlines a range of measures that national-level actors may implement.⁸⁴ These measures include commitments to reskilling and upskilling, safeguards against excessive connectivity and surveillance, and principles designed to promote transparency and accountability in the use of AI.⁸⁵ Although the provisions of the Agreement are non-binding, they function as an important reference point for collective bargaining and workplace-level regulation.

The most significant contribution of the Agreement to the broader public debate is methodological. It introduces a “partnership-based approach” that is grounded in the idea that the effective integration of digital technologies in the workplace should occur through a “consensual transition.”⁸⁶ According to the signatory parties, this

82. EUROPEAN TRADE UNION CONFEDERATION (ETUC) ET AL., *European Social Partners Framework Agreement on Digitalisation* (June 2020) [hereinafter *Social Partners Framework Agreement*], https://www.etuc.org/system/files/document/file2020-06/Final%2022%2006%2020_Agreement%20on%20Digitalisation%202020.pdf.

83. *Id.* at 5.

84. *Id.* at 7.

85. *Id.* at 8.

86. *Id.* at 6.

process seeks a “win-win” in which both employers and workers are able to benefit from technological change while simultaneously reducing the risks associated with it.⁸⁷

This partnership approach is organized as a circular process involving five key phases: joint exploration, mapping, strategic planning, adoption of measures, and monitoring.⁸⁸ This procedural design embeds workers’ voices at every stage of the process and corrects the common pattern in which worker involvement is limited to the final phases of implementation.⁸⁹ I doing so, the Agreement seeks to shift the regulatory focus from the adaptation of unilateral managerial decisions to a cooperative approach to digital transformation.⁹⁰

Despite its limitations, including its inherent vagueness and its role merely as a reference point for future developments,⁹¹ the EFAD remains a noteworthy example of the regulatory potential of social dialogue in context of digitalization. The Agreement advances a methodological approach and an innovative regulatory strategy for social partners, grounded in a virtuous interplay between two different instruments that are central to the European tradition of industrial relations, collective bargaining and employee participation.⁹²

Participation schemes, which rely on continuous collaboration between management and workers’ representatives, share important similarities with the partnership-based approach to digitalization. They offer a flexible channel through which workers can influence managerial decisions as those decisions are being formed.⁹³ Collective bargaining, by contrast, is more rigid and less responsive to rapidly changing circumstances, since it operates as a rule-setting mechanism that often results from lengthy and complex negotiations.⁹⁴

87. *Id.*

88. *Id.* at 7.

89. *Social Partners Framework Agreement*, *supra* note 82, at 9.

90. *Id.* at 9. (Info under “Measures to be considered include:”).

91. See David Mangan, *Agreement to Discuss: The Social Partners Address the Digitalisation of Work*, 50 *INDUS. L. J.* 689 (2021).

92. *Social Partners Framework Agreement*, *supra* note 82, at 8–10.

93. *Id.* at 8.

94. See Marco Biasi, *‘We will all laugh at gilded butterflies’*. *The shadow of antitrust law on the collective negotiation of fair fees for self-employed workers*, 9 *EUR. LAB. L. J.* 354 (2018).

However, the emphasis on employee involvement does not preclude a continued role for collective bargaining.⁹⁵ Strengthening the interaction between these two dimensions of collective action is likely the most effective strategy for addressing contemporary challenges. The result may be the emergence of a “continuous negotiation” process on issues associated with digitalization in the workplace, where participatory mechanisms initiate dialogue and collective bargaining agreements later formalize and consolidate the resulting commitments.⁹⁶

The EFAD has not reversed the broader crisis confronting European social dialogue in the face of contemporary transitions, including the technological one.⁹⁷ In this context, the European Commission issued its 2023 Communication titled *Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions*.⁹⁸ The Communication contains several references to digitalization and identifies it, together with climate change and demographic shifts, as one of the core transitions reshaping labor markets.⁹⁹ It calls for stronger involvement of social partners in the governance of digital change, particularly with regard to platform work, algorithmic management, and the development of digital skills.¹⁰⁰ These priorities align closely with the EFAD’s procedural approach. However, the Communication goes further by situating digitization within a broader strategy to rebuild collective bargaining coverage and invest in the institutional capacity of social partners.¹⁰¹

95. See Valerio De Stefano, ‘Negotiating the Algorithm’: Automation, Artificial Intelligence, and Labor Protection, 41 COMP. LAB. L. & POL’Y J. 15 (2019).

96. See Iacopo Senatori, *The European Framework Agreement on Digitalisation: A Whiter Shade of Pale?*, 13 ITALIAN LAB. L. E-J. 159 (2020).

97. *Id.* at 161–162.

98. European Commission, *Strengthening Social Dialogue in the European Union: Harnessing its Full Potential for Managing Fair Transitions*, COM (2023) 40 final (Jan. 1, 2023).

99. *Id.*

100. *Id.* at 1–6.

101. See Silvia Rainone, *EU Social Dialogue Revitalization: Between Rhetoric, New rights, Political Commitments and Historical Caution*, 15 EUR. LAB. L. J. 900 (2024) (a critical assessment that emphasizes the largely programmatic nature and lack of binding mechanisms in the Commission’s Communication may limit its potential to address the structural weaknesses of collective representation in the digital age).

III. THE PLATFORM MODEL AND THE CHALLENGES TO EMPLOYMENT STATUS

As discussed in previous sections, the rise of digital labor platforms has profoundly disrupted established labor law categories. By mediating work with algorithmic infrastructures, these platforms have created business models that challenge both the conceptual and functional foundations of traditional employment regulation and workplace organization.¹⁰² At the center of this disruption lies a crisis of legal classification: platform workers often do not fit into the binary framework of “employee” versus “self-employed.”¹⁰³ This mismatch exposes the inadequacy of existing categories to capture the realities of platform-mediated work.¹⁰⁴ As a result, many platform workers experience economic dependence and managerial control, in technologically mediated forms, without enjoying corresponding labor protections.¹⁰⁵ This gap in protection is not a simple byproduct of regulatory loopholes. Rather, the classification of platform workers as independent contractors is a structural feature of the platform business model. It is strategically designed to minimize labor costs and legal responsibilities while exploiting power and information asymmetries to the detriment of workers.¹⁰⁶

However, these challenges extend well beyond the frequent misclassification of workers. Although misclassification is a central legal problem, it represents only one aspect of a broader process that is weakening labor protection systems. Even genuinely self-employed workers increasingly face conditions of vulnerability and economic dependence, reflecting a structural trend that is not confined to the platform economy.¹⁰⁷ The literature identifies this development as an emerging “grey zone” of employment relationships, in which formal

102. MARTIN GRUBER-RISAK, CLASSIFICATION OF PLATFORM WORKERS: A SCHOLARLY PERSPECTIVE, IN *DECENT WORK IN THE DIGITAL AGE: EUROPEAN AND COMPARATIVE PERSPECTIVES* 85 (Tamàs Gyulavári & Emanuele Menegatti eds., 2022).

103. GRUBER-RISAK, *supra* note 102.

104. *Id.*

105. *See Id.*

106. *See* Veena B. Dubal, *Economic Security & the Regulation of Gig Work in California: From AB5 to Prop 22* (Eur. Comm’n, Thematic Working Paper 2020).

107. GRUBER-RISAK, *supra* note 102.

autonomy coexists with material and economic subordination.¹⁰⁸ Workers in this “hybrid” category are genuinely autonomous yet experience functional constraints and power imbalances that place them in a position comparable to that of traditional employees.¹⁰⁹ This evolution underscores the need for a more universal approach to labor protection, one that allocates rights and protections based on criteria that move beyond the rigid dichotomy of self-employment versus subordination. Such an approach should rely on parameters that more accurately capture workers’ actual conditions of vulnerability, including the personal nature of the work performed, economic dependence on a single client, and limited contractual autonomy.¹¹⁰

A. Remedies to the Misclassification of Employment Relationships

Across the European Union, national courts and legislators have struggled to respond to the challenges posed by misclassification and protection gaps affecting platform workers.¹¹¹

The issue of misclassification has fallen largely to national judiciaries. Courts and administrative bodies in many Member States have been asked to determine whether platform workers, particularly in ride-hailing and food delivery sectors, should be reclassified as employees or “workers,” with intermediate labor protections.¹¹² In several countries, courts have increasingly recognized the existence of employment relationships in platform work by relying on indicators such as subordination, control, and economic dependency.¹¹³

Alternatively, legislative interventions have generated a wide range of national responses. Some jurisdictions continue to rely on strict binary

108. Dubal, *supra* note 106.

109. See GRUBER-RISAK, *supra* note 102.

110. See Christina Heissl, *The legal status of platform workers: Regulatory approaches and prospects of a European solution*, 15 ITALIAN LAB. L. E-JOURNAL 13 (2022); Adalberto Perulli, *Beyond Subordination: Four Arguments*, in *Defining and Protecting Autonomous Work. A Multidisciplinary Approach* 51 (Tindara Addabbo, Edoardo Ales, Ylenia Curzi, Tommaso Fabbri, Olga Rymkvich, & Iacopo Senatori eds., 2022).

111. Heissl, *supra* note 110.

112. Heissl, *supra* note 110, at 21-22.

113. See Christina Heissl, *The Classification of Platform Workers in Case Law: A Cross-European Comparative Analysis*, 42 COMP. LAB. L. & POL’Y J. 465 (2021).

criteria that draw a sharp distinction between subordination and self-employment.¹¹⁴ Others have introduced intermediate categories, such as the Italian concepts of “quasi-subordination” and “hetero-organized” collaboration, or the Spanish category of economically dependent workers.¹¹⁵ These intermediary classifications are designed to extend core labor rights, including minimum pay and occupational health and safety, to platform workers without granting them full employee status. In some cases, they provide an even broader set of protections.¹¹⁶

In Italy, early judicial approaches to determining the employment status of platform workers, particularly food delivery riders, generally classified them as self-employed.¹¹⁷ This interpretation relied heavily on the workers’ apparent freedom to accept or decline tasks, a characteristic that Italian courts viewed as incompatible with the managerial control required to establish subordination under Article 2094 of the Civil Code.¹¹⁸ The introduction of Article 2 of Legislative Decree No. 81/2015, however, revealed the transformative potential of an intermediate category by recognizing “hetero-organized” collaborations.¹¹⁹ In several high-level court decisions, courts acknowledged that although platform workers may be formally autonomous, the concrete modalities of their service provision, including unilateral task assignment and rigid scheduling imposed by the platform, create a situation of functional subordination.¹²⁰ This recognition has allowed courts to extend the full set of protections provided to employees to these workers.¹²¹

114. *See id.* .

115. *Id.* at 472.

116. *See* Emanuele Menegatti, *The Classification of Platform Workers through the Lens of the Judiciaries: A Comparative Analysis*, in *Decent Work in the Digital Age: European and Comparative Perspectives* 105 (Tamàs Gyulavári and Emanuele Menegatti eds., 2022).

117. Heissl, *The Classification of Platform Workers in Case Law*, *supra* note 113.

118. *Id.* at 488.

119. Heissl, *supra* note 110.

120. *Id.* at 23.

121. Cass., [Court of Cassation], 24 January 2020, n. 1663 (It.); *See* Silvia Borelli, *Fitting the Panoply in a Binary Perspective. The Italian Platform Workers in the European Context*, 41 *COMP. LAB. L. & POL’Y J.* 365 (2020).

More recently, several courts have gone further by directly classifying platform workers as employees.¹²² This jurisprudential shift is grounded in an updated understanding of subordination that captures the nuanced forms of control generated by digital technologies. Italian courts have highlighted how remote surveillance, algorithmic task distribution, and data-driven performance monitoring allow platforms to exercise employer-like prerogatives, including direction, coordination, and even sanctioning powers.¹²³ In these circumstances, the formal autonomy attributed to platform workers is treated as largely fictitious, and the substantive reality supports their inclusion within the scope of employment.¹²⁴

The influence of the Court of Justice of the European Union has been a significant driver of this shift in Italian case-law. The Court has developed an autonomous and expansive definition of “worker” for the purposes of EU law, one that prioritizes the substance of the working relationship over its formal classification¹²⁵ In applying this definition, the Court has focused on elements such as the provision of personal service, the worker’s coordination and integration in the employers’ business organization, and the broader economic reality.¹²⁶

These multifaceted national responses reflect a shared commitment to extending protections that correspond to the actual needs of platform workers. However, they also produce a fragmented and inconsistent regulatory landscape, which generates significant legal uncertainty for both workers and platforms.

In this context, the introduction of an EU-level regulatory instrument represents an important step towards establishing equal standards of treatment for platform workers across Europe.

B. The Platform Work Directive

The legislative process for adopting a Directive on improving working conditions in platform work began with a broad two-stage

122. See also Heissl, *The Classification of Platform Workers in Case Law*, *supra* note 113.

123. See *id.*

124. Tribunale Ordinario di Torino [Tribunal of Turin], 18 Nov. 2021 (It.).

125. See Emanuele Menegatti, *Taking EU labour law beyond the employment contract: The role played by the European Court of Justice*, 11 *Eur. Lab. L. J.* 26 (2020).

126. See *id.*

consultation of social partners in 2021.¹²⁷ The social partners did not reach an agreement that would allow them to initiate a negotiated proposal under the procedure permitted by the EU Treaties.¹²⁸ As expected, they expressed sharply divergent views about the desirability and feasibility of an EU regulatory instrument.¹²⁹ Trade unions, including the ETUC, strongly supported the initiative and called for enhanced algorithmic transparency, and greater protection against misclassification of workers.¹³⁰ Employers' organizations and major platform companies, by contrast, opposed the measures, arguing that it would undermine flexibility, hamper genuine self-employment, and discourage innovation.¹³¹

As a result, the European Commission advanced its own legislative proposal, presented on December 9, 2021.¹³² The subsequent political negotiations reflected the wide range of views throughout the political spectrum. For instance, the European Parliament advocated for stronger worker protections, while several Member States in the Council and the intergovernmental body within the EU, favored more flexible solutions.¹³³ After extensive negotiations, a political agreement was

127. European Parliament, *Report on Fair Working Conditions, Rights and Social Protection for Platform Workers: New Forms of Employment Linked to Digital Development*, A9-0257/2021 (Sept. 9, 2021).

128. *Id.* at 13–14.

129. *Id.* at 23.

130. EUROPEAN TRADE UNION CONFEDERATION (ETUC), *ETUC Reply to the Second phase consultation of social partners under Article 154 TFEU on possible action addressing the challenges related to working conditions in platform work* (Sept. 9, 2021), <https://www.etuc.org/en/document/etuc-reply-second-phase-consultation-social-partners-under-article-154-tfeu-possible>.

131. EUR. ECON. & SOC. COMM. (EESC), *EESC Opinion: Working conditions package — Improving Working Conditions in Platform Work*, at 3–5 (June 2022), <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/working-conditions-package>.

132. *Id.*

133. EUR. PARL., *Social Europe: What Parliament is doing on social policy* (June 6, 2017), <https://www.europarl.europa.eu/topics/en/article/20170616STO77648/social-europe-what-parliament-is-doing-on-social-policy>.

reached in February 2024,¹³⁴ and the final, substantially diluted text was adopted on October 23, 2024.¹³⁵

The Directive aims to establish a comprehensive regulatory framework governing the contractual relationships between workers and digital labor platforms, irrespective of whether they are classified as employees or independent contractors.¹³⁶ As stated in Article 1, its objective is threefold: (1) to introduce measures to facilitate the proper determination of the employment status of workers performing platform work; (2) to promote transparency, fairness, human oversight, safety and accountability in algorithmic management; and (3) to improve transparency in platform work, including cross-border situations.¹³⁷

The Directive's policy rationale is based on a dual premise: while most individuals providing services via platforms are genuinely self-employed and require only baseline rights, a significant minority are misclassified as self-employed and therefore require stronger protections.¹³⁸ The distinction is reflected in the Directive's recognition of two separate categories of individuals, each subject to a distinct set of protections.¹³⁹ "Persons performing platform work," encompassing both employees and the self-employed, are covered solely by the provisions on algorithmic management.¹⁴⁰ "Platform workers", however, are those individuals employed under a contract of employment and are therefore entitled to the full range of protections provided by the Directive.¹⁴¹ This structure reflects a hybrid regulatory approach which combines universal and selective criteria to extend

134. COUNCIL OF THE E.U., *EU rules on platform work* (Feb. 4, 2025), <https://www.consilium.europa.eu/en/policies/platform-work-eu/>.

135. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, O.J. L 2024/2831, 11 Nov. 2024. See, in general: Jeremias Adams-Prassl, Antonio Aloisi, Nicola Countouris, Valerio De Stefano, Silvia Rainone, *Protecting platform workers in the European Union*. 16 EUROPEAN LABOUR LAW JOURNAL 427 (2025).

136. *Id.* at Article III.

137. *Id.* at Article I.

138. *Id.*

139. See generally Directive (EU) 2024/2831 Of The European Parliament And Of The Council Of 23 October 2024 On Improving Working Conditions In Platform Work, O.J. L, 11.11.2024.

140. See generally *id.*

141. See generally *id.*

employment protections to platform workers. The universal component extends a limited set of rights to a broadly defined group, namely persons performing platform work.¹⁴² In contrast, the selective component ensures a broader range of protections applies to those individuals who meet the legal definition of platform workers.¹⁴³

C. *The Legal Presumption*

While the provisions concerning algorithmic management will be analyzed in the following section, the present discussion focuses on the classification of platform workers. The Directive identifies three core elements for determining employment status: organization, direction, and control.¹⁴⁴ “Organization” refers to whether a digital labor platform is within the material scope of the Directive.¹⁴⁵ In this respect, if a service is performed without the platform’s organizational involvement, neither category of worker is encompassed by the Directive’s protective framework.¹⁴⁶ “Direction and control,” in turn, serve as indicators of an employment relationship between the individual worker and the platform.¹⁴⁷ These elements reflect core aspects of the platform’s organizational function and provide the basis for determining whether the individual should be classified as an employee.¹⁴⁸

142. *See generally id.*

143. *See* Iacopo Senatori, *EU Law and Digitalisation of Employment Relations*, in *DECENT WORK IN THE DIGITAL AGE: EUROPEAN AND COMPARATIVE PERSPECTIVES* 57, at 79 (Tamás Gyulavári and Emanuele Menegatti eds., 2022).

144. *Id.* at 70, 80.

145. *Id.* at 80.

146. *See* Directive (EU) 2024/2831 Of The European Parliament And Of The Council Of 23 October 2024 On Improving Working Conditions In Platform Work, *supra* note 139, at art. 2, § 1. (definition of digital labor platform) (“Digital labour platform means a natural or legal person providing a service which meets all of the following requirements: (i) it is provided, at least in part, at a distance by electronic means, such as by means of a website or a mobile application; (ii) it is provided at the request of a recipient of the service; (iii) it involves, as a necessary and essential component, the organisation of work performed by individuals in return for payment, irrespective of whether that work is performed online or in a certain location; (iv) it involves the use of automated monitoring systems or automated decision-making systems”).

147. *See* Senatori, *supra* note 143.

148. *Id.* at 80.

To facilitate the classification of platform workers as employees where appropriate, the Directive introduces a rebuttable presumption of employment status, grounded in the principle of the “primacy of facts.”¹⁴⁹ This means that:

[T]he ascertainment of the existence of an employment relationship shall be guided primarily by the facts relating to the actual performance of work, including the use of automated monitoring systems or automated decision-making systems in the organization of platform work, irrespective of how the relationship is designated in any contractual arrangement that may have been agreed between the parties involved.¹⁵⁰

The European Commission’s initial proposal of the Directive was particularly innovative, it introduced a structured list of five criteria for assessing employment status.¹⁵¹ Under that proposal, if at least two of the following criteria were met, a rebuttable presumption of employment would arise:¹⁵²

- (1) the platform determines or sets limits on the worker’s remuneration;
- (2) the platform imposes rules or restrictions on working time or schedules;
- (3) the worker is restricted from working for third parties;
- (4) the platform monitors performance through electronic means;
- (5) the platform imposes requirements concerning appearance, conduct, or service quality.¹⁵³

149. Directive (EU) 2024/2831 Of The European Parliament And Of The Council Of 23 October 2024 On Improving Working Conditions In Platform Work, *supra* note 139, at art. 27.

150. *Id.* at art. 4, § 2.

151. William B. Gould IV and Marco Biasi, *The Rebuttable Presumption of Employment Subordination in the US ABC-Test and in the EU Platform Work Directive Proposal*, 15 ITALIAN LABOUR L. E-JOURNAL 85, 93 (2022).

152. *Id.* (examining the affinities between this mechanism and the model introduced by California’s AB5, in their attempt to codify control indicators and reverse the burden of proof).

153. *Id.*

This approach was potentially disruptive because these indicators supplemented the traditional markers of subordination. Originally, the markers were assessed on functional or hierarchical dependence, such as direct control or supervision.¹⁵⁴ However, these same markers were reinterpreted as indicators based on structural and economic dependence.¹⁵⁵ In doing so, the proposal acknowledged that platforms may exert non-traditional or “hidden” forms of control, such as algorithmic governance and economic dependency.¹⁵⁶

However, the final version of the Directive removes this specific list of criteria.¹⁵⁷ The presumption of employment now applies more generally where the platform controls “the performance of work.”¹⁵⁸ The assessment of control is based on non-exhaustive indicative elements defined under national law and practice, with consideration given to the Court of Justice of the European Union case law.¹⁵⁹ Furthermore, the presumption is no longer automatic: it must be activated through a formal legal or administrative procedure.¹⁶⁰

This reformulation reflects a political compromise amid highly divergent positions among Member States and social partners,¹⁶¹ but it nevertheless weakens the original mechanism. The Commission’s initial formulation would have had a transformative impact on national legal traditions by encouraging greater convergence among Member

154. *Id.*

155. *Id.*

156. *Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work*, COM (2021) 762 final (Jul. 29, 2022).

157. *Compare Proposal for a Directive of the European Parliament and of the Council on improving working conditions in platform work*, COM (2021) 762 final (Jul. 29, 2022), with Directive (EU) 2024/2831 Of The European Parliament And Of The Council Of 23 October 2024 On Improving Working Conditions In Platform Work, O.J. L, 11.11.2024.

158. Directive (EU) 2024/2831 Of The European Parliament And Of The Council Of 23 October 2024 On Improving Working Conditions In Platform Work, *supra* note 139.

159. European Commission Press Release, Platform workers: Council confirms agreement on new rules to improve their working conditions, (Mar.11, 2024) <https://www.consilium.europa.eu/en/press/press-releases/2024/03/11/platform-workers-council-confirms-agreement-on-new-rules-to-improve-their-working-conditions/>.

160. *Id.*

161. *Id.*

States towards a shared, functionally based notion of subordination.¹⁶² By contrast, the removal of specific, uniform criteria reduces legal certainty, increases fragmentation, and makes the presumption's effectiveness heavily dependent on national enforcement,¹⁶³ even though its potential legal significance remains.

IV. THE EVOLVING LEGAL FRAMEWORK ON ALGORITHMIC MANAGEMENT

Recent scholarship has extensively examined the phenomenon of algorithmic management and its impact on employment relationships.¹⁶⁴ It is increasingly analyzed through the dual lens of risk and opportunity.¹⁶⁵ When managerial prerogatives are exercised through automated, data-driven decision-making processes, the potential for human bias may be reduced and decisions may appear more objective, whether such systems merely assist human decisions or fully replace them.¹⁶⁶ Yet the opposite can also occur: algorithmic systems may embed or amplify existing biases, resulting in opaque or discriminatory outcomes.

A. *The Managerial Prerogative and the Algorithm*

The automation of managerial functions reshapes the exercise of authority in three fundamental ways. First, automation mediates authority: human managers often lack influence over the algorithmic

162. See William B. Gould IV and Marco Biasi, *supra* note 151.

163. Mirjam de Blecourt et al., *European Union: Platform Workers Directive Goes Ahead - Presumption of Employment and Regulation of Algorithmic Management in Platform Work*, BAKER MCKENZIE (Mar. 20, 2024), <https://insightplus.bakermckenzie.com/bm/employment-compensation/european-union-platform-workers-directive-goes-ahead-presumption-of-employment-and-regulation-of-algorithmic-management-in-platform-work#:~:text=Key%20takeaways,taxes%20is%20a%20criminal%20offence>.

164. See ANTONIO ALOISI & VALERIO DE STEFANO, YOUR BOSS IS AN ALGORITHM (2022), <https://ssrn.com/abstract=4139319>.

165. Iacopo Senatori, *Regulating the Employment Relationship in the Organization 4.0: Between Social Justice and Economic Efficiency*, in THE FUTURE OF WORK. LAB. L. & LAB. MKT. REG. IN THE DIGIT. ERA 187, 188 (Adalberto Perulli and Tiziano Treu eds., 2020).

166. *Id.*

processing that leads to a given decision, leaving them to passively implement outcomes they cannot question.¹⁶⁷ Second, automation augments authority: algorithmic systems vastly expand the employer's capacity for oversight—both in breadth, for instance by interpreting biometric data to infer workers' emotional or physical states, and in depth, through the microscopic tracking of performance indicators in real time.¹⁶⁸ Third, and most critically, automation opacifies authority: machine learning models and statistical correlations drive decisions that are not readily intelligible, even to those who deploy them.¹⁶⁹ The data sources, parameters, and causal pathways underlying algorithmic decisions are frequently inaccessible, resulting in diminished transparency and limited scope for contestation, as if the decisions were made in “metaphorical black box.”¹⁷⁰ This opacity does not eliminate managerial authority; it simply shifts the point at which authority is exercised.¹⁷¹ Nor does algorithmic management neutralize employer authority; it reconfigures it by enabling employers to maintain control through the design, selection, and governance of algorithmic tools.¹⁷² In other words, algorithmic systems do not displace managerial prerogatives, they are embedded within them, coded into the architecture, data flows, and decision-making logic of the technology itself, thereby institutionalizing employer control through design.¹⁷³

167. Michele Molè, *Commodified, Outsourced Authority: A Research Agenda for Algorithmic Management at Work*, 17 ITALIAN LABOUR L. E-JOURNAL 169, 174 (2024), <https://ssrn.com/abstract=5086055> [<http://dx.doi.org/10.2139/ssrn.5086055>].

168. *Id.* at 170.

169. Antoine Bujold et al., *Opacity Behind the Wheel: The Relationship Between Transparency of Algorithmic Management, Justice Perception, and Intention to Quit Among Truck Drivers*, 8 COMPUTERS IN HUMAN BEHAVIOR REPORTS, Oct. 29, 2022, at 2, <https://doi.org/10.1016/j.chbr.2022.100245>; Lilian Edwards & Michael Veale, *Slave to the Algorithm? Why a 'Right to an Explanation' is Probably Not the Remedy You are Looking for*, 16 DUKE L. & TECH. REV. 17, 44 (2017).

170. Marta Otto, *A Step Towards Digital Self- & Co-determination in the Context of Algorithmic Management Systems*, 2 ITALIAN LABOUR LAW E-JOURNAL 51, 53 (2022).

171. *Id.*

172. See Jeremias Adams-Prassl, *What If Your Boss Was an Algorithm? Economic Incentives, Legal Challenges, and the Rise of Artificial Intelligence at Work*, 41 COMP. LAB. L. & POL'Y J. 123 (2019).

173. See generally Molè, *supra* note 167.

The implications for workers are profound. Algorithmic systems not only render decisions increasingly inscrutable, but they also obstruct avenues for redress.¹⁷⁴ Where discrimination, particularly indirect discrimination, is suspected, employers may escape scrutiny and preclude judicial review by characterizing the outcome as the product of an autonomous algorithmic process.

The EU's regulatory framework governing algorithmic management remains fragmented and multi-layered, it consists of a variety of legal sources that differ in scope, focus, and legal basis.¹⁷⁵ Some of these sources have a general field of application, such as EU anti-discrimination law¹⁷⁶ and the Directive on Transparent and Predictable Working Conditions,¹⁷⁷ both of which establish baseline protections applicable to all forms of work. Others are sector-specific and address particular risks associated with algorithmic systems, most notably the General Data Protection Regulation (GDPR),¹⁷⁸ which sets out individual rights and obligations concerning data processing, and the Artificial Intelligence Act, which regulates the development and deployment of AI systems.¹⁷⁹ Finally, certain instruments target

174. Edwards & Veale, *supra* note 169, at 44.

175. Marta Beltran, *AI Algorithms Under Scrutiny: DPR, DSA, AI Act and CRA as Pillars for Algorithmic Security and Privacy in the European Union*, 158 COMPUTERS & SEC., Aug. 19, 2025, at 5–8, <https://www.aepd.es/documento/1-s2.0-s0167404825003177-main.pdf> (discussing the multi-layered regulatory framework).

176. See Charter of Fundamental Rights, art. 31, 2007 O.J. (C 303) (EU); Council Directive 2000/78, 2000 O.J. (L 303) (EC) (together articulating and operationalizing the EU's general principle of equal treatment).

177. Directive 2019/1152, of the European Parliament and of the Council of 20 June 2019 on Transparent and Predictable Working Conditions in the European Union, 2019 O.J. (L 186) 105 (EU).

178. Regulation 2016/679, of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance), 2016 O.J. (L 119) 1 (EU).

179. See generally *AI Act*, EUROPEAN COMMISSION, <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> (last visited Nov. 23, 2025); Beltran, *supra* note 175.

specific categories of workers or employment models, such as the aforementioned Platform Work Directive.¹⁸⁰

The objective of this analysis is not to provide a detailed and systematic examination of each individual source of regulation or the specific implementation challenges they may pose. Rather, it aims to identify and reflect upon certain overarching trends that emerge across this fragmented legal landscape.

B. The Risk-Based Regulation in the AI Act and Beyond

The AI Act is arguably the most prominent and widely debated international instrument among the regulatory instruments mentioned above.¹⁸¹ A preliminary observation is that the AI Act does not provide a particularly extensive or detailed regulatory framework concerning employment relationships.¹⁸² Critics argue that the Act's internal logic, primarily oriented towards product safety and market access, makes it ill-suited to capture the relational, procedural, and distributive dimensions of algorithmic power in the workplace.¹⁸³ As such, the AI Act risks reinforcing a regulatory blind spot, delegating essential protections to other instruments without ensuring substantive coherence or effective cross-sector enforcement.¹⁸⁴

180. See Patty Shapiro, *It's Official: The EU Platform Work Directive is Here*, OGLETREE DEAKINS (Jan. 3, 2025), <https://ogletree.com/insights-resources/blog-posts/its-official-the-eu-platform-work-directive-is-here/>.

181. See generally Zahra Usifli, *Labour Rights and the EU Artificial Act: How to Get Away with High-Risk AI*, UNIV. OF LUX. LAW RESEARCH PAPER SERIES NO. 2025-01(2025), <https://ssrn.com/abstract=5098359> [<http://dx.doi.org/10.2139/ssrn.5098359>]; Kristof Meding, *It's complicated. The Relationship of Algorithmic Fairness and Non-discrimination Regulations for High-risk Systems in the EU AI Act* (May 2025), <https://arxiv.org/html/2501.12962v3>.

182. Usifli, *supra* note 181.

183. Meding, *supra* note 181; Itxaso Domiguez De Olazabal, *Reclaiming workers' rights in the age of AI: from data protection to collective justice*, THE PROGRESSIVE POST (2025), <https://feps-europe.eu/reclaiming-workers-rights-in-the-age-of-ai-from-data-protection-to-collective-justice/>.

184. See Anna Alaimo, *Il Regolamento sull'Intelligenza Artificiale. Un treno al traguardo con alcuni vagoni rimasti fermi [The Regulation on Artificial Intelligence. A Train Reaches the Finish Line with Some Carriages Left Unattended]*, FEDERALISMI.IT (2024) (It.); Stanley Greenstein & Mauro Zamboni, *Navigating the Legislative Dilemma: EU AI Act's Approach to Regulating Emerging Technologies*,

On the other hand, and more optimistically, it should be acknowledged that the AI Act was not conceived as a labor or social regulation *per se*.¹⁸⁵ Its legal foundation lies in provisions of the EU Treaties concerning the internal market and competition law.¹⁸⁶ It would therefore be inaccurate to expect the AI Act to fully address the complexities of algorithmic governance in the employment contexts. Nevertheless, the AI Act does not exist in isolation within the EU legal order.¹⁸⁷ It operates within a broader and evolving regulatory ecosystem that includes instruments more directly concerned with labor and social protection.¹⁸⁸ Although this architecture is not yet fully consolidated, certain foundational elements are already in place. The interplay between the AI Act and these sector-specific sources pave the way for a more coherent and integrated regulatory approach.¹⁸⁹

The AI Act rests upon normative principles that encapsulate the European Union's distinctive approach to regulating emerging technologies. Chief among these are the commitments to trustworthy and human-centered AI, articulated in Recital 1:

The purpose of this Regulation is to improve the functioning of the internal market by laying down a uniform legal framework in particular for the development, the placing on the market, the putting into service and the use of artificial intelligence systems (AI systems) in the Union, in accordance with Union values, to promote the uptake of human centric and trustworthy artificial intelligence (AI) while ensuring a high level of protection of health, safety, fundamental

THE THEORY AND PRAC. OF LEGIS., 2025, at 21, [<https://doi.org/10.1080/20508840.2025.2513177>].

185. Tambiana Madiaga, *Artificial Intelligence Act*, EUR. PARLIAMENTARY RSCH. SERV., Sept. 2024, at 3 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI\(2021\)698792_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698792/EPRS_BRI(2021)698792_EN.pdf).

186. *Id.*

187. Mia Hoffmann, *The EU AI Act: A Primer*, CSET (Sept. 26, 2023), <https://cset.georgetown.edu/article/the-eu-ai-act-a-primer/>.

188. *See, e.g., High-level summary of the AI Act*, FUTURE OF LIFE INST. (Feb. 27, 2024), <https://artificialintelligenceact.eu/high-level-summary/>; Krystyna Marcinek et al., *Risk-Based AI Regulation: A Primer on the Artificial Intelligence Act of the European Union*, RAND (Nov. 20, 2024), https://www.rand.org/pubs/research_reports/RRA3243-3.html.

189. *See* MARCO PERUZZI, INTELLIGENZA ARTIFICIALE E LAVORO. UNO STUDIO SU POTERI DATORIALI E TECNICHE DI TUTELA [ARTIFICIAL INTELLIGENCE AND WORK. A STUDY ON EMPLOYER POWERS AND PROTECTION TECHNIQUES] (2023) (It.).

rights as enshrined in the Charter of Fundamental Rights of the European Union (the “Charter”).¹⁹⁰

The AI Act operationalizes these principles through a pyramidal risk-based regulatory model, classifying AI systems according to the degree of risk they pose to individual rights and societal interests.¹⁹¹ This structure is fundamentally permissive. Although the Act prohibits a narrow set of applications, such as manipulative practices that distort human behavior, social scoring, and predicative policing systems used to anticipate criminal offences, it generally permits the deployment of AI systems *per se*.¹⁹² The Act allows their use and placement on the market, provided that developers and deployers implement appropriate safeguards.¹⁹³ These safeguards aim to eliminate or reduce risks at the design stage, or, where elimination is not feasible, mitigate their impact through procedural mechanisms.¹⁹⁴

Through this risk-limiting approach, the AI Act departs from the classical regulatory technique based on binary rules—prescription or prohibition, backed by sanctions—and instead focuses on a model of anticipatory governance.¹⁹⁵ Explicit prohibitions directly concerning the workplace are limited. Notable examples include the ban on AI systems designed to infer human emotions in the workplace, non-safety or non-medical purposes in educational institutions, and the prohibition of biometric categorization systems that draw sensitive inferences from biometric data—such as those relating to race, political opinions, religious beliefs, and sexual orientation.¹⁹⁶

190. AI Act, *supra* note 29, § 1.

191. See Chiara Cristofolini, *Navigating the Impact of AI Systems in the Workplace: Strengths and Loopholes of the EU AI Act from a Labour Perspective*, 17 ITALIAN LABOUR L. E-JOURNAL 75 (2024).

192. See AI Act, *supra* note 29, art. 5.

193. *Understanding the EU AI Act*, ISACA: WHITE PAPER (2024), <https://www.isaca.org/resources/white-papers/2024/understanding-the-eu-ai-act>.

194. Jonas Schuett, *Risk Management in the Artificial Intelligence Act*, 15 EUR. J. OF RISK REGUL. 367, 370 (2024); Lena Enqvist, *‘Human Oversight’ in the EU Artificial Intelligence Act: What, When and by Whom?*, 15 LAW INNOVATION & TECH. 508, 509–510 (2023).

195. See Deirdre Ahern, *The New Anticipatory Governance Culture for Innovation: Regulatory Foresight, Regulatory Experimentation and Regulatory Learning*, 26 EUR. BUS. ORG. L. REV. 241 (2025).

196. See AI Act, *supra* note 29, art. 5, annex III.

Beyond these prohibitions, the high-risk systems category, defined in Annex III, Section 4, is the most relevant category for employment contexts.¹⁹⁷ It encompasses nearly all significant applications of AI within the employment relationship.¹⁹⁸ It explicitly includes systems used in recruitment and hiring (e.g., targeted job ads, CV filtering, candidate evaluation), management of employment conditions, promotions, terminations, task allocation based on individual traits or behaviors, and the monitoring or evaluation of worker performance.¹⁹⁹ Systems used in education and training, which influence employability, also fall under this category.²⁰⁰

The regulation of these high-risk systems is guided first by principles of risk prevention, where the relevant risk is the potential violation of fundamental rights, and, where such preventions is unavoidable, by the principle of risk mitigation.²⁰¹ To this end, the AI Act imposes a set of procedural obligations on deployers (users of AI systems, commonly the employers) and providers (developers of AI systems).²⁰² These obligations concern risk management, data governance, transparency, documentation, human oversight, and post-market monitoring.²⁰³ Their function is not only to ensure legal compliance but also to confer a degree of regulatory legitimacy.²⁰⁴ When correctly implemented, they may limit liability in the event of harm, thereby functioning as a form of *ex ante* accountability rather than reactive sanction.²⁰⁵

197. *Opinion of the European Economic & Social Committee on “Pro-worker AI: Levers for Harnessing the Potential and Mitigating the Risks of AI in Connection with Employment and Labour Market Policies,”* 2025 O.J. (C1185) 1, 4 (EU) (describing the impact of AI systems on the labor market).

198. *Id.* at 4; *EU AI Act: First Regulation on Artificial Intelligence*, EUR. PARLIAMENT (June 8, 2023), <https://www.europarl.europa.eu/topics/en/article/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence>.

199. AI Act, *supra* note 29, annex III.

200. *Id.*

201. *The EU’s Artificial Intelligence Act*, FERMA: EU POLICY NOTE NO. 2 (Oct. 2024), https://ferma.eu/wp-content/uploads/2024/10/FERMA-Policy-Note-EU-AI-Act_v0.3-1.pdf.

202. ISACA, *supra* note 193.

203. FUTURE OF LIFE INST., *supra* note 188.

204. *See generally* AI Act, *supra* note 29, annex III.

205. *Id.*

A noteworthy provision is Article 26, which establishes the obligation to ensure human oversight and transparency in algorithmic decision-making.²⁰⁶ Article 26 imposes a duty on deployers to ensure human oversight of high-risk AI systems and to inform workers and their representatives about the system's use.²⁰⁷ This obligation constitutes a tangible expression of the EU legislator's commitment to a human-centered approach to AI. The requirement that oversight must be exercised by the deployer, unless embedded at the design stage,²⁰⁸ marks a first step in assigning employer responsibility for the proper functioning of AI systems.

This responsibility is operationalized through the appointment of a qualified individual tasked with overseeing the system.²⁰⁹ They must be capable of understanding how the system operates, interpreting its outputs, and identifying potential malfunctions.²¹⁰ Nevertheless, the provision is limited in scope, and the framework for human oversight set out in the AI Act remains fundamentally top-down and unilateral.²¹¹ No provision is made for worker involvement or consultation in the monitoring process, nor does the legislation contemplate mechanisms through which workers or their representatives can submit observations or participate in algorithmic oversight.²¹²

In addition to the oversight obligation, Article 86 introduces further safeguards in the form of a right to explanation.²¹³ Individuals affected by high-risk AI decisions that negatively impact their health, safety, or fundamental rights are entitled to receive "clear and meaningful" explanations from the deployer.²¹⁴ These explanations must specify the role of the AI system in the decision-making process and identify the principal factors influencing the decision.²¹⁵

206. *Id.* at art. 26.

207. *Id.* at art. 26, §§ 2, 7.

208. *Id.* at art. 26, §§ 2–3.

209. *Id.* at art. 26, § 2.

210. *Id.* at art. 14, § 4.

211. Lilian Edwards, *The EU AI Act: Summary of its significance and scope*, ADA LOVELACE INST. (Apr. 8, 2022), <https://www.adalovelaceinstitute.org/resource/eu-ai-act-explainer/>.

212. *See generally* AI Act, *supra* note 29, arts. 14, 26.

213. AI Act, *supra* note 29, art. 86.

214. AI Act, *supra* note 29, at 138.

215. *Id.*

While Article 86 enhances transparency and accountability, its effectiveness remains limited. The right to explanation is not accompanied by a right to challenge, amend, or annul the underlying decision, nor does the Act specify remedial avenues if the explanation proves inadequate.²¹⁶

C. *General v. Employment-Specific Regulation*

While the AI Act's approach may appear limited, and its provisions comparatively mild in addressing labor-specific concerns, other instruments within the broader EU regulatory framework demonstrate a more explicit sensitivity to employment-related issues. Notably, Chapter III of the Platform Work Directive introduces prohibitions on the use of automated monitoring and decision-making systems that complement those contained in the AI Act,²¹⁷ and provides a more detailed and robust framework of procedural safeguards.²¹⁸ These include enhanced requirements for transparency, human oversight of algorithmic decisions, and stronger guarantees of the right to redress.²¹⁹

The Directive enshrines a right to be transparently informed about the existence and use of automated decision-making systems.²²⁰ Explanations should be provided when decisions are taken or supported by such systems, particularly in case of decisions affecting essential aspects of the employment relationship, like the restriction, suspension

216. Edwards & Veale, *supra* note 169, at 44.

217. *See generally* Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 16-17. (prohibiting, *inter alia*, the use of algorithmic management systems to monitor or assess the emotional or psychological state of a person performing platform work and the processing of personal data to predict the exercise of fundamental rights or process any personal data to infer the racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation).

218. *See* Antonio Aloisi & Nastazja Potocka-Sionek, *De-gigging the Labour Market? An Analysis of the 'Algorithmic Management' Provisions in the Proposed Platform Work Directive*, 15 ITALIAN LABOUR L. E-JOURNAL 29 (2022).

219. *Id.*

220. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 17-19; *see also* Otto, *supra* note 170, at 53 (discussing the legal meaning of the principle of transparency and its implementation).

or termination of the account.²²¹ Workers have the right to contest the decision, to request an impartial human review, and to obtain rectification of unjustified decisions or compensation for any harm suffered as a result.²²² The Directive further guarantees access to effective and impartial dispute resolution mechanisms and secures the right to redress, including adequate compensation for damages arising from violations of the rights it confers.²²³

In addition, the Directive imposes a duty on digital labor platforms to periodically assess, in cooperation with workers' representatives, the impact of individual decisions made or supported by automated monitoring and decision-making systems on the working conditions and equal treatment of platform workers.²²⁴ Where such evaluations identify adverse effects, platforms are required to adopt appropriate corrective measures, which may include modifying or discontinuing the use of such systems.²²⁵

It should be noted that while the provisions on algorithmic management outlined in the AI Act and the Platform Work Directive differ in terms of their effectiveness in securing adequate labor protections, they also share several significant commonalities, including their procedural nature.²²⁶ As outlined above, both instruments rely on risk prevention and mitigation mechanisms, such as human oversight of automated systems.²²⁷ These safeguards operate in conjunction with broader horizontal frameworks, both substantive and procedural, including equality law and data protection regulations.²²⁸ A growing consensus highlights the need for a comprehensive and

221. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 19-20.

222. *Id.*

223. *Id.* at 22.

224. *Id.* at 19.

225. *Id.*

226. Aloisi & Potocka-Sionek, *supra* note 218; Edwards, *supra* note 211.

227. Aloisi & Potocka-Sionek, *supra* note 218, at 33; *see also* Edwards, *supra* note 211 (explaining how human oversight is outlined in Article 14 of PWD and is one of the essential requirements to manage the risks of AI).

228. *See* Frank Hendrickx, *Privacy 4.0 at Work: Regulating Employment, Technology and Automation*, 41 COMP. LAB. L. & POL'Y J. 147 (2019); Aloisi & Potocka-Sionek, *supra* note 218.

integrated regulatory framework for algorithmic management in the employment context—one capable of addressing the current inconsistencies and normative gaps across existing instruments, as proposed by the European Parliament.²²⁹

V. COLLECTIVE REPRESENTATION RIGHTS

The centrality of social dialogue and collective workers' representation within the European Social Model are particularly relevant in the context of digitalization for two closely intertwined reasons.²³⁰

First, as previously noted, the normative foundation of social dialogue is firmly embedded in the EU's system of fundamental rights.²³¹ Workers' collective rights are not merely the product of contingent policy choice, they constitute a constitutional commitment within EU law. These rights extend across evolving contexts, including those transformed by digitalization.²³²

Second, from a more functional perspective, European labor scholarship widely recognizes the active involvement of workers' representatives in the governance of employment relations—through collective bargaining and broader participation in decision-making—contributes to raising the floor of rights in the workplace.²³³ Such participation is seen as enhancing worker protection and well-being, improving working conditions, and supporting organizational productivity.²³⁴ Moreover, it enables more responsive and

229. See Marco Peruzzi, *IA e obblighi datoriali di tutela del lavoratore: necessità e declinazioni dell'approccio risk-based [AI and Employers' Obligations to Protect Workers: Needs and Implications of the Risk-based Approach]*, 30 FEDERALISMI.IT, FOCUS LAVORO, PERSONA, TECNOLOGIA 224 (2024) (It.); *Digitalisation, Artificial Intelligence and Algorithmic Management in the Workplace – Shaping the Future of Work*, *supra* note 47; Edwards & Veale, *supra* note 169, at 44.

230. See The European Social Model, *supra* note 14.

231. *Id.*; *Strengthening Social Dialogue in the EU*, *supra* note 98.

232. See The European Social Model, *supra* note 14.

233. THOMAS BLANKE & BRUNO VENEZIANI, EUROPEAN LABOUR LAW AND THE EU CHARTER OF FUNDAMENTAL RIGHTS 47–59 (Brian Bercusson ed., European Trade Union Institute) (2022).

234. *Id.* (explaining that Article 27 of the Charter secures workers' rights to information and consultation as a fundamental social right aimed at protecting their health, safety, and dignity, and that Article 28 strengthens collective bargaining as a

context-sensitive solutions, particularly in periods of rapid structural and technological change.²³⁵ Workers, as experienced and qualified members of the labor community, are uniquely positioned to evaluate the real-world implications of innovations affecting work organization.²³⁶ This remains true despite the challenges posed by the digital transformation to the established forms of representation.²³⁷ As work becomes increasingly digitalized, relationships and practices tend to fragment and erode traditional reference points, such as the physical workplace when it assumes a virtual form.²³⁸ These developments risk weakening the institutional and spatial foundations on which the collective voice has been built, thereby intensifying the need to reinforce participatory mechanisms through legal and policy innovation.

While Section II examined the substantive role of social partners in shaping regulatory responses to digitalization, the present section turns to the legal recognition and regulation of collective rights in this evolving context. It considers how the law enables, structures, and permits social partners to exercise their access to collective rights as these conditions evolve. The analysis will focus on two key dimensions: the involvement of workers' representatives in algorithmic management processes, and the access to the right to collective bargaining in platform work.

A. Participation of Workers' Representatives in Algorithmic Management

With respect to how the law enables access to these collective rights, both the AI Act and the Platform Work Directive move beyond an exclusively individualistic framework, although to different degrees, by

means of improving working conditions and fostering cooperative dialogue, thereby enhancing both worker well-being and organizational performance).

235. *Strengthening Social Dialogue in the EU*, *supra* note 98.

236. See ALES, *The Impact of Automation and Robotics on Collective Labour Relations: Meeting an Unprecedented Challenge*, in *DECENT WORK IN THE DIGITAL AGE*, *supra* note 102 at 39-56; *Strengthening Social Dialogue in the EU*, *supra* note 98.

237. Davor Vuchkovski et al., *A Look at the Future of Work: The Digital Transformation of Teams from Conventional to Virtual*, 163 *J. BUS. RSCH.* 1, 5 (2023).

238. *Id.* at 2.

conferring certain rights directly to workers' representatives.²³⁹ Importantly, these rights are granted to representatives in their own capacity, not merely as proxies for individual workers.²⁴⁰ This direct attribution enhances both the effectiveness and practical enforceability of collective involvement, particularly where individual workers may lack the knowledge or capabilities to exercise these prerogatives.²⁴¹ At the same time, it reaffirms the institutional significance of collective representation as a cornerstone of democratic governance in the digital workplace.

Notable distinctions a between the two instruments. The AI Act requires employers to inform workers and their representatives about the use of AI system but confines the representatives' role to passive information, without procedural guarantees of meaningful consultation.²⁴² In contrast, the Platform Work Directive not only requires employers to disclose relevant data, but also imposes an obligation to engage with workers' representatives in a meaningful exchange before decisions taken and to provide a reasoned response to their observations.²⁴³ From a legal standpoint, consultation represents a qualitatively superior form of participation. Whereas rights to information serve primarily as tools of transparency and accountability of managerial decisions,²⁴⁴ consultation rights condition the exercise of managerial power itself by creating a space for shared governance and potentially modifying the asymmetry at the core of the employment relationship.²⁴⁵ In this respect, the role afforded to workers' representatives under the AI Act appears weak and misaligned with the principles in the European Framework Agreement on Digitalization,

239. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28.

240. *Id.*

241. Cristofolini, *supra* note 191; Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 22.

242. Cristofolini, *supra* note 191, at 92-95; *AI Act*, *supra* note 29.

243. See *Understanding the EU AI Act and Its Impact on Employee Relations and Workplace Consultations*, GRAYLARK TECHNOLOGY LTD. (2023).

244. See generally Molè, *supra* note 167, at 183 (explaining how different Articles ensure employers uphold fundamental rights of employees and are transparent in their use of AI).

245. DECENT WORK IN THE DIGITAL AGE, *supra* note 102, at 25, 50.

which emphasizes worker's participations in information, consultation, and decision making process.²⁴⁶

By comparison, the Platform Work Directive offers a more advanced and structured framework of collective rights in the context of algorithmic management than the AI Act. As detailed in Section IV, Chapter III confers upon workers' representatives an autonomous right to be informed of the deployment of algorithmic management systems²⁴⁷ and ensures their involvement at all stages of the impact assessment process required under Article 10.²⁴⁸ This comparison suggests that the Platform Work Directive embraces a participatory governance model consistent with the systemic role of collective workers' representation in the EU and may serve as a blueprint for future comprehensive regulation in this area.

The general framework governing information and consultation rights under existing EU directives remains in applicable.²⁴⁹ This includes, inter alia, the employer's obligation to inform and consult workers' representatives in the event of organizational changes likely to affect working conditions.²⁵⁰ However, such provisions apply only

246. See Lorenzo Zoppoli, *Tecnologia, socializzazione, partecipazione e poteri collettivi dopo l'AI Act [Technology, Socialization, Participation and Collective Powers After the AI Act]*, 14 FEDERALISMI.IT, FOCUS LAVORO, PERSONA, TECNOLOGIA 283 (2025) (It.); Umberto Gargiulo, *Intelligenza Artificiale e poteri datoriali: limiti normativi e ruolo dell'autonomia collettiva [Artificial Intelligence and Employer Power: Regulatory Limits and the Role of Collective Autonomy]*, 29 FEDERALISMI.IT, FOCUS LAVORO, PERSONA, TECNOLOGIA 171 (2023) (It.). Compare *Understanding the EU AI Act and Its Impact on Employee Relations and Workplace Consultations*, *supra* note 243; with BUSINESSSEUROPE, *supra* note 82.

247. LAULOM, *Discrimination by Algorithms at Work*, in DECENT WORK IN THE DIGITAL AGE, *supra* note 102, at 282; Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 16-21.

248. See *Algorithmic Bosses Can't Lie! How to Foster Transparency and Limit Abuses of the New Algorithmic Managers*, *supra* note 38, at 707-12; Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 19.

249. Council Directive 2002/14, 2002 O.J. (L 80) 29 (EC) [hereinafter *Council Directive 2002/14*] (Matters involving a transnational scope, involving company branches in at least two Member States, operate differently); Council Directive 2009/38, 2009 O.J. (L 122) 28 (EC) [hereinafter *Council Directive 2009/38*].

250. *Council Directive 2002/14*, *supra* note 249, at 32.

to undertakings employing more than fifty workers.²⁵¹ These general provisions are remain unaffected by both the AI Act and the Platform Work Directive,²⁵² continuing to represent a vital component of the broader regulatory framework. Within this context, the need for a specific and coherent legal regime addressing algorithmic management, including the identification of actors entitled to exercise collective prerogatives and define a consistent scope of application, has become increasingly evident.

B. Collective Bargaining in Platform Work

The Recognition of collective bargaining rights in platform work and the limits placed upon them, are closely tied to the employment status of platform workers and to the tendency of platform-based business models to evade labor laws through worker misclassification.²⁵³ Pursuant to Article 101 of the Treaty on the Functioning of the European Union (TFEU), agreements between undertakings that restrict competition, including, potentially collective agreements among self-employed individuals, are generally prohibited.²⁵⁴ As a result, self-employed workers, classified as undertakings in their own right, have traditionally been excluded from the scope of protected collective bargaining.²⁵⁵ This exclusion poses significant legal and practical challenges for platform workers, who are frequently designated as independent contractors by digital platforms.²⁵⁶

251. *Id.* at 30.

252. *Opinion of the European Economic and Social Committee on the “Pro-worker AI: Levers for Harnessing the Potential and Mitigating the Risks of AI in Connection with Employment and Labour Market Policies,”* 2025 O.J. (C 1185) 1; *AI Act*, *supra* note 29; Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 20.

253. Anthony Forsyth, *The Digital Resistance: Contesting the Power of Gig Economy Platforms through Collective Worker Action*, 16 ITALIAN LABOUR L. E-JOURNAL 49, 54 (2023).

254. *TFEU*, *supra* note 58, at 42.

255. *See* Biasi, *supra* note 94.

256. *See id.*

In its landmark *FNV Kunsten* judgement, the Court of Justice of the European Union (CJEU)²⁵⁷ held that only certain categories of self-employed individuals, specifically those engaged in “false self-employment”, could qualify as “workers” entitled to collective bargaining protections.²⁵⁸ The Court defined “false self-employed” as individuals who, although formally classified as self-employed, perform the same tasks as employees and are in a comparable situation.²⁵⁹ Such individuals are under the direction and control of the principal, lack independence in the market, and do not assume the financial or commercial risks of their activity, effectively functioning as auxiliaries within the principal’s enterprise.²⁶⁰

Subsequently, EU policymakers recognized that the rigid application of competition law can unfairly restrict certain categories of self-employed individuals, particularly those marked by significant economic dependence and labor market vulnerability, including platform workers.²⁶¹ In response, the European Commission adopted Guidelines in 2022²⁶² clarifying that solo self-employed persons, especially those in economically dependent positions, may lawfully engage in collective bargaining without infringing EU competition rules.²⁶³ The Guidelines emphasize that such individuals, particularly those reliant on a single client, working alongside employees, or operating through digital labor platforms, often experience asymmetrical power dynamics comparable to those faced by traditional employees.²⁶⁴ Consequently, collective agreements addressing their working conditions, including pay, safety, and working time, are considered consistent with EU law, thereby

257. *FNV Kunsten Informatie en Media* 4 December 2014, ECLI 2014, 2411 m.nt. MF (FNV/Staat) (Neth.).

258. *Id.* at 7.

259. *Id.* at 6.

260. *Id.*

261. Lamannis, *supra* note 75, at 4-5.

262. *Commission Guidelines on the Application of Union Competition Law to Collective Agreements Regarding the Working Conditions of Solo Self-employed Persons*, COM (2022) 374 final (Sep. 30, 2022) [hereinafter *Commission Guidelines*].

263. *Id.* at 3, 10.

264. *Id.* at 8.

extending collective bargaining rights even beyond formally recognized employees.²⁶⁵

In line with this evolving framework, the Platform Work Directive explicitly aims to promote and facilitate the exercise of collective bargaining rights within platform work, regardless of workers' employment status.²⁶⁶ It also warns that such collective agreements must not undermine the Directive's core objective, namely, the correct classification of persons performing platform work with regard to their employment status.²⁶⁷

CONCLUSION

This essay set out to provide an overview of the trajectory of the regulation of digitalization of employment relations in the European Union, its landmarks, and the principles that have guided it.

The EU's regulatory approach to the digitalization of work is distinctive in that it explicitly seeks to ensure that technological innovation serves human development.²⁶⁸ This objective embodies the EU's broader commitment to a human-centered digital transition, signaling a clear departure from deterministic approaches to technology. Rather than accepting digitalization as an exogenous and ungovernable force, EU institutions have proactively sought to regulate its effects by placing social protection and fundamental rights at the core of their strategy.²⁶⁹ This orientation distinguishes the European model within the international landscape and reflects a deep-rooted normative ambition to reconcile innovation with dignity in the workplace.

265. *Id.* at 9.

266. Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, *supra* note 28, at 24.

267. *Id.* at 25; *See generally* Silvia Rainone, *The collective rights dimension of the Platform Work Directive: Assessing regulatory effectiveness in the digital labour context*, 16 EUROPEAN LABOUR LAW JOURNAL 494 (2025).

268. Balcoiglu et al., *supra* note 267, at 3-7.

269. *Id.*

Far from suppressing economic interests, the AI Act's regulatory framework aims to embed technological change within a structure of transparent oversight and fair labor standards.²⁷⁰ Yet, this balance remains imperfect. Several areas of the emerging digital employment still lack adequate responses, particularly in terms of legal certainty, internal consistency, and the empowerment of collective actors.

This essay aims to contribute useful insights to comparative legal analysis, acknowledging that the decision to regulate or refrain from regulation, is deeply embedded in the legal traditions of each jurisdiction. Just as these choices cannot be forcibly transplanted from one system to another, it would be equally inappropriate to seek to influence their outcomes from the outside.

270. ISACA, *supra* note 193, at 3.