

Improving working conditions in platform work in the light of the recent proposal for a directive

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Stefano Bellomo, Domenico Mezzacapo, Fabrizio Ferraro, Dario Calderara



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3. The impact of artificial intelligence and platform work on gender equality

Remarks on the recent Proposal for a Directive

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Summary: 1. Gender equality, artificial intelligence and platform work – 2. Machine learning based technologies – 3. Digital transition and the need for transparency in platform work – 4. The impact of artificial intelligence and platform work on labour markets – 5. The impact of artificial intelligence and platform work on individuals – 6. The impact of artificial intelligence and platform work on gender gap – 7. Remote working and gender pay gap – 8. The Italian National Recovery and Resilience Plan: last call for gender equality?

“The Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work aims to provide for an important body of legal minimum standards in labour rights across the Union, and it must be wisely used to ensure that gender equality is respected in the transformation of the workplace, as it can affect hiring, task assignment, performance evaluation as well as promotion. In this context, the urge for more transparency comes from the lack of regulation of the new phenomenon of algorithmic management, that poses challenges to both workers and self-employed, especially from the perspective of protecting gender equality.”.

1. Gender equality, artificial intelligence and platform work

“Digital transformation brings fast change that affects our labour markets”: with these words the President of the European Commission stressed, in her political guideline, that our time to find the right way to improve the labour conditions of platform workers is running very fast.

Digitalisation is changing the world of work and, while enhancing flexibility, it is carrying multiple risks for employment and working conditions as well as widening the gender gap.

Latest statistics leave no doubt: as reported by the European Institute for Gender Equality (EIGE), in the European Union and United Kingdom only 16% of artificial intelligence skilled workers are women, and the gap in the workforce widens with career length¹.

For these reasons the European Union, in its Gender Equality Strategy for 2020-2025, recognises artificial intelligence as a key driver of economic progress. Of course, the recognition of new technologies as an area of strategic importance for the development of an effective European gender strategy undoubtedly plays a key role in ensuring that work through platforms and artificial intelligence systems reflect the diversity of society.

In this context, Covid-19 pandemic has emphasized the growing use of artificial intelligence, platform work and remote working, which poses new challenges and risks, especially if there is a lack of a common discipline to regulate its principal aspects.

For this reason, the Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work aims to provide for an important body of legal minimum standards in labour rights across the Union, and it must be wisely used to ensure that gender equality is respected in the transformation of the workplace, as it can affect hiring, task assignment, performance evaluation as well as promotion².

2. Machine learning based technologies

Algorithmic management plays a key role in decisions making processes of artificial intelligence and platform work, so it is fundamental to understand the technology on which it is based in order to fully comprehend its significant impact on working conditions³.

¹ Eige (2021), Artificial intelligence, platform work and gender equality, Luxembourg, Publications Office of the European Union, 11.

² Earlier see Sciarra S. (2007), EU Commission Green Paper 'Modernising labour law to meet the challenges of the 21st century, *Industrial Law Journal*, Vol 36, pages 375–382.

³ For some initial thoughts on this theme see Dagnino, E., (2017), *People Analytics: lavoro e tutele al tempo del management tramite big data*, *Labour Law Issues*, 3, 1.

In fact, common denominator of any artificial intelligence technique is the algorithm, which can be defined as “an explicit, precise, unambiguous, mechanically-executable sequence of elementary instructions, usually intended to accomplish a specific purpose”⁴.

Thus, it is a procedure aimed at achieving a specific result, through a defined sequence of steps, each logically connected to the previous one, according to a pattern whereby specific input values correspond to specific output values.

Algorithms – through a constant process of decoding reality in logical-mathematical terms – are now not only limited to encoding, millions and millions of data, but aspire, in the not so far future, to become “definitive algorithms”, capable of deducing from data all the knowledge of this world, past, present and future⁵.

The most common technique for “training” a neural network is to propose to the network a set of correct examples, that is, a series of input and output pairs where the output indicates the correct result for the corresponding input.

In this regard, we speak of “machine learning”, to indicate the aptitude of the algorithm to “learn” the program automatically from the processing of the data, without the need for manual programming of every single step to be followed: in fact, through self-learning, a machine is able to create relationships between the given data, identify recurring patterns, generate new examples identify any anomalies and, therefore, even predict certain types of behaviour⁶.

Traditionally, three main categories of machine learning have been identified, which are distinguished in relation to the type of feedback or “training” on which the learning system is based: supervised learning, in which the examples provided to the algorithm consist of a series in input accompanied by a label, which indicates the result or a value judgment; unsupervised learning, in which a learning algorithm is used through input data but without corresponding output variables, with the goal of finding relationships or patterns among the various

⁴ Erickson J. (2019), Algorithms, Creative Commons, Attribution 4.0 International, 2019, <http://jeffe.cs.illinois.edu>.

⁵ Domingos P. (2020), The Ultimate Algorithm. The self-learning machine and the future of our world, Bollati Boringhieri, Turin.

⁶ The term was coined by the U.S. computer scientist Samuel A. L., Some studies in machine learning using the game of checkers, IBM Journal of research and development, 1959.

data analyzed, without using labels or categorization; reinforcement learning, used to teach the machine to perform a given task without giving prior instructions, but helping it determine what actions to follow, by sending positive or negative feedback.

With the advent of “big data”⁷, new techniques for learning through algorithms are developed, such as what is known as “deep learning”⁸. It represents a subset, or rather an evolution, of machine learning techniques, based on so-called artificial neural networks, built on computational models inspired by the human brain, which allows for unanticipated, nonlinear and unpredictable machine reactions, which are, therefore, beyond the control of the developer himself.

In this case, the network “learns” through “training sets”, i.e., a set of data on which the computer will train, comparing the received data and learning its characteristics according to the initial settings indicated by the software. During learning, the network compares the result obtained with the correct result indicated in the entered set of examples, and in case of deferral from the programmed result, it corrects its configuration of the weights on the connections⁹.

It is not possible to ignore the dangers inherent in the use of deep learning models, which are characterized by such complexity that, even in the eyes of the programmers and developers themselves, their mechanism of operation and the processes on the basis of which a certain decision was made or a certain behaviour assumed. We speak, in this regard, of black box systems¹⁰, to indicate precisely the characteristics of the relevant processes, which are not only opaque ex post, but also unpredictable ex ante, because they are designed to respond not only to predefined stimuli, but also to new stimuli, independently identified by the algorithm.

⁷ Although there is no certain agreed definition, the term “big data” refers to “a new generation of technologies and architectures designed to economically extract value from very large volumes of a wide variety of data by enabling high-speed extraction, discovery and analysis”. See Gantz J., Reinsel D. (2011), *Extracting Value from Chaos*, in ICD Iview, June, sponsored by EMC. The multimedia content can be viewed at http://www.emc.com/digital_universe.

⁸ The Economist, *The data deluge.*, February. 27th, 2010, On the cover a man with an overturned umbrella under a deluge of data.

⁹ This has undoubtedly facilitated the achievement of results that were not even imaginable a few decades ago, of which self-driven cars are a shining example.

¹⁰ The term was coined by MC Arthur L. (2019), *Machine Learning for Philosophers*, Beneficial AI Society, Edinburgh.

Opacity, unpredictability and autonomy: these are all characteristics that inevitably pose heavy questions about the ability of traditional normative categories of labour law to govern, especially from the standpoint of employer responsibility, such complex and by their nature highly variable phenomena.

For that reason, it will not be possible to ignore the side effects that will inevitably emerge from these new technologies, not only at the socioeconomic level, but also and above all at the legal and ethical level, as well as in the perspective of gender equality. In this perspective, the scientific dimension will necessarily and appropriately have to be combined with the legal and ethical dimensions, in that perspective of new and global governance of techno-scientific progress¹¹.

3. Digital transition and the need for transparency in platform work

Algorithmic management is nowadays used in a growing number of ways in the labour market, but especially in the digital labour platforms' business model¹².

Platform work refers to an economic model where the fixed job gives way to services work rendered on demand, at the request of the consumer or user of the service. The so called "gig economy", that of online platforms, has therefore increased the number of workers on-demand, mostly performing temporary activities, and is shaping the economy of the European Union and its labour markets¹³.

To fully understand the effects of the digital transition at work, it is sufficient to consider the latest statistics show that digital labour platforms have grown by around 500% in the last 5 years and, current-

¹¹ PUNZI A. (2003), *L'ordine giuridico delle macchine*, Giappichelli, Torino.

¹² In Italy labor platforms have now invaded several sectors, from home meal delivery (Foodora or Deliveroo) to transportation (Uber) and home services (TaskRabbit), instantly connecting potential customers and service providers. For a complete view of the theme of labour platforms see Aloisi A., De Stefano V. (2022), *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour*, Hart Publishing.

¹³ As pointed out by C. Giorgiantonio, L. Rizzica (2018), *Il lavoro nella gig economy. Evidenze dal mercato del food delivery in Italia*, *Questioni di economia e finanza* 472, 5, the expression "gig economy" is borrowed from the world of music, where the term "gig" denotes a performance linked to a single engagement and - therefore - unique, occasional. The work in the gig economy is, in fact, purely occasional, referable to the single daily (or a few hours, minutes) performance.

ly, over 28 million people in the European Union work through these platforms¹⁴.

As highlighted by the European Commission in the explanatory memorandum of the Proposal for a directive, nine out of ten platforms active in the Union are estimated to classify people working through them as self-employed, which, when really happens, is a way to develop entrepreneurial activities by developing business, innovation, accessibility of services as well as creating jobs.

In the European Commission perspective, the achievement of the goal of improving the legal, economic and social condition of platform workers cannot disregard two elements: on the one hand, the correct qualification of the legal situation in which the worker operates through digital platforms and, on the other, the regulation of the algorithmic management of such platforms.

Due to its potential, digital labour platforms may represent an important element not only to efficiently match supply and demand for labour, but also to help people facing barriers in access to the labour market, such as women, young people or people with disabilities, earn more possibilities.

From a labour law perspective, the complexity of the platform work imposes some considerations about the potential labour effects of the processes of digitization of production systems and labour relations, given that technological innovation represents a challenge for the economic and labour system from the perspective of the future sustainability of the change introduced¹⁵.

Digital labour platforms use automated systems to assign tasks, to monitor, evaluate and take decisions for the people working through them: it is the algorithmic management that is used in a growing number of ways in the labour market, but especially in the digital labour platforms' business model¹⁶.

¹⁴ Data are reported in the section "Context of the proposal" of the explanatory memorandum of the Proposal for a directive on improving working conditions in platform work, available at <http://ec.europa.eu>.

¹⁵ With reference to the duration and intensity of online work see DAUBLER W. (2016), *Challenges to Labour Law*, in A. Perulli (a cura di), *L'idea del diritto del lavoro, oggi. In ricordo di Giorgio Ghezzi*, Cedam, Padova, 497.

¹⁶ Choudary S. P.(2018), *The architecture of digital labour platforms: Policy recommendations on platform design for worker well-being*, ILO Future of Work Research Paper Series, No. 3; Aloisi, A. (2016), *Commoditized workers: Case study*

As algorithmic management creates efficiencies in the matching of supply and demand of work, understanding how algorithms influence decisions is crucial to comprehend its significant impact on working conditions. Thus arises the need for greater transparency in platform work expressed in the Proposal for a directive, due to the lack of clear automated and decisions making systems, in addition to the insufficient transparency regarding the efficient access to remedies for decisions taken or supported by such systems.

It then seems that the urge for more transparency comes from the lack of regulation of the new phenomenon of algorithmic management, that poses challenges to both workers and self-employed, especially from the perspective of protecting gender equality.

4. The impact of artificial intelligence and platform work on labour markets

In order to assess what the impact of artificial intelligence and platform work is on the national and European labour market, it is worth pointing out that this technological evolution could raise new and articulated critical issues, not only regarding gender gap¹⁷.

In particular, the fear is, on the one hand, that of the potential elimination of many jobs, given that every technological change has a strong impact on employment levels; on the other hand, that of the qualitative transformation that job performance may undergo. These are relevant changes which testify to the significant destabilization that technological and scientific developments in recent years are capable of bringing to the labour system¹⁸.

For these reasons, it is not surprising that, from the progressive awareness of the radical change that is transforming economic and labour realities, those who foresee considerable progress in the labour

research on labour law issues arising from a set of 'on-demand/gig economy' platforms, in *Comparative Labor Law & Policy Journal*, 37, 3., 653–690.

¹⁷ OECD (2016), *The Risk of Automation for Jobs in OECD Countries A Comparative Analysis*, OECD Social, Employment and Migration Working Papers, No. 189; OECD (2018), *Automation, skills use and training*, OECD Social, Employment and Migration Working Papers, No. 202.

¹⁸ For a broad vision on the issues of automation, artificial intelligence and the preservation of "human" employment levels, see DE STEFANO V. (2018), *Negotiating the algorithm: automation, artificial intelligence and labour protection*, International Labour Office, Working Paper No. 246.

market, in terms of greater efficiency of businesses and greater competence and professionalism of individuals¹⁹, are contrasted by those who, on the other hand, show concern about the considerable changes that digital innovation in the economy and labour is bound to spill over into the workforce²⁰.

Obviously, as far as it is of interest here to investigate, the problem of the destabilization of the labour market balances arises with reference to jobs performed via platform.

As carefully noted, one of the most obvious effects of the digitization of socio-economic and labour relations is the considerable reduction in transaction costs, made possible by the construction of a communication system that facilitates the encounter between the labour provider and the service user. A platform is a digital infrastructure, where the worker can be freely contacted by any party interested in his or her work service and the work service can be freely agreed upon by the parties on the basis of individual negotiation or, alternatively, adjust to a rate predetermined by the platform operator²¹.

Thus, the use of platforms in work is capable of easing the meeting of labour supply and demand, helping to achieve that disintermediation of the labour market that represents one of the most incisive requirements in the path toward the revival of social and labour dynamics.

Indeed, in a distributed labour market, such as the one realized by digital technologies, it becomes possible to find available labour providers, to obtain, at any time desired, the performance of the required service, at the place and in the manner agreed upon²².

This is a real revolution in the labour market, which undoubtedly benefits, first and foremost, businesses, which would thus be able to make use of workers only where they are needed for the performance

¹⁹ CICCARELLI R. (2015), *La rivoluzione dei lavori*, in Allegri G., Bronzini G. (eds), *Libertà e lavoro dopo il Jobs Act. Per un garantismo sociale oltre la subordinazione*, Derive Approdi, Roma, 142.

²⁰ DEGRYSE C. (2016), *Impacts sociaux de la digitalisation de l'économie*, WP ETUI, 2, 9; DRAHOKOUPIL J., FABO B. (2016), *The platform economy and the disruption of the employment relationship*, ETUI Policy Brief, 5, 2.

²¹ Ichino P. (2017), *Le conseguenze dell'innovazione tecnologica sul diritto del lavoro*, *Rivista Italiana di Diritto del Lavoro*, 2017, 4, 1, 525.

²² It is intended to share here the reflection that the realization of a global digital market for the provision of goods and services implies the creation of a labor market subject to strong competitive pressure, the same competitive pressure from which the legal status of subordinate employment is intended to remove the worker. See TULLINI P. (2016), *Economia digitale e lavoro non standard*, *Labour Law Issues*, 2, 2, 5.

of a certain service, without the obligation to employ them in their employ in order to rely on their labour activity.

5. The impact of artificial intelligence and platform work on individuals

In this context, it is possible to expect that the worker who renders his service through a platform, on his part, would lose the connotation of being an employee of the company, since he would be contractually free to consent or not to the performance of a given activity. It would be, in other words, a way of realizing the work life balance of the employee, who would be free to choose between performing a paid activity and performing other personal or family activities.

Of course, even with such an advantage, this form of work organization, that sets the worker free from the traditional spatial-temporal coordination with the employer, entails a high risk for the worker himself, not only for job stability but also and above all for the guarantee of protections, which in many cases would remain the responsibility of the worker.

Indeed, in a labour market based on disintermediation and the distribution of data and controls, as well as the absence of a central authority to manage the network, the level of protection for the labour provider is bound to necessarily regress.

The worker, once again, becomes the weaker party to the relationship, but not because of the employer's hetero-direction nor because of his condition of economic, technical and social inferiority, but rather as a result of uninterrupted competition with other platform workers²³.

This creates, in other words, a vicious system of stressing workers to maintain a certain standard of efficiency, the threshold of which would settle at the average of services rendered with reference to a specific activity by workers operated in the platform.

²³ As authoritatively noted on gig economy and labour platforms, the marketplace in which workers operate subjects them "to permanent confrontation with those offering their own services, thus to precisely the 'examination stress' that in the area of traditional salaried employment, forms of collective self-defense typically tend to limit." See Ichino P. (2017), *Le conseguenze dell'innovazione tecnologica sul diritto del lavoro*, *Rivista Italiana di Diritto del Lavoro*, 2017, 4, 1, 525.

For this reason, relying on the spontaneous regulation of the marketplace to match supply and demand of work via platform could re-propose the problem of downward competition of worker protections that initially occurred in similar terms in the subject of the employment relationship.

This is a particularly significant problem, which has been limited by the alluvial guarantor legislation on subordinate employment over the past fifty years.

Regarding the proper qualification of the worker's legal situation by platform, the proposal requires member states to establish procedures that, looking at the substantive characteristics of the case (so-called principle of primacy of facts), enable them to arrive at the correct qualification of the worker's legal status as an employed or self-employed worker²⁴.

After all, the correct framing of the relationship that binds the worker to the platform employer produces relevant consequences as to the social security and welfare rights and protections assured, which are welfare insured, which are far more relevant in the case of subordinate employment than in the case of self-employment.

For this reason, the introduction of a "iuris tantum" legal presumption allows that, when the conditions provided for in the directive, which are symptomatic of the existence of a form of "control" exist, the employment relationship is presumed to be subordinate²⁵.

²⁴ So Article 3 of the Proposal for a directive refers to the member states the definition of procedures to verify and ensure the correct legal framework of the employment relationship carried out through digital platforms, in order to ascertain the existence or otherwise of a relationship of subordination which, if found, determines the consequential application of all the legal labour protections provided by both domestic and European legislation. The classification, in particular, must be made by giving preeminent importance to the concrete attitude of the employment relationship, thus disregarding its formal classification.

²⁵ Article 4 of the Proposal for a directive, in particular, introduces a legal presumption of subordination that operates in case the employment relationship has at least two of the indicated elements: effective determination of the level of remuneration or setting maximum limits for that level; obligation of the worker through digital platforms to abide by specific binding rules regarding the outward appearance, behaviour towards the recipient of the service or performance of the work; supervision of the performance of the work or verification of the quality of the results of the work, including by electronic means; limitation, including through sanctions, of the freedom to organize one's own work, such as working hours or periods of absence; effective limitation of the possibility of building one's own clientele or performing work for third parties.

6. The impact of artificial intelligence and platform work on gender gap

To fully understand what the impact of artificial intelligence and platform work is, it is fundamental to look more deeply into what the social impact of the gig economy is, that means look into its reflections on the gender gap.

Today, in the aftermath of the biggest pandemic in recent times, economic success and social progress in business are two inseparably linked aspects, which call for a rethink of the organisation of work and production that, by making it possible to detect and measure virtuous behaviour and responsibility over the long term, is in line with the Sustainable Development Goals proclaimed by the United Nations in its 2030 Agenda for Sustainable Development²⁶.

At the same time in Europe, the recent Directive (EU) 2023/970 strengthens the application of the principle of equal pay for equal work of equal value between men and women, whereas, The European Strategy for Gender Equality 2020-2025 contains the strategic goals and actions needed to make significant progress towards a gender equal Europe by 2025²⁷. As the description of the strategy states “the goal is a Union in which women and men, girls and boys, in all their diversity, are free to pursue their own life choices, have equal opportunities to fulfil themselves and can, to an equal extent, participate in and lead our European society”.

Unfortunately, gender biases are often transmitted to artificial intelligence systems by design, because they tend to reflect the views and personal biases of the designers of the systems and it may sometimes amplify broader societal norms.

The potential for gender bias and discrimination in algorithmic management could also amplify gender inequalities. Understanding

²⁶ The Agenda is divided into 17 goals and 169 target to promote future development and require that the pursuit of the macro-objective of sustainable development inspired by the 2030 Agenda is declined in the national context of individual countries, which shall adopt and implement specific national strategies and plans to implement the Agenda, with the full involvement of all stakeholders concerned. Further information can be found at <https://sdgs.un.org/goals>.

²⁷ Communication of the European Commission on its strategy for equality between women and men in Europe, dated march 5th 2020: “progress is slow and gender gaps persist in employment and in pay, care and pensions; in management positions; and in participation in political and institutional life”. The main objectives of the strategy include ending gender-based violence, combating sexist stereotypes, reducing the gender gap in the labour market, ensuring equal participation in different economic sectors, and fighting the pay and pension gap.

how algorithms influence or determine decisions such as the access to future task opportunities or bonuses, is fundamental, given the implications for the income and working conditions of people working through digital labour platforms.

Currently, however, there is insufficient transparency regarding such automated monitoring and decision-making systems and people lack efficient access to remedies in the face of decisions taken or supported by such systems.

Algorithmic management is a relatively new and – apart from EU data protection rules – largely unregulated phenomenon in the platform economy that poses challenges to both workers and the self-employed working through digital labour platforms.

Chapter III of the Proposal for a directive (Articles 6 to 10) deals with algorithmic management, whereas Chapter IV (Articles 11 to 12) deals with transparency regarding work through digital platforms.

The goal of ensuring effective improvement of the condition of the worker is pursued, in the Commission's proposal, not only through enhancing the transparency and accessibility of the criteria governing the operation of the automated systems by the individual worker, the union representatives and the relevant public authorities, but also through specific provisions on the protection of the worker's personal data as well as the introduction of requirements for human monitoring of automated systems in order to assess the resulting risks to workers' health and safety.

Therefore, a higher level of transparency of artificial intelligence systems and work platforms would be really helpful in tackling problems such as gender based discrimination at work, but unfortunately the proposal for a directive does not expressly mention gender gap and does not provide anything specific about it.

For this reason, it would be useful to use data to assess some specific issues from a gender perspective as well as to examine the opportunities and challenges for gender equality in the labour markets transformed by artificial intelligence and platform work.

As mentioned, there's new evidence from the European Institute for Gender Equality that shows that artificial intelligence and platform work have the potential to improve gender equality in the economy.

However, on the other hand, there is also a danger they reinforce discrimination, while spreading insecure work and a lack of social protection. In fact platform works are parts of the economy of the future but it is fundamental to make sure they're designed and regulated in a way that protects women.

To make sure artificial intelligence and platforms works for both women and men, the European Union and Member States should conduct gender impact assessments of new technologies, require publicly funded projects to have balanced numbers of women and men, and train engineers and computer scientists in how to avoid bias.

These are just some initial reflections that, with reference to the impact on gender gap, speculate how the proposal for a directive may finally represent the opportunity and the best tool to reduce gender inequalities that still harm our labour market as well as our economy.

7. Remote working and gender pay gap

At the same time, the massive use of remote working that has been globally experienced over the last two years inevitably calls for a re-think of the tools available to reduce the gender gap and enhance gender equality, especially with reference to remuneration rights.

It is clear that remote working has indeed reshaped our time, our way of working, our lives. For this reason, in the pursuit of sustainability, especially the social one, of companies, remote working could be used as a tool to free women's career paths from those mechanisms that delay or hinder their development in organisations.

This is an issue that, although it emerged even before the health emergency, has recently gained a prominent role in rethinking the remuneration systems of all those workers who, forced by the Covid-19 emergency, suddenly found themselves working from home²⁸.

The challenge of remote working has in fact raised many new issues related to the economic treatment of the employee, with particular reference to the issue of the necessary valorisation of the individual result, which must now be imposed as a reference point for the employer in encouraging individual and corporate productivity and in the pursuit of effective equality of pay between genders²⁹.

In fact, remote working, used in a structural and shared manner, and therefore outside the logic of emergencies or as an easy welfare

²⁸ On the differences between remote working and the previous telework see Martone M. (2018), "Lo smart working nell'ordinamento italiano", *Diritti Lavori Mercati*, Issue 2, 293.

²⁹ In this regard, please refer to the reflections contained in the Italian Chamber of Deputies Report "Parità di genere", february 10th 2022.

solution, acts as a pay equalizer because time - in the office or at work - is no longer a determining factor for pay: it is no longer the time worked which counts, but the objectives³⁰.

The right to equal pay for women and men for equal work or work of equal value is one of the fundamental principles enshrined in the Treaty of Rome. The need to ensure equal pay is expressed in Directive 2006/54/EC, supplemented in 2014 by a Commission Recommendation on pay transparency.

Despite this legal framework, the effective implementation and application of this principle in practice continues to be a challenge in the EU. The lack of pay transparency has been identified as one of the main obstacles.

Nowadays the gender pay gap in the EU continues to be around 14 %. The pay gap has long-term repercussions on women's quality of life, puts them at greater risk of poverty and perpetuates the pension pay gap, which stands at 33 % in the EU. The Covid-19 pandemic and its economic and social consequences make it even more urgent to address this problem, as the crisis has hit female workers particularly hard.

The European Parliament has in recent years repeatedly called for further action at EU level to improve the implementation of equal pay provisions and on March 4th 2021 a proposal for a Directive of the European Parliament and of the Council has been presented to enhance the application of the principle of equal pay for men and women for equal work or work of equal value through pay transparency and enforcement mechanisms.

In this context it is not by chance that Italian latest legislative action on gender has recently focused on the world of work, which has been the subject of numerous legislative interventions aimed at achieving gender equality by recognising equal rights and greater protection for working women.

In particular the issue of pay equity is extremely relevant in the current Italian legal context, as evidenced by the recent law on pay equity No. 162 of 2021³¹.

³⁰ On the relevance of the result in remote working, reference should be made to the considerations already expressed in De Marco E. (2020), "Retribuzione e premialità del lavoro da remoto", Martone M. (eds), *Il lavoro da remoto*, Piacenza, 121.

³¹ In this framework, support instruments for the creation and development of enterprises with a majority or total participation of women have been strengthened,

The Law considerably broadens the notion of direct and indirect discrimination (referred to in Article 25 of the “Codice delle Pari Opportunità”), no longer consisting only in “treatment” but also in “any change in the organisation or conditions and times of work” motivated not only by “state of pregnancy, maternity or paternity” but also simply by “sex, age, or the needs of personal or family care” that is in any case likely to put the worker at a disadvantage compared to other workers or that may limit the opportunities for participation in the life or choices of the company or access to the mechanisms of progression or career advancement.

Of particular impact is the extension by Article 46 of Law No. 162 of 2021 of the obligation for public and private companies with more than 50 employees (previously the threshold was 100) to draw up a report at least every two years on the situation of male and female staff: the Ministry of Labour will publish on its institutional website the list of companies that have submitted the report and those that have not. The ministerial decree will also regulate the methods of access to the report by employees and trade union representatives of the company concerned, in compliance with the protection of personal data, in order to benefit from judicial protection.

The possibility for stakeholders such as employees and trade union representatives to access the data of the staff situation report makes it possible to strengthen the protection against discrimination for the purposes of the so-called statistical proof aimed at the judicial ascertainment of discrimination and the mitigation of the burden of proof on the employee who claims to have suffered discrimination pursuant to Article 40 of the “Codice delle Pari Opportunità”.

In conclusion, Law no. 162 of 2021 constitutes a further important step, addressing a number of issues related both to the fight against the gender pay gap and to the relevance of “care work” in the configuration of the prohibition of discrimination, without forgetting the promotion of the presence of women in the bodies of public companies, including unlisted ones.

as well as the promotion of the participation of women in the bodies of listed companies. Last but not least, increasing attention has also been paid to measures aimed at combating violence against women, with three objectives: to prevent crimes, punish perpetrators and protect victims.

8. The Italian National Recovery and Resilience Plan: last call for gender equality?

In the Italian system, the centrality of issues related to overcoming gender inequalities has recently been reiterated in the National Plan for Recovery and Resilience (so called PNRR) which, in order to boost national development in the aftermath of the pandemic, identifies gender equality as one of the three cross-cutting priorities pursued in all the missions that make up the Plan³².

Within such an ambitious project as the one outlined in the PNRR presented by the Draghi government, the choice was made to decline gender equality in the form of a priority, which transversally runs through the entire Plan, and to allocate resources worth 7 billion euros to the promotion of an effective culture of equality in each of the missions of which the Plan is composed³³.

The innovative decision to consider the fight against gender inequality as a common need in each of the PNRR's areas of intervention represents a significant step forward, given that enduring gender inequalities, however exacerbated during the pandemic, have deep origins in our culture and, on closer inspection, have never been severed in the regulatory path that has so far characterized our legal system.

Indeed, there is no doubt that our legal system is characterized by still too deep-rooted cultural stereotypes of a clear division of roles within the family unit, in which the man has the task of supporting the family from an economic point of view and the woman has the task of taking care of domestic care. A model around which all the legislation of the last century was built, which, in an attempt to combine the role of a working woman with that of a mother, was for a long time declined exclusively in the female.

Today, also on the impetus of the experience remotely gained during the health emergency, it is more important than ever to promote effective forms of work-life balance, seizing the historic opportunity of the PNRR to promote the values of inclusion and gender equality pursued by the UN Generation Equality campaign and the European Strategy for Gender Equality 2020/2025 in our system as well.

³² Martone M (2022), *Il lavoro nel PNRR*, *Giurisprudenza Italiana*, 12.

³³ For a wider reflection on this topic see De Marco E (2022), *PNRR e contrasto alle disuguaglianze di genere*, *Giurisprudenza Italiana*, 12.

Anyway, within such a complex and articulated project as the one outlined in the PNRR, the absence of significant references to the potential impact of artificial intelligence, platform work and remote work on gender gap is quite surprising. Indeed, one cannot help but notice that references to this particular works rendered with the use of technological devices and algorithms, have not received the deserved attention among the interventions planned by the PNRR.

In this context, appropriate planning of interventions aimed at “normalizing” the use of artificial intelligence, platform work and remote work, while respecting the characteristics of the specific activities, could have contributed not only to promoting a more effective reconciliation of women’s and men’s life and work times, but also to implementing that pay parity between female and male workers that is unfortunately still far off today.

The aim of the next reforms should be to spread a new culture of results, in which a central role is assigned to productivity and the result of performance, on the basis of which pay is to be determined, regardless of the place and time of work but considering gender equality as a priority.

Only doing so it would become possible to overcome those practices, mainly linked to the time spent in the company, which have historically favoured men and harmed women, who are also in charge of family care tasks.

At the same time, only in this way will it be possible to attempt to reduce that gender gap that is still more entrenched in Italy than in other states and that, while exacerbated by the pandemic, is unfortunately ancient in the Italian legal system.

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