

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

edited by

Stefano Bellomo, Domenico Mezzacapo, Fabrizio Ferraro, Dario Calderara



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Table of contents

Foreword	7
SECTION I	
1. La transparencia y el uso de sistemas automatizados de control y toma de decisiones en las plataformas digitales: Algunas consideraciones a la discriminación algorítmica <i>Djamil Tony Kahale Carrillo</i>	15
2. Encaje de la reciente normativa española sobre riders en la propuesta de directiva comunitaria sobre plataformas digitales <i>Fermín Gallego Moya</i>	35
3. The impact of artificial intelligence and platform work on gender equality Remarks on the recent Proposal for a Directive <i>Enrica De Marco</i>	57
4. The meaning of “person performing platform work”: how about “influencer”? <i>Paolo Iervolino</i>	75
5. Towards an EU directive on platform work: reflections from the Czech law perspective <i>Jakub Tomšej</i>	85

SECTION II

6. On the digital labour side, is power still collective power?
Notes on the proposal for a Directive on improving working conditions in platform work and its impact on the Italian legal system 95
Giuseppe Antonio Recchia
7. Protección social y conciliación: el hándicap del trabajador en plataformas digitales no reconocido como trabajador por cuenta ajena 113
M^a Belén Fernández Collados
8. Is work safer after the COVID-19 pandemic experience? 135
Marianna Russo
9. Social Issues in “the Best in Covid Country” 157
Jáchym Stolička, Štěpán Pastorek
- SECTION III
10. The escape from (presumption of) subordination 181
Antonio Alessandro Scelsi
11. Gig economy: «old wine in a new bottle»? 193
Savino Balzano
12. Protecting workers in uncertain times: theoretical foundations of dismissal protection 199
Ceren KASIM
13. (Tele)working in the pandemic: challenges for the Portuguese legal framework 225
Mariana Pinto Ramos

Foreword

The aim of this collective work, which is divided into three sections, is to bring together several contributions by scholars from different Countries through the leitmotif of the analysis of work through digital platforms, also and above all in the light of the latest proposal for a European Union directive aimed precisely at improving the working conditions of platform workers.

Particularly, this collective work provides the opportunity to develop a choral reflection on improving working conditions in platform work and the idea of giving shape to a collective volume stem from the fruitful and constructive dialogue established during two Meeting of the European sub-section ELLYS, European Labour Law Young Scholars, held respectively on 5-7th May 2021 in Lisbon and on 8th July 2022 in Rome.

The title of the book “Improving working conditions in platform work in the light of the recent proposal for a directive” evokes the intent to encourage a comparative reflection focused on modern work. For reasons of consistency, it was decided to divide the writings into three subgroups.

The first section focuses on the analysis of digital platform work, also in the light of the 9 December 2021 Proposal for a directive, in various aspects, including issues concerning the use of artificial intelligence.

The first paper, written by Djamil Tony Kahale Carrillo, address the issue of the transparency of the use of automated control and decision-making systems in digital platform work: the author analyses in detail Article 6 of the Proposal for a Directive on the digital platform obligation to inform workers of the existence of such control tools, which can be a source of so-called algorithmic discrimination.

In the second contribution, by Fermín Gallego Moya, an examine of the recent Spanish legislation on riders emerges; this legislation fits perfectly into the proposal for a EU directive on digital platforms, with a view to providing new solid bases for adapting Labour Law to economic/productive changes, in order to keep intact the traditional balances of protection of the weaker party in the employment relationship.

The third contribution, written by Enrica De Marco, is an analysis of the impact of artificial intelligence and digital platform work on gender equality, which must also be respected in such contexts in relation to job transformation, recruitment, job assignment and performance appraisal. In this context, the call for more transparency derives from the lack of regulation of the new phenomenon of algorithmic management, which poses challenges to both employees and the self-employed, especially from the perspective of gender equality protection.

In the fourth contribution, which revolves around the concept of the person performing work through a digital platform, Paolo Iervolino tries to show how the directive runs the risk of falling into contradiction since it would not take into account all the types of platforms, even those recently introduced, present on the market.

The last paper, written by Jakub Tomšej, of the first section examines the proposal for a directive on platform work by carrying out a reflection from the point of view of Czech law: the author hopes that the current internal system in the Czech Republic, which presents a high level of flexibility, welcomed by the majority of workers, will not be deprived of one of its main advantages by the proposal, the future of which, at least at the time of writing, is not clearly known.

The second section analyses issues related to the development of workers' rights through digital platforms, also with reference to the pandemic experience.

The first contribution of the second section is a paper, by Giuseppe Antonio Recchia, on the impact of the directive on the improvement of working conditions for platform providers on the Italian legal system. More specifically, the author questions the collective dimension of the proposed directive and its possible implementation in Italy, in order to highlight how the rights recognized are not in fact able to overcome the shortcomings of a weak legislation.

In the second paper, M^a Belén Fernández Collados focuses on the social protection and work-life balance of workers through digital platforms, with particular reference to Spanish law. The author emphasises-

es that, in Spain, beyond the recognition of individual and collective Labour rights, the disadvantage of digital platform workers, who are not recognized as employees, lies in their reduced social protection and the lack of real tools to reconcile family, personal and work life, since there are no reconciliation formulas comparable to those of employees.

The third contribution of the second section, by Marianna Russo, is more wide-ranging and it offers an argument that goes beyond digital platform work. The author analyses the issue of job security and the measures to implement it in the light of emergency legislation. The COVID-19 experience has left a great legacy in the field of occupational health and safety, through the shared anti-conflict protocols, the focus on personal protective equipment and technological tools, the massive use of remote work and the widespread use of anti-COVID-19 vaccines. The question that remains open is, therefore, how much of this legacy will be maintained in a non-emergency condition.

The last paper of the second section, written by Jáchym Stolička and Štěpán Pastorek, is also dedicated to the emergency context with reference to the Czech immigration legislation, which appeared too complex and inadequate to the needs of an employment sector that is constantly evolving, especially when looking at the digital platform sector. The authors hope that the weaknesses that emerged during the pandemic in the management of immigration will be addressed by new, clearer legislation that better meets the needs of modern society. Generally speaking, what emerges from the contributions in the second section is the desire to highlight the profound changes in the production and service management contexts and to provide innovative solutions that break with the previous system, treasuring what emerged during the pandemic phase of European and national legislation.

In the third section, the authors made considerations on the intervention of the draft directive on qualification, also with reference to transposition and coordination with national regulations.

The first essay of the third and last section, written by Antonio Alessandro Scelsi, analyzes the evolutionary dynamics of the proposal for a directive of the Parliament and of the Council on the improvement of working conditions of platform workers, launched on 9 December 2021. In particular, starting from a communication launched by the European Trade Union Confederation, it dwells on the potentially disruptive impact exerted on the presumption of subordination governed

by Article 4 of the directive by a provision, set out in recital 23, which would allow platforms to take out private social insurance for their workers, without this being relevant as a criterion indicating the existence of an employment relationship.

In the second contribution, Savino Balzano does a reflection on the term 'Gig Economy' which, according to the author, in itself represents several contradictions regarding its etymological origin and the choice of its use. The focus of the paper is on the question whether this expression hides the old habit of those who are the strongest party in the labour contract to flex the position of individuals for the benefit of the market of large industrial and financial groups.

The third essay, by Ceren Kasim, discusses the theoretical foundations of the laws protecting against dismissal, starting precisely with the relationship between the employer, as the economically and often politically weaker party to the employment contract, and the employee. In this context, the rules of the law on protection against dismissal promote the maintenance of social peace. Protection against dismissal is an instrument to achieve material equality in employment and serves to preserve the economic, social and cultural rights of workers.

The third section ends with a contribution, written by Mariana Pinto Ramos, dedicated to the Portuguese legal framework related to teleworking during the pandemic. The author points out that the phenomenon of the explosion of telework or remote work in terms of numbers (as it has emerged in several countries, Italy included) has occurred precisely during the pandemic, so forcing legislators to intervene to adapt this institution to the contingencies. It emerges from the fact that the regulations on smart working, at least in the Portuguese context, could have been bolder so as to allow greater flexibility in labour relations.

All this is part of a European context in which the proposal for a directive is intended to increase the protection of platform workers at European level, with the aim, on the one hand, to reduce the phenomenon of "grey labour" as much as possible; on the other one, to provide genuine self-employed workers, who account for 90% of all platform workers in the countries of the European Union, with general and minimal protections; and, on the third hand, to increase the traceability and transparency of platform workers through the introduction of a series of reporting and information obligations on the part of the platform. This focus on digitalisation on the part of the European institutions could be defined as "digital constitutionalism", during which

- having become aware of the inadequacy of traditional institutions to cope with technological instances - politics, national and supranational legislators bring the safeguarding of the human person and his dignity back to the centre of the debate, including in the protection of the latest generation of rights, such as the digital ones.

To summarise and present the contributions, it is possible to emphasise how the treatment and examination of digital platform work and the proposal for a directive allowed the authors to range, especially in the second and third sections, over broader themes of labour law, which is constantly evolving precisely on the basis of technological innovations that cannot be taken into consideration merely as a tool at the service of digital platforms, but as a reality that now underpins every dynamic within industrial and labour relations.

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