

CATALINA SMINTINICA

PhD Researcher, University of Castilla-La-Mancha, Spain

GIULIA MARCHI

Research fellow, University of Bologna, Italy

THE NEED FOR MORE PROTECTION FOR VULNERABLE WORKERS IN THE RECENT INDUSTRIAL TRANSITIONS. OVERVIEW 2021-2023

The present overview aims for a selection of the major topics that appeared in the last three years' issues (2021-2023) of the IALLJ's members journals. The International Association of Labour Law Journals is an increasingly expanding international consortium that now consists of thirty-one journals from all over the world. Since 2012 a group of editors have periodically collaborated to provide (usually annual) overviews of the most relevant scientific trends in the publications that appeared in the IALLJ's member journals¹.

The articles reviewed concern a huge variety of subjects, ranging from the most typically theoretical labour law issues to the recent challenges. Since the present overview will consider three years, the choice of the articles addressed is particularly selective and leaves inevitably some topics aside: the present overview aims at identifying trends, movements, and developments in the scientific debate, which may be worth highlighting and mentioning to the wider community of labour law scholars. Therefore, topics that appeared more frequently have been preferred and the selection has been narrowed to the articles that could help draw a piercing and coherent picture of the doctrinal trends as well as of the challenges currently faced by the labour law legal frameworks. Since the 2022 overview focused on the impact of Covid-19 on the world of work and labour law, the matters related to the Covid-19 pandemic have been cast aside or only touched upon.

The world of work is rapidly changing. In recent years, labour law journals have shown growing interest in articles and research papers focusing on the most recent transitions - and the challenges resulting from these - having an impact on the world of work.

1 More information on this is available on the website: <https://www.labourlawjournals.com/>. We owe many thanks to Silvia Borelli and Giulio Centamore for their suggestions. The article is the product of a shared reflection and elaboration; Giulia Marchi has drafted sections preliminary and III, and Catalina Smintinica has drafted sections I and II.

As widely acknowledged, today, the term “transition” is usually adopted to describe the transformations of the production systems and in the labour market resulting both from the digitalisation and from the green transition towards an ecologically sustainable economy, urgently needed to face the ongoing effects of climate change. The peculiarity of these innovations and of the policy efforts to address these challenges is that they «inevitably affect many people’s conditions of work while threatening the viability of livelihoods for others entirely»².

Also limiting the analysis to the first group of consequences of the recent transitions, the impact of digitalisation on the world of work is multifaceted. On the one hand, it stimulates the emergence of new business models, shaping relevant changes to the working methods and to labour relations, also having a significant impact on traditional employer-employee relationships³. The technological progress has a «vast potential», but it also risks amplifying pre-existing inequalities, leading to a «commodification and casualization of labour»⁴. Therefore, it also brings about the need to «correct’ negative externalities that lead to profound inequalities»⁵. Without underestimating the new challenges of digitalisation, its connection with previous transformations must be valued, as it allows for a more balanced analysis of its impacts. This connection also helps to maintain the traditional principles and identity of Labour Law, defending its relevance in current debates⁶.

The second transition, the environmental or green one, concerns the transformations of working practices to mitigate environmental harms and preserve social justice⁷.

In this context, it seems undebatable the need and the potential to include labour-related concerns, as well as to adopt policy measures to make the transitions toward a greener and more digital economy more inclusive and sustainable, ensuring that no one is left behind. Indeed, the «essence of a “just transition” is anticipating and managing labour market transitions’», with the aim of promoting decent work for all⁸.

To this end, there are many measures and policies that can be adopted. In the first place, to ensure social justice, policy makers should consider those measures aimed at protecting the most vulnerable workers in the view of achieving substantive equality.

-
- 2 A. Zbyszewska and F. Maximo, « Rethinking the Labour-Environment (Land) Nexus: Beyond Coloniality, Towards New Epistemologies for Labour Law », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 39, no. 3&4, 2023, p. 293.
 - 3 W. M. Mokofe, S. van Eck « Reflections on marginalised workers and the role of trade unions in the changing world of work », *Industrial Law Journal*, 42, 7, 2021, p. 1365.
 - 4 T. Novitz, « Gig work as a manifestation of short- termism: crafting a sustainable regulatory agenda », *Industrial Law Journal*, 50, 4, 2021, p. 638.
 - 5 N. Potocka-Sionek and A. Aloisi, « Festina Lente: The ILO and EU Agendas on the Digital Transformation of Work », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 37, no. 1, 2021, p. 36.
 - 6 J. Cruz Villalón, «El derecho del trabajo ante la transformación digital», *Revista de derecho social*, 100, 2022, p. 142.
 - 7 T. Novitz, « Human Rights as a Regulatory Tool for ‘Just Transition’ in Europe (and Beyond) », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 39, no. 3&4, 2023, p. 439.
 - 8 S. Canalda, «The European Green Deal: A Useful Framework for Anticipating Change in Companies? », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 39, no. 3-4, 2023, p. 420.

This must be stressed particularly since recently many labour law articles also describe a world of work in which many vulnerabilities persist and are exacerbated.

In the context of these transformations, the question that can summarize the recent debate is: how can we ensure that the digital and green transitions do not occur at the expense of workers' rights, particularly of more vulnerable workers? Therefore, the main concern seems linked to the guarantee of decent working conditions, as usual, but we are going to focus also on the ability of the national and international labour law frameworks to face the structural challenges to the world of work produced by the digitalization of the economy and by the green transition.

The present overview will focus in the first place on work and labour relations transformations, linked to the digital transition (Sec. I) and on the issues related to green and just transition, as well as to due diligence (Sec. II). Moreover, the present contribution aims at testifying the ongoing debate on the role played - or that should be played - by labour law instruments and institutions, particularly considering those measures aimed at protecting the most vulnerable workers (Sec. III). The focus on these two issues leads us to the question: which is the assessment of labour law instruments in protecting vulnerabilities and keeping up with digital and environmental transition given in the labour law literature, so far?

Before studying these issues, a methodological clarification seems important: the concept of vulnerability must be considered. It is an indeterminate concept, that only recently has been taken seriously in its "ontological dimension". Today in the scientific debate, it is considered to have a universalistic declination, meaning that we are all vulnerable, but also a "specific" one that describes the different ways in which everyone is vulnerable⁹. This idea of vulnerability has been elaborated - in particular, starting from gender studies - in contrast to the "old" neoliberal notion of individual as an independent, autonomous and active worker. Indeed, praising self-affirmation and self-entrepreneurship, many modern theories were based on the belief that the just society is the one that allows individuals to be as little dependent as possible on others¹⁰; vulnerable individuals were considered as weak and, in many cases, stigmatized as guilty of their conditions¹¹. Quite the opposite, today, many scholars look at vulnerability as a characteristic of each person, at least to some extent. Precisely because of this broad vision, someone think that this vague definition risks not to serve any purpose. For this reason, the specific declination of vulnerability plays an important role: identifying the different ways in which everyone is vulnerable may help ensure more protection and in promoting the ideal of substantial equality¹². In other words, the concept of vulnerability does not describe only something or someone that need to be protected¹³. It is a condition that affects all the individuals. It is

9 O. Giolo and B. Pastore, « Premessa », in Id. (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, Carocci editore, 2021, p. 11.

10 T. Casadei, «La vulnerabilità in prospettiva critica», in *Vulnerabilità. Analisi multidisciplinare di un concetto*, in O. Giolo and B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, op. cit., p. 78.

11 A. Verza, «Il concetto di vulnerabilità e la sua tensione tra colonizzazioni neoliberali e nuovi paradigmi di giustizia », in O. Giolo and B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, op. cit., p. 242.

12 *Ibid.*, p. 244.

13 O. Giolo, «La vulnerabilità neoliberale. "Agency", vittime e tipi di giustizia », in O. Giolo and B. Pastore (a cura di), *Vulnerabilità. Analisi multidisciplinare di un concetto*, op. cit., p. 260-261.

strictly related to the social and cultural context; it also describes the fact that some political and institutional conditions may cause the necessary prerequisites for a “good” life to be lacking, creating situations of discrimination, exposing individuals to disrespect or need. For example, being a woman does not necessarily imply vulnerability; however, a mark - or a layer - of vulnerability stands out whether a woman lives in a country that does not fully protect women’s rights, particularly - adding another layer of vulnerability - if she is not educated and has not sufficient resources¹⁴.

The interpretation that we would like to propose in this paper analysing the labour law literature is to look at vulnerability in this way, as a sort of «heuristic device»¹⁵, i.e. as a strategy that pushes scholars to build critical perspectives on political and social institutions. Therefore, in sec. III, we are going to address some vulnerabilities - that, due to the circumstances, are also needs for protections for certain groups of workers - considering vulnerability as a critical concept, as a way of constructing “political criticism”: in this perspective, it can be a tool to interpret the recent transitions and legal systems, as well as to push for their revision and concrete transformation.

I - THE IMPACT OF THE DIGITAL AND ECOLOGICAL TRANSITION ON THE WORLD OF WORK

The transformation of the labour market is being driven by the digital and ecological transition, two forces that are reshaping industrial relations and the global economy. In shaping this double transition, social dialogue, information, consultation and participation of social partners at different levels play an important role¹⁶. These transitions reach and impact society in all spheres of life but have a particular impact on the labour market. For example, digitalisation, especially through artificial intelligence and digital platforms, has generated new forms of employment, characterised by flexibility, but also by precariousness and the need for regulation¹⁷. In parallel, the transition to a sustainable, low-carbon economy is fostering the creation of green jobs, reconfiguring industries and requiring novel skills. However, in the fight against climate change, the strategy of a just transition must go hand in hand with a fight against the structural inequalities of the system¹⁸. This dual process presents significant challenges for labour law, which must adapt to protect workers’ rights, ensure a just transition and promote sustainable development. In this process of building a regulatory model that addresses the double

14 T. Casadei, «La vulnerabilità in prospettiva critica», *op. cit.*, p. 83-84.

15 *Ibid*, p. 78, quoting M. Fineman, « The vulnerable subject: anchoring equality in the human condition », *Journal of Law and Feminism*, 20, 1, 2008, p. 1.

16 M.L. Rodríguez Fernández, «La participación de las personas trabajadoras en la gobernanza de la transición digital: las experiencias de la Unión Europea y de España», *Revista de derecho social*, 101, 2023, p. 110.

17 F. Rocha Sánchez, «Viejas y nuevas encrucijadas de la precariedad laboral», *Revista de derecho social*, 96, 2021, p.229; T. Novitz, «Gig work as a manifestation of short-termism: crafting a sustainable regulatory agenda», *Industrial Law Journal*, 50, 4, 2021, p. 636.

18 P. Tomassetti, «Just Transition and Industrial Relations: The Italian Patterns», *E-journal of International and Comparative Labour Studies*, 10 (1), 2021, p. 52; J.J. Rodríguez Bravo de Laguna, «La transición laboral justa en el contexto de la acción por el clima», *Revista de derecho social*, 103, 2023, pp. 101 ff.

transition simultaneously but in parallel, labour lawyers¹⁹ advocate a balance between innovation and fairness, highlighting the need to re-evaluate and adapt the labour regulatory framework to address the new forms of work and organisation emerging in the digital economy, stressing that collective action and trade union representation can play a crucial role in protecting workers' rights.

Without a shadow of a doubt, the structural changes that are causing these phenomena can be seen as opportunities for innovation and drivers of job creation, functioning as enablers of these transitions. However, in order to manage the processes of change in an inclusive way and for the benefit of all people «leaving no one behind» (according to the universal value of the UN 2030 Agenda for Sustainable Development), it is necessary to adopt adequate transition strategy planning, which implies that governments should update themselves to the risks of the 21st century, promote the training and acquisition of new skills of working people and invest in measures that enable them to actively participate in society²⁰.

A large part of the labour law debate was devoted to the impact of digitalisation on the world of work even before the emergence of Covid -19, and although this debate was temporarily displaced by the health crisis and the regulatory measures taken to deal with it, digitalisation implies structural changes in the organisation of companies and, more broadly, in socio-economic systems. The impact of digitalisation on the current dynamics of labour relations translates into a change in the way of producing and working, with the adoption and use of new technologies by companies becoming particularly important, such as the introduction of algorithms or, more generically, Artificial Intelligence (AI) in their production processes, the analysis of big data that makes it possible to scale up to a new type of digital and intelligent production that has the potential to make businesses more efficient, productive and profitable²¹. Without denying the transformations derived from digitalisation, there are doctrinal voices that understand that the new ways of working and their consequences do not have to cause the obsolescence of the determining criteria (in particular, subordination as a criterion for differentiating between subordinate and self-employed work) of the qualification of a service provision as subject to labour law²² or that «digitalisation imposes a new anthropological model» on which labour protections are based²³.

On the other hand, Information and Communication Technologies (ICT) have also had an impact on the labour market by allowing teleworking. This modality of work is not new in the different national systems, but it had an important development and exponential

19 M. Falsone, «Lavorare tramite piattaforme digitali: durata senza continuità», *Giornale di diritto del lavoro e di relazioni industriali*, 174,2, 2022, p. 247; C. Szymanski, «Organized Labor and the Tech Giants», *Giornale di diritto del lavoro e di relazioni industriali*, 173, 1, 2022, p.69.

20 E.Verdolini, C. Belpietro, «Giusta transizione ecologica: l'impatto delle tecnologie digitali», *Giornale di diritto del lavoro e di relazioni industriali*, 174,2, 2022, p. 205.

21 J.C. García Quiñones, «Inteligencia artificial y relaciones laborales: entre la significación creciente de los algoritmos y el desmentido de su neutralidad aparente», *Temas Laborales*, 167, 2023, p.76.

22 J. Cruz Villalón, «El derecho del trabajo ante la transformación digital», *Revista de derecho social*, 100, 2022, p. 147.

23 A.P. Baylos Grau, «Derecho del trabajo: itinerario de viaje», *Revista de derecho social*, 104, 2023, p. 23.

application during the pandemic²⁴. For many companies, to be able to continue to provide their services and to respect quarantines and security measures imposed by governments, telework represented the obligatory alternative. ICTs not only promoted telework as a mandatory alternative for companies in the pandemic but also opened business and work opportunities through so-called digital platforms. Working through platforms «is one of the unconventional work trends and typologies that are transforming the labour market globally», as they create entirely new forms of business, consumption, use of goods, work and provision of services²⁵.

One of the three simultaneous effects of the introduction of technologies in the labour market is the transformation of work along with the decrease or disappearance of jobs and the creation of new jobs²⁶. The transformation of the labour market occurs because of the way companies operate due to new technologies that enable the emergence of smart and borderless organisations, markets based on digital platforms, data-driven decisions, services provided via teleworking, digitalities of communication and promotion channels, working together with robots, etc. The main line of the changes occurring in the labour market requires prompt, relevant and constant instances of upskilling²⁷, reskilling²⁸ and professional reconversion²⁹, so that people acquire the necessary skills to work together and in tune with the new technologies, taking advantage of the opportunities that these tools provide, while managing to differentiate themselves from the use of these tools by contributing added value to the organisation that machines cannot provide. In addition, and considering the constant development of technologies, learning must also be permanent, *i.e.*, technification requires as a counterpart a constant education and adaptation of the workforce, which must imply the need to implement a vision of lifelong learning so that workers can keep their skills and abilities updated and competitive³⁰.

The significant impact of digital technologies on the European workplace is demonstrated by the Framework Agreement on Digitalisation, signed in June 2020 by the European social partners, which underlines the need to address the associated challenges in a deliberate and reflective manner. Doctrinal voices analysing this Agreement suggest that, although it provides a framework for dialogue between employers and workers, its impact might be limited due to the lack of concreteness of crucial issues, such as remote working, and the speed of technological change³¹. However, another doctrinal position

24 J.E. Ruiz Saura, «La negociación colectiva en la reciente construcción de marco normativo del teletrabajo», *Revista de derecho social*, 99, 2022, p. 204.

25 B. Torres García, «Spain's Law No. 10/2021 on Teleworking: Strengths and Weaknesses», *E-journal of International and Comparative Labour Studies*, no. 10(2), 2021, p. 41; E.M. Sierra Benítez, «Sozialschutz am Scheideweg. Die Ausbreitung der Fernarbeit und die Aufnahme von digitalen Nomaden in Europa», *Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht*, 2, 2021, p. 195.

26 M. Fernández Ramírez, «Formando para un mundo que ya no existe: la urgente necesidad de alfabetización digital para el empleo», *Revista de derecho social*, 95, 2021, p.116.

27 *Ibid.*, p.117.

28 A. Weaver, «Technology and the Reskilling Debate: Whats the Problem and What Should Be Done?», *Comparative Labor Law & Policy Journal (CLL&PJ)*, vol. 41, no. 3, 2021, p. 583.

29 F. Géa, «Le défi des transitions collectives», *Revue de droit du travail*, 5, 2021, p. 298 ff.

30 M. Fernández Ramírez, «Formando para un mundo que ya no existe: la urgente necesidad de alfabetización digital para el empleo», *op.cit.*, p. 122.

31 D. Mangan, «Agreement to Discuss: The Social Partners Address the Digitalisation of Work», *Industrial Law Journal*, Special Issue Law on Demand, 50(4), 2021, p. 689 ff.

points to the turning point for collective bargaining of the contents of the Agreement and the importance of a more comprehensive and democratic participation of workers' and employers' representatives in shaping a regulatory framework for labour relations adapted to digital transformations but which, at the same time, must put workers at the centre of attention³².

Technologies such as AI and work on digital platforms are transforming the labour market, creating significant opportunities and challenges at international, European and national levels. The regulation of these phenomena has started to take shape at both European and national levels in the period 2021-2023 and legal experts have debated extensively the implications of these technologies for labour rights and the protection of workers.

A - IMPACT OF ARTIFICIAL INTELLIGENCE (AI) ON EMPLOYMENT

The significant evolution of AI in the field of labour law between 2021 and 2023 is undeniable. During these years, among other issues, discussions among labour lawyers and academics have focused on the growing influence of AI on employment relations, the risks and benefits of its integration into the work environment, and the legal and ethical implications arising from its use. In general terms, we can summarise that the impact of AI on employment has the potential to improve efficiency and productivity, but also raises concerns around discrimination, privacy and automated decision-making³³. Labour law scholars agree in highlighting the need to establish legal frameworks that regulate the use of AI to avoid discrimination and protect workers' rights³⁴.

Both at the European and national levels we have a general regulatory framework that also applies to situations in which this type of advanced technology such as AI has been involved, but there is a broad debate about the need for specific regulation of AI applied to the labour sphere both by statutes and collective agreements³⁵. The importance of ensuring that the implementation of AI in the workplace does not violate fundamental principles, such as equal opportunities and the right to decent work, is emphasised³⁶. Academics from various states also agree on the urgency of updating labour laws to include specific regulations on AI considering the challenges that this technology presents in terms of privacy, surveillance and control over work³⁷.

-
- 32 M. Sepúlveda Gómez, «El acuerdo marco europeo sobre digitalización. El necesario protagonismo de la norma pactada», *Temas Laborales*, 158, 2021, p. 213.
- 33 J.L. Goñi Sein, «El impacto de las nuevas tecnologías disruptivas sobre los derechos de privacidad (intimidad y "extimidad") del trabajador», *Revista de derecho social*, 93, 2021, p.56; L.M. Melián Chinae, «Algoritmos laborales y negociación colectiva», *Revista de derecho social*, 99, 2022, p. 43.
- 34 J. Adams-Prassl, «Regulating algorithms at work: Lessons for a 'European approach to artificial intelligence», *European Labour Law Journal*, vol. 13(1), 2022, p.30.
- 35 M. Sepúlveda Gómez, «Los principios generales de la Inteligencia Artificial en la propuesta de Reglamento Europeo y la negociación colectiva», *Revista de derecho social*, 104, 2023, p. 183; H. Parviainen, «Can algorithmic recruitment systems lawfully utilise automated decision-making in the EU?», *European Labour Law Journal*, vol. 13, no. 2, 2022, p. 225.
- 36 M.T. Alameda Castillo, «Reclutamiento tecnológico. Sobre algoritmos y acceso al empleo», *Temas Laborales*, 159, 2021, p.11; A. Kelly-Lyth, «Algorithmic discrimination at work», *European Labour Law Journal*, vol. 14, no. 2, June, 2023, p.152.
- 37 A. Kelly-Lyth, A. Thomas «Algorithmic management: Assessing the impacts of AI at work», *European Labour Law Journal*, vol. 14, no. 2, June, 2023, p. 230.

The legislative initiative on Artificial Intelligence came from the European Union through the proposal of the Artificial Intelligence Regulation in April 2021 which, among other things, proposes a graduated risk-based system for classifying AI systems, with those used in employment being classified as high risk³⁸. The Regulation aims to ensure that AI systems used in the work environment are transparent, safe and respect fundamental rights. However, a detailed analysis of the provisions aimed at providing greater security proves insufficient or deficient when examined in detail³⁹. At the end of 2023, the European Regulation on Artificial Intelligence had not yet been approved, generating a significant time mismatch between the implementation and use of AI in all areas, including labour, and its specific regulation at the European level, although this did not prevent some States from adapting their labour regulations to the major challenge posed by AI. Spain, for example, adopted a regulation that establishes the legal presumption of employment for people dedicated to delivery in the field of digital platforms⁴⁰ or the right of workers' representatives to be informed about the parameters, rules and instructions on which algorithms that may have an impact on working conditions are based⁴¹, or «information transparency»⁴² or the regulation of teleworking. Furthermore, the importance of data protection and workers' privacy has been highlighted in the context of the use of AI in personnel management⁴³. The Italian government, for its part, lacks concrete policies on training, but it is expected to promote them to encourage continuous training and retraining so that workers can adapt to the changes that AI brings to the labour market⁴⁴. This is to ensure that workers develop the necessary skills to live and work with AI systems. Finally, it seeks to ensure that the use of AI does not lead to a dehumanisation of labour relations. This includes ensuring that workers have access to human supervision and that automated decisions are reviewed when necessary⁴⁵. Among other countries, France has sought to strengthen the regulation of workplace monitoring⁴⁶.

B - WORKING ON DIGITAL PLATFORMS

The rise of digital platforms has transformed the labour market, giving rise to new forms of employment that, while offering flexibility and work opportunities, also pose serious

-
- 38 J. Adams-Prassl, «Regulating algorithms at work: Lessons for a 'European approach to artificial intelligence», *op.cit.*, p.30.
- 39 A. Cefaliello, M. Kullmann, «Offering false security: How the draft artificial intelligence act undermines fundamental workers rights», *European Labour Law Journal*, vol. 13, no. 4, 2022, p. 542; M. Sepúlveda Gómez, «Los principios generales de la Inteligencia Artificial en la propuesta de Reglamento Europeo y la negociación colectiva», *op. cit.*, p. 196.
- 40 A. Todolí-Signes, «Spanish riders law and the right to be informed about the algorithm», *European Labour Law Journal*, vol 12, 3, 2021, p. 399.
- 41 R. Gómez Gordillo, «Algoritmos y derecho de información de la representación de las personas trabajadoras», *Temas Laborales*, 158, 2021, p. 161.
- 42 M. Sepúlveda Gómez, «Los principios generales de la Inteligencia Artificial en la propuesta de Reglamento Europeo y la negociación colectiva», *op.cit.*, p. 184.
- 43 L.M. Melián China, «Algoritmos laborales y negociación colectiva», *op.cit.*, p.46.
- 44 E.Verdolini, C. Belpietro, «Giusta transizione ecologica: l'impatto delle tecnologie digitali», *op.cit.*, p.205.
- 45 M. Falsone, «Lavorare tramite piattaforme digitali: durata senza continuità», *op.cit.*, p. 247 ff.
- 46 I. Daugareilh, «La legge francese sul dovere di vigilanza al vaglio della giurisprudenza», *Giornale di diritto del lavoro e di relazioni industriali*, 170, 2, 2021, p. 159 ff.

challenges in terms of labour rights and working conditions⁴⁷. Falsone highlights that digital platforms tend to fragment labour relations, promoting the idea that work performed through them is autonomous and independent, which weakens the recognition of workers' rights and their legal protection⁴⁸. Determining the legal nature of the employment relationship is crucial to protecting the rights of digital platform workers. However, the application of the traditional subordination test to platform work is controversial both in theory and in practice.

Job insecurity is one of the main problems associated with working on digital platforms. The impact of the gig economy was analysed and how digital platforms, such as Uber Eats, often lead to labour exploitation, offering low-wage jobs with no social security and no benefits⁴⁹. Workers on these platforms are often classified as self-employed, which excludes them from the protection offered by traditional labour legislation. Despite the different definitions of employment contract, the jurisprudential tendency is to recognise these workers as employees rather than self-employed is underlined, reflecting a growing concern for labour rights in the platform economy⁵⁰. The subordination test is still widely used in China to determine gig worker status, and an approach based on the 'primacy of the facts' of the case is feasible in this context⁵¹.

The classification of platform workers as self-employed has been criticised by Trillo Párraga⁵². The author points out that this classification allows companies to evade labour responsibilities and weaken workers' right to effective union representation. This situation poses a major legal challenge, as current labour legislation is not always adapted to the new forms of employment emerging in the digital economy. For his part, Guamán Hernández criticises the lack of effective monitoring and control mechanisms to ensure that platforms comply with labour and social security standards⁵³. The author emphasises the need for a regulatory framework that ensures that workers on digital platforms have access to the same rights and protections as traditional employees (on this see also § 4.2.).

Moreover, Esteve-Segarra addresses outsourcing in the context of digital platforms, pointing out that companies often outsource labour risks and responsibilities, leaving workers in a vulnerable position and without adequate protection⁵⁴. This contributes to the precariousness of working conditions, where workers lack stability, rights and job security. Working on digital platforms has led to the erosion of labour rights. In this regard,

47 C. Inversi, «Caporalato digitale: il caso Uber Italy Srl», *Lavoro e diritto*, Vol. 35, 2, 2021, p. 335.

48 M. Falsone, «Lavorare tramite piattaforme digitali: durata senza continuità», *op.cit.*, p. 247 ff.

49 N. Ferrigni, E. Rocchini, «Tra trasformazioni normative e ricadute sociali. La figura del rider in Italia», *Giornale di diritto del lavoro e di relazioni industriali*, 175, 3, 2022, p. 405.

50 M.A. Valéry, «Le chauffeur Uber et le coursier Glovo: Comparaison d'une requalification de la relation de travail», *Revue de Droit de Travail*, 4, 2021 p. 231.

51 Q. Zheng, J. Su, «Subordination Theory in Practice: An Empirical Analysis of Chinese Courts' Approaches to Classifying Labour Relationships in Platform Cases», *Industrial Law Journal*, 3, 2023, p.721.

52 F. Trillo Párraga, «La "Ley Rider" o El arte del volver», *Revista de derecho social*, 94, 2021 p.25.

53 A. Guamán Hernández, «Diligencia debida en derechos humanos: ¿un instrumento idóneo para regular la relación entre derechos humanos y empresas transnacionales?», *Revista de derecho social*, 95, 2021, p. 92 ff.

54 M.A. Esteve- Segarra, «Cambios jurisprudenciales en subcontratación laboral ¿por qué son una condición necesaria pero no suficiente y por dónde habría que ir en la reforma?», *Revista de derecho social*, 94, 2021, p. 40.

it is highlighted how the lack of clear and effective regulation allows platforms to avoid labour obligations, resulting in the un-protection of workers and the exploitation of labour⁵⁵. The nature of platform work makes union organisation and collective bargaining difficult, leaving workers without a collective voice to defend their rights⁵⁶, but that nature did not prevent unions from responding to the rise of platform work by devising strategies to represent workers who are excluded from labour legislation⁵⁷.

To address these challenges, several authors propose the need to develop legal frameworks that recognise the particularities of working on digital platforms. The inclusion of workers in the regulatory process is crucial to ensure that the rules reflect their needs and rights⁵⁸. For example, Spanish legislation presents interesting and important advances in this regard, but there is still a need for transparency in the use of algorithms and artificial intelligence systems in the labour management of platforms⁵⁹. Regulation should include requirements for platforms to inform workers about how algorithms are used for task assignment and performance evaluation, avoiding opacity and unfair use of these technologies.

C - TELEWORK IN THE DIGITAL AGE

Telework has gained unprecedented relevance in the digital age, especially in the wake of the COVID-19 pandemic, which accelerated its implementation in multiple sectors. Romagnoli warns that while telework offers greater flexibility, it also presents significant challenges in terms of regulation and protection of workers' rights. He notes that this type of work can lead to a form of «personal self-exploitation» where the boundary between work and personal life is blurred, affecting workers' well-being⁶⁰.

The regulation of telework has been a complicated issue. Romagnoli discusses how, in the Italian context, regulation through collective bargaining has been weakened by austerity policies, making it difficult to create effective frameworks to protect remote workers. The lack of strong collective agreements and clear standards has left many workers vulnerable, with labour rights and working conditions insufficiently protected⁶¹. Telework has also been presented as a potential tool for environmental sustainability. Miñarro Yanini addresses this aspect, arguing that, although telework can contribute to the reduction of CO2 emissions by reducing commuting, current regulation does not establish effective measures to maximise these benefits. The author criticises that Spanish legislation does not include specific provisions to promote telework as part of a broader sustainability strategy,

55 T. Novitz, «Gig work as a manifestation of short-termism: crafting a sustainable regulatory agenda», op.cit., p. 636 ff.

56 F. Trillo Párraga, «La "Ley Rider" o El arte del volver», op.cit., p.36.

57 A. Bertolini, R. Dukes R., «Trade unions and platform workers in the UK: worker representation in the shadow of the law», *Industrial Law Journal*, vol 50, no. 4, 2021, p. 662.

58 L. Zoppoli, «Derecho laboral y medioambiente: stepping stones para un camino difícil», *Revista de derecho social*, 99, 2022, p. 223.

59 M.L. Rodríguez Fernández, «La participación de las personas trabajadoras en la gobernanza de la transición digital: las experiencias de la Unión Europea y de España», op.cit., p.133.

60 U. Romagnoli, «Hacia la normalización del trabajo a distancia», *Revista de derecho social*, 93, 2021, p. 21.

61 *Ibid.*, pp. 20-23.

which limits its positive impact on the fight against climate change⁶². Bruurs and Huybrechts point out that the Belgian legal framework for telework has proved confusing, with different legal regimes applying to different forms of telework. This patchwork of regulations poses challenges in areas such as non-discrimination, welfare, and working time control⁶³.

In the digital age, the involvement of workers in the governance of telework and other forms of remote work is crucial. Rodríguez Fernández stresses the importance of this aspect, underlining that, in the digital transition in the EU and Spain, there has been a greater emphasis on social dialogue and worker participation. However, she points out that there are still gaps in the regulation of telework, particularly regarding transparency in the use of algorithms and artificial intelligence systems for the management of remote work. Rodríguez Fernández calls for greater inclusion of workers in decision-making related to digitalisation, which is essential to ensure the democratisation of work in the digital age⁶⁴.

II - GREEN TRANSITION AND THE LABOUR MARKET

A - GREEN TRANSITION IN THE WORKPLACE

The ecological transition, understood as the shift towards a sustainable and environmentally friendly economic model, has significant implications for labour law and workers' rights. The relationship between labour law and the environment is excellently summarised by Zoppoli, who points out the main questions raised by Italian labour law doctrine⁶⁵. Bugada and Cohen-Donsimoni highlight the active role of the social partners in France in including environmental sustainability in collective bargaining, with progress at company and sectoral level⁶⁶. In Spain, it is analysed how collective bargaining has incorporated green clauses in collective agreements, showing the interrelation between collective bargaining and environmental protection⁶⁷. In Hungary, the social partners have also shown interest in including green clauses in collective agreements, but their effective inclusion is still limited and requires more attention from public policies⁶⁸.

It is noted that this transition presents both challenges and opportunities for the labour market, especially affecting traditional sectors dependent on fossil fuels. In this

62 M. Miñarro Yanini, «Cambio climático y nuevas formas de empleo: el régimen del teletrabajo en clave de gestión ecológica», *Revista de derecho social*, 93, 2021, p. 64 ff.

63 S. Bruurs and S. Huybrechts, «Telework in Belgium: a Patchwork of Legal Regimes», *E-journal of International and Comparative Labour Studies*, no. 10 (2), 2021, p. 4 ff.

64 M.L. Rodríguez Fernández, «La participación de las personas trabajadoras en la gobernanza de la transición digital: las experiencias de la Unión Europea y de España», op.cit., p.116.

65 L. Zoppoli, «Derecho laboral y medioambiente: stepping stones para un camino difícil», *Revista de derecho social*, 99, 2022, p. 223 ff.

66 A. Bugada, V. Cohen-Donsimoni, «'Green' Collective Bargaining in France», *E-journal of International and Comparative Labour Studies*, no. 10(1), 2021, p. 4.

67 C. Chacartegui Jávega, S. Canalda Criado, «Collective Bargaining, Labour and Environmental Rights: the Spanish Experience», *E-journal of International and Comparative Labour Studies*, no. 10(1), 2021, p. 22.

68 B. Rossu, «Environmental Sustainability in Collective Agreements and Other Policies in Hungarian Practice», *E-journal of International and Comparative Labour Studies*, no. 10 (1), 2021, p. 38.

vein, Tomassetti explores how the transition to a low-carbon economy affects workers and enterprises in Italy, underlining that industrial relations institutions are central to this process, but also face dilemmas in balancing sustainable development with the preservation of jobs⁶⁹. In this context, the concept of just transition arises, which seeks to ensure that these changes take place in an equitable manner, protecting workers and affected communities⁷⁰. The ecological transition implies the reconfiguration of many economic sectors and the need to adapt labour legislation to reflect these new forms of so-called “green” employment. The importance of finding a balance between environmental protection and social justice is stressed, suggesting that just transition policies should address both the creation of green jobs and the protection of labour rights⁷¹. However, the lack of a systematic vision on the creation of green jobs and the need for specific professional profiles for this transition is criticised⁷².

The economic and social effects of the ecological transition can be profound. In this vein, the importance of a just transition in the agricultural sector is highlighted, where workers risk being marginalised if they are not provided with adequate training and support⁷³. It is suggested that the lack of research on the socio-economic implications of digital technologies in the ecological transition represents an obstacle to the effective inclusion of all sectors in this process⁷⁴. The need for digital literacy and lifelong learning is emphasised so that workers can adapt to the changes in the labour market brought about by the ecological and digital transition⁷⁵.

A just transition requires the active participation of workers and their representatives in decision-making processes. A dynamic participatory process with the involvement of workers’ representatives in collective bargaining is thus advocated⁷⁶. It analyses temporary employment and subcontracting, proposing the need for regulatory interventions and the importance of collective bargaining to improve working conditions during the transition⁷⁷.

Regulatory proposals are essential to ensure a just transition. In this regard, the Just Transition Fund within the European Green Pact provides financial and technical resources to support the regions and sectors most affected by the ecological transition,

69 P. Tomassetti, «Just Transition and Industrial Relations: The Italian Patterns», op.cit., p. 52.

70 J.J. Rodríguez Bravo de Laguna, «La transición laboral justa en el contexto de la acción por el clima», op.cit., p. 101.

71 E. Leonardi, «La giusta transizione tra questione sociale e questione ambientale: il potenziale ecologico delle mobilitazioni operaie», *Giornale di diritto del lavoro e di relazioni industriali*, 177-178, 1-2, 2023, p. 99.

72 R. Semenza, «La retorica dei green jobs», *Giornale di diritto del lavoro e di relazioni industriali*, 175, 3, 2022, p. 359 ff.

73 I. Canfora, «La giusta transizione ecologica nel settore agroalimentare europeo: politica agricola comune, sviluppo sostenibile e strategie occupazionali», *Giornale di diritto del lavoro e di relazioni industriali*, 180, 4, 2023, p. 563.

74 E. Verdolini, C. Belpietro, «Giusta transizione ecologica: l’impatto delle tecnologie digitali», op.cit., p.205 ff.

75 M. Fernández Ramírez, «Formando para un mundo que ya no existe: la urgente necesidad de alfabetización digital para el empleo», *Revista de derecho social*, 95, 2021 p. 103.

76 J.J. Rodríguez Bravo de Laguna, «La transición laboral justa en el contexto de la acción por el clima», op.cit., p. 110.

77 A. Merino Segovia, «Empleo, temporalidad y subcontratación: retos y espacios de intervención de la negociación colectiva», *Revista de derecho social*, 93, 2021, p. 195.

promoting economic diversification and the retraining of workers⁷⁸. Despite the normative advances, there are important criticisms of the way in which just transition is being implemented⁷⁹. The relationship between the climate crisis and inequalities is also examined, as well as the crucial role the law can play in combating social imbalances related to climate change⁸⁰. To address these challenges, several concrete measures are proposed: it is suggested to implement continuous training and retraining programmes to prepare workers for jobs in sustainable sectors⁸¹; it is advocated to strengthen collective bargaining and the participation of workers in decision-making related to the ecological transition⁸²; the need for a social security reform that takes into account the principles of redistributive justice to ensure social protection of workers during the transition is emphasised⁸³; the establishment of labour standards in green jobs is proposed in order to protect workers' rights and avoid exploitation in subcontracting chains in the context of just transition⁸⁴. The criticisms and suggestions of the above-mentioned jurists underline the need for a more inclusive and democratic approach, which ensures that the green transition is not only environmentally sustainable, but also equitable and just for all members of society.

B - DUE DILIGENCE AS A MECHANISM FOR THE PROTECTION OF HUMAN RIGHTS IN THE CONTEXT OF BUSINESS OPERATIONS

Due diligence has become a central issue in the regulation of business, especially in the context of human rights and sustainability. This concept implies that companies must identify, prevent, mitigate and account for adverse impacts that their activities may have on human rights and the environment⁸⁵. The importance of due diligence lies in its ability to hold companies accountable for the effects of their operations along the entire supply chain. One of the main challenges of due diligence is its effective implementation in a globalised environment. Guamán Hernández notes that the complex and broad nature of due diligence makes its implementation challenging, as it encompasses various aspects, from labour rights to environmental impact⁸⁶. Moreover, the lack of a harmonised regulatory framework at the global level poses problems in the supervision and control of due diligence obligations, especially in transnational contexts. Borelli adds that, despite the development of due diligence as a tool for managing corporate risks, this process is often carried out

78 A. Guamán Hernández, «Diligencia debida en derechos humanos: ¿un instrumento idóneo para regular la relación entre derechos humanos y empresas transnacionales?», op.cit., p.80 ff.

79 S. Borelli, «La retórica de los derechos fundamentales sin democracia económica en la Unión Europea», *Revista de derecho social*, 102, 2023, p. 28.

80 M. Barbera, «Giusta transizione ecologica e diseguaglianze: il ruolo del diritto», *Giornale di diritto del lavoro e di relazioni industriali*, 175, 3, 2022, p. 339 ff.

81 M. Fernández Ramírez, «Formando para un mundo que ya no existe: la urgente necesidad de alfabetización digital para el empleo», op.cit., p. 104 ff.

82 J.J. Rodríguez Bravo de Laguna, «La transición laboral justa en el contexto de la acción por el clima», op.cit., p.109; M. Giovannone, «Perspectives de régulation des liens entre travail et environnement dans l'UE et en Italie», *Revue de droit comparé du travail et de la sécurité sociale*, 1, 2021, p. 58.

83 C. Ochando Claramunt, «Seguridad Social y equidad», *Revista de derecho social*, 94, 2021, p. 66.

84 M.A. Esteve- Segarra, «Cambios jurisprudenciales en subcontratación laboral ¿por qué son una condición necesaria pero no suficiente y por dónde habría que ir en la reforma?», op.cit., p.39 ff.

85 A. Guamán Hernández, «Diligencia debida en derechos humanos: ¿un instrumento idóneo para regular la relación entre derechos humanos y empresas transnacionales?», op.cit., p.72.

86 *Ibid.*, p. 92.

unilaterally, without adequate involvement of workers and their representatives. The author criticises how the debate around due diligence has largely ignored trade union rights and workplace democracy, which can lead to risk assessments and mitigation measures not fully considering the implications for workers' rights⁸⁷.

Due diligence has important economic and social implications. Semenza highlights that the lack of a systematic view on the need for specific professional profiles in the context of the green transition may hinder the effective implementation of due diligence⁸⁸. Leonardi suggests that due diligence should be part of a broader approach that integrates environmental protection with social justice, ensuring that workers and affected communities are involved in decision-making processes⁸⁹. This implies that due diligence policies should address social inequalities and promote the inclusion of workers in sustainability strategies. In the fight against social imbalances related to climate change, the role that regulation can play and how due diligence can be an effective tool to redress inequalities is examined⁹⁰. The author proposes that the law should be more active in regulating corporate practices, ensuring that companies not only comply with minimum requirements, but take a proactive and effective approach to avoiding harm.

From a regulatory perspective, the European Union has made progress in the implementation of due diligence. Of note is the proposal for the EU's mandatory Human Rights and Environmental Due Diligence Directive, which imposes an obligation on companies to carry out due diligence processes in their operations and supply chains^{91,92}. Without a strong regulatory framework and effective control mechanisms, due diligence risks becoming a mere formality, without bringing about real changes in business practices. It is essential that due diligence policies include worker participation and that standards are developed that hold companies accountable in a transparent manner⁹³.

III - THE NEED FOR MORE PROTECTION FOR VULNERABLE WORKERS

Many of the topics addressed in the recent literature can be connected to a widespread need for protection – or for more protection – for workers in the transforming world of work.

Looking at this issue through the lens of the “vulnerability perspective” may be useful to describe the precariousness and the risks that today affect the concrete life of individuals. When looking at changes, such as digital and green transitions, it is interesting to adopt an approach based on an idea of vulnerability calling into question «the social and economic determinants that make individuals more exposed to the risk of suffering

87 S. Borelli, «La retórica de los derechos fundamentales sin democracia económica en la Unión Europea», op.cit., p. 28.

88 R. Semenza, «La retorica dei green jobs», op.cit., p. 359.

89 E. Leonardi, «La giusta transizione tra questione sociale e questione ambientale: il potenziale ecologico delle mobilitazioni operaie», op.cit., p. 99.

90 M. Barbera, «Giusta transizione ecologica e diseguaglianze: il ruolo del diritto», op.cit., p. 339.

91 A. Guamán Hernández, «Diligencia debida en derechos humanos: ¿un instrumento idóneo para regular la relación entre derechos humanos y empresas transnacionales?», op.cit., p.89.

92 The Directive (EU) 2024/1760 of the European Parliament and of the Council on corporate sustainability due diligence was adopted on 13th June 2024.

93 A. Lassandari, «El derecho del trabajo y la globalización. Intentos de (re)introducción de límites», *Revista de derecho social*, 101, 2023 p. 24.

inequalities in treatment or access to goods and resources, discrimination, precariousness and exploitation, posing increasingly complex and widespread challenges also to the law, especially to the definition of guarantees and legal protections required to the State and institutions»⁹⁴.

In the articles analysed, many different dimensions of vulnerability are described, in relation to different groups of workers. Usually, scholars focus on a particular driver or element of vulnerability, analysing the socio-economic context, the applicable legal framework and its pitfalls in the protection of the selected group.

For instance, considering just transition policies in the context of Latin America, Olmos Giupponi argues the need for «a Global South approach» - that considers the specific socio-economic and environmental conditions of the region - and for prioritizing the needs of vulnerable groups. She adopts a “contextual” and intersectional notion of vulnerability, focusing on gender, race, health, and age-related vulnerabilities to identify those groups particularly exposed to climate change; due the regional perspective adopted, the author looks “only” at some factors that are particularly relevant, as leading to tailoring labour law and policy frameworks, such as the changing working patterns in response to extreme climatic events, that have created “new vulnerabilities” for workers, especially in the informal economy in agriculture, construction, and services⁹⁵.

Different dimensions of vulnerability have been explored in other papers. For instance, Kovacs takes into account vulnerable persons performing platform work. She acknowledges that the academic and political discourse on how to improve the conditions of such workers «focuses mainly on the question of status». She considers the heterogeneous personal scope of labour rights across EU Member States and argues «that regulations that focus less on the relationship between the employer and the worker, and more on the impact of a regime on the public, provide more appropriate protection for persons who do not fit into the traditional employment relationship», as platform workers⁹⁶. Focusing on the issue of platform workers’ protection need in a similar perspective, Bellomo questions whether it’s needed to address these issues maintaining traditional categories and regulations, «trying to adapt them to the new realities of work» or creating «specific regulatory areas taking into account the peculiar features of the emerging forms of work»⁹⁷. In his reasoning on the transformations caused by digitalization, Zoppoli concludes that today, due to the relevance of the outcome of the performance and the consequent restriction of the workers’ contractual freedom, new protections for all the workers are needed, going beyond the traditional paradigm based on the binary division between employee and self-employed⁹⁸.

94 S. Zullo, «Lo spazio sociale della vulnerabilità tra “pretese di giustizia” e “pretese di diritto”. Alcune considerazioni critiche », *Politica del diritto*, 3, 2016, p. 487 (our translation).

95 B. Olmos Giupponi, « Just Transition in the Global South: Alternative Approaches from Latin America », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 39, no. 3&4, 2023, pp. 391-392.

96 E. Kovacs, « The Different Rights of a ‘Worker: A Comparative View », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 39, no. 2, 2023, p. 151.

97 S. Bellomo, « Platform work, protection needs and the labour market in the Labour law debate of recent year », *DLM International*, 2, 2022, p. 166.

98 L. Zoppoli, « Lavoro digitale, libertà negoziale, responsabilità: ancora dentro il canone giuridico della subordinazione », *Diritti Lavori Mercati*, 1, 2022, p. 74 (our translation).

Even though not explicitly talking of vulnerabilities, Fredman focuses on women, who «face specifically gendered risks from climate change», that might exacerbate pre-existing inequalities⁹⁹. This condition of vulnerability is often related to the role of women in social reproduction or to their exclusion from property. In addition, she considers that the different «social locations» in which women live influence their conditions: for this reason, «especially racialized and migrant women, women living in poverty, and women with disabilities, require specific attention».

As shown, the need for securing «effective protection for the most unprotected workers» in the context of the recent transitions is widespread. It is also acknowledged by the ILO and the EU, in which agendas there are proposals to counter the downsides of the digital transformation, as well as of the green transition. It is a good starting point, even though some scholars, such as Potocka-Sionek & Aloisi think that «it makes little sense for regulators to focus merely on digitally-driven forms of work»¹⁰⁰. A more general consideration of vulnerabilities and of their intersections would be valuable.

A - MEASURES TO REDUCE THE GENDER GAP AND PROMOTE EQUALITY BETWEEN MEN AND WOMEN

Starting the analysis of vulnerabilities with the gender issues may seem old-fashioned. However, the inequality between men and women is still an issue and a topic currently addressed in labour law literature. Indeed, among the articles published, we identified several studies on gender gap, promotion of equal opportunity for men and women, equal pay, discrimination on gender grounds, union feminism and collective bargaining for gender equality, gendered segmentation of labour market, etc. These studies describe, in a world-wide perspective, women as overrepresented in informal and precarious employment and spending more time than men in unpaid care work¹⁰¹.

In line with the idea above-mentioned, we would like to underline that «women are not weaker» *per se*: the fact that many women are facing more barriers than men - also embracing the double burden of work and care responsibilities - depends on their social conditions and on legal framework. Therefore, to improve their condition in the workplace, there is the need to introduce amendments to the existing «gender biased legislation, combined with effective implementation»¹⁰².

99 S. Fredman, « 'Greening the Workforce: A Feminist Perspective », *International Journal of Comparative Labour Law and Industrial Relations*, A5vol. 39, no. 3&4, 2023, pp. 338-339.

100 N. Potocka-Sionek and A. Aloisi, « Festina Lente: The ILO and EU Agendas on the Digital Transformation of Work », *op. cit.*, p. 36.

101 N. Vyas, « Undermining the role of women in the economy: the interplay between paid work and unpaid care work in India », *Industrial Law Journal*, vol. 51, no. 4, 2022, p. 904; S. Marshall, K. Taylor and S. Tödt, « Gendered distributive injustice in production networks: implications for the regulation of precarious work », *Industrial Law Journal*, vol. 52, no. 1, 2023, p. 107; P. Bozzao, « Il welfare dei figli, tra Family act e (attuazione della) Direttiva EU n. 2019/1158 », *Rivista giuridica del lavoro e della previdenza sociale*, 4, I, 2022, p. 587.

102 N. Vyas, « Gender inequality - now available on digital platform: an interplay between gender equality and the gig economy in the European Union », *European Labour Law Journal*, 12, 1, 2021, p. 38.

Some publications investigate this topic from the context of the EU, focusing on the impact of the approval of Directive 2019/1158 on work-life balance for parents and carers¹⁰³. Indeed, in the EU – as well as across the world – the promotion of work-life balance policies has been shaped as a relevant tool to pursue gender equality¹⁰⁴. The attention to be deserved to this topic is linked to the awareness of the persistent difficulties that women face in the world of work and, more generally, within society, due to stereotypes about the roles and skills of women. The consequence of the burden of family care is that they tend to receive lower wages and to have limited career opportunities. The directive 2019/1158, significantly, broadens the approach from a mother-oriented approach to a shared parental roles typology¹⁰⁵, from parental leave to conciliation, in the view of promoting the equal rebalancing of care duties between parents¹⁰⁶. Some advances «towards a more gender-neutral worker-carer approach» have been made, even though the Directive does not challenge the traditional prioritisation of mothers' caring role¹⁰⁷. To enable mothers to «maintain a positive workforce connection», above all, a change to the workplace and the recognition of the social value of care work would be necessary. If men were considered equally likely to provide care, employers would have no reason to discriminate women, and this would really enhance equality¹⁰⁸. Therefore, in order to challenge the gendered assumptions regarding care, the main issue is «to move it away from the secondary status of supporting the mother to recognize that fathers have their own caring responsibilities»: a stronger focus on men, in order to facilitate the «father-infant bonding» – and their subsequent family engagement in childcare, that is strictly related to their demanding for leave¹⁰⁹ – seem necessary. In this respect, the Directive 2019/1158 should be welcomed, as in the definition of paternity leave in art. 3 (1) (a) it explicitly refers to fathers' caring responsibilities¹¹⁰. Pragmatically, to make this work and avoid that «unused leave 'may serve to institutionalise women's disadvantage in the labour market'», shared parental leave should be improved through paid leaves or bonuses and rights to request flexible working should be extended¹¹¹.

103 M. L. de La Flor Fernández, «La Directiva sobre conciliación y su trasposición en España», *Temas laborales*, 168, 2023, p. 37.

104 G. Mitchell, « Shared Parental Leave: Can Transferable Maternity Leave Ever Encourage Fathers to Care? », *Industrial Law Journal*, 52, 1, 2023, p. 149.

105 R. Zucaro, «Conciliazione vita-lavoro e gender gap nella cura. L'evoluzione legislativa nel prisma del quadro normativo europeo», *Rivista giuridica del lavoro e della previdenza sociale*, 2, 2022, p. 311.

106 L. Calafà, U. Gargiulo, C. Spinelli, Calafà L., Gargiulo U., Spinelli C., «Introduzione», *Rivista giuridica del lavoro e della previdenza sociale*, 4, 2022, p. 557.

107 M. Weldon-Johns, « EU work-family policies revisited: Finally challenging caring roles? », *European Labour Law Journal*, 12, 3, 2021, p. 302 ff.

108 G. Mitchell, « Shared Parental Leave: Can Transferable Maternity Leave Ever Encourage Fathers to Care? », *op. cit.*, p. 162 ff.

109 M. Hack, « Working-life out-of-balance? Legal responses in the EU and Norway to parenthood and caregiving in times of crisis », *DLM International*, 1, 2023, p. 127.

110 M. Weldon-Johns, « EU work-family policies revisited: Finally challenging caring roles? », *op. cit.*, p. 308

111 G. Mitchell, « Shared Parental Leave: Can Transferable Maternity Leave Ever Encourage Fathers to Care? », *op. cit.*, p. 162 ff; M. Weldon-Johns, « EU work-family policies revisited: Finally challenging caring roles? », *op. cit.*, p. 320.

Indeed, the ability to use remote working, alongside the chance of requesting reduced hours or changed working patterns, may encourage more individuals to combine work with caring responsibilities¹¹². The 2019 Work-life Balance Directive provides the right to request flexible working arrangements for caring purposes; notwithstanding, it has a pitfall in its wording: it is up to Member States to determine the meaning of flexibility, with the consequence that it «may not embed genuine choice and flexibility in practice», risking undermining in practice the work-life balance and reinforcing traditional working family models¹¹³.

Sedacca criticizes the devaluation of socially reproductive work, focusing on working conditions of domestic workers. These workers usually enjoy lesser protection from labour law compared with other workers - including longer working hours, complexities in identifying the hours to be counted as work, and exclusion from the right to statutory minimum wage - even though they play a crucial role in supporting societal needs. Such devaluation is strictly related to «the systematic construction of work performed in the home and family, typically by women, as inferior to and less important than work in the 'public' sphere», and as not to be rewarded as other "productive" work. On the opposite, socially reproductive work also plays an important role also to «produce and reproduce labour - i.e. the ability to work»: therefore, she argues the «inseparability of 'reproductive' work conducted primarily by women in the home» from other work¹¹⁴.

Gender equality has been explicitly considered also in the light of the green and digital transitions.

In the last years, in international policy documents addressing climate change there has been an increasing attention for «gender-responsive climate action»¹¹⁵. This perspective is of course important, but simply mentioning the importance of promoting gender equality and «decent work for women» is not enough: there is a risk that the proposed measures will replicate current gendered inequalities in the world of work, reinforcing gendered stereotypes, since «many prominent Just Transition frameworks have been modelled on the paradigm of a male worker, employed in full-time, relatively secure and often unionized work». To face this risk, there is the need to go beyond the formal conception of equality, adopting «an explicitly feminist and multi-dimensional understanding of substantive gender equality». To this end, Fredman stresses the importance of addressing the disadvantages attached to gender, including «legal impediments, power imbalances, and time poverty», as well as to redress the most common stereotyping of women as primary caregivers for the child or as responsible for domestic work, that make it difficult for them «to enter the labour market on equal terms», relegating them in low paid, precarious and informal jobs¹¹⁶.

112 L. Waddington and M. Bell, « The right to request flexible working arrangements under the Work-life Balance Directive - A comparative perspective », *European Labour Law Journal*, 12, 4, 2021, p. 508.

113 M. Weldon-Johns, « EU work-family policies revisited: Finally challenging caring roles? », *op. cit.*, p. 312 ff.

114 N. Sedacca, « Domestic Workers, the 'Family Worker' Exemption from Minimum Wage, and Gendered Devaluation of Women's Work », *Industrial Law Journal*, vol. 51, no. 4, 2022, p. 777-778; similarly, S. Borelli Borelli S. (2021), « Le diverse forme dello sfruttamento nel lavoro domestico di cura », *Lavoro e diritto*, 2021, p. 281.

115 S. Fredman, « Greening the Workforce: A Feminist Perspective », *op. cit.*, p. 337 ff.

116 *Ibid.*, p. 344-345.

Some gender issues on digital platforms are emerging, including the «propagation of flexibility». From an intersectional perspective, there is the need to improve the conditions of women in non-standard employment, properly addressing the issues concerning the work-life balance, as well as to facilitate their «transition from precarious work to full-time work by making working conditions suitable for women»; otherwise, unpaid care and domestic work will remain unresolved issues, with the additional risk for women working in the platform economy that flexible work schedules make this balance more difficult¹¹⁷.

The work through digital platforms also increases the risk of gender discrimination in pay and in the distribution of jobs. The gender pay gap is still an issue in “traditional” labour market. The long-lasting claim for equal pay for equal work led to the adoption of the directive (EU) 2023/970 on strengthening the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms, which importantly addresses the issue of the criteria for the assessment of comparable work and the identification of a valid comparator.

The risk of gendered discrimination on digital platforms and higher vulnerability for women - also with respect of pay gap - arises also from the profiling of the workers, which often takes into consideration gender and age of workers¹¹⁸. This is linked to the potential discriminatory impact of algorithmic decision-making systems. There is evidence that this kind of discrimination has an impact also in terms of gender stereotypical distribution of job ads. Xenidis shows that the «facially “neutral” algorithms still discriminate» and - to tackle this injustice - proposes to start from a «presumption of algorithmic bias», instead of considering AI systems «neutral by default». The consequence of this presumption would be to consider «any failure to take preventive measures against algorithmic bias that results in discrimination» as a form of negligence and «unchecked discriminatory algorithms» as falling in «category of “instructions to discriminate”». It would create an obligation to take positive action, *i.e.* to take reasonable preventive safeguards against algorithmic discrimination¹¹⁹.

B - PROTECTIONS FOR ECONOMICALLY DEPENDENT SELF-EMPLOYMENT

Several articles discuss the vulnerabilities and the emerging need for protection for self-employed workers¹²⁰.

More than one contribution argues that, although important, employment status is no longer suitable to identify the workers in need of protection¹²¹. Making the example of

117 N. Vyas, « Gender inequality - now available on digital platform: an interplay between gender equality and the gig economy in the European Union », *op. cit.*, p. 38.

118 *Ibid.*, p. 48.

119 R. Xenidis, « Algorithmic neutrality vs neutralising discriminatory algorithms: for a paradigm shift in EU anti-discrimination law », *Lavoro e diritto*, 4, 2022, p. 769 ff.

120 C. Hiessl, « Introduction. Special Issue on Income Support for Self-Employed Workers in the Wake of the Pandemic », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 38, no. 4, 2022, p. 415.

121 A. Baylos Grau, « Derecho del trabajo: itinerario de viaje », *Revista de derecho social*, 104, 2023, p. 23; T. Novitz, « Gig work as a manifestation of short- termism: crafting a sustainable regulatory agenda », *op. cit.*, p. 660; M. Biasi, « An Essay on Liberty, Freedom and (Decent) Work », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 38, no. 3, 2022, p. 359.

content creators/influencers on Instagram or Youtube, who are formally self-employed, even though dependent on the platform from many points of view, Barnard affirms that the traditional binary divide between employees – and workers when we take into account UK legal system – and self-employed, with employment law protections restricted to the first group because they «are vulnerable/dependent», seems to be anachronistic¹²². In the online world, this issue is exacerbated by the «greater blurring of distinctions and roles»: particularly after the affirmation of gig economy, the self-employment is «a heterogeneous term», including «genuinely entrepreneurial highly-skilled risk-takers, but also low-skilled and low-paid migrant workers, and everything in between»¹²³. In this panorama, self-employment, defined as «an activity performed 'on one's own' and conceived in negative as being 'without the constraint of subordination'», «masks the complexity of a category that does not correspond to any homogeneous positive reality»¹²⁴: it shows «a progressive fracture between norms and social reality» that may have important consequences also on the axiological level. Therefore, the weakness of self-employed workers in relation to one or more principles, «the structural imbalance of which is comparable to that of employees»¹²⁵ and the substantial increase of the number of working poor among self-employed¹²⁶ prompt a new need for social protection.

Some articles focus on specific groups of particularly vulnerable self-employed workers, such as economically dependent self-employed. The EU has never provided «direct protection» for these workers, instead focusing on the fight against bogus self-employment or on the extension of some protections already granted to employees to certain groups of atypical workers, who are vulnerable from a socio-economic point of view¹²⁷. Conversely, some social protections are granted to self-employed at the national level. For instance, in Italy, on the one hand, the scope of application of standard employment has been broadened «collaborations organized by the principal»¹²⁸; on the other hand, some rights and protections have been given to self-employed in the 2017 reform¹²⁹ and further

122 C. Barnard, « The Serious Business of Having Fun: EU Legal Protection for Those Working Online in the Digital Economy », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 39, no. 2, 2023, p. 127.

123 S. McCrystal and T. Hardy, « Filling the Void? A Critical Analysis of Competition Regulation of Collective Bargaining Amongst Non-employees », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 37, no. 4, 2021, p. 359; similarly, A. Bogg, « Square pegs in round holes? Collective bargaining and the self-employed », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 409; C. Hiesl, « Germany: The Self-Sufficient Entrepreneur Trope and the Pandemic Gnawing Away at It », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 38, no. 4, 2022, p. 505.

124 A. Perulli, « A critique of self-employment », *European Labour Law Journal*, 13, 2, 2022, p. 306.

125 E. Gramano, « Self-Employment in the EU and Italian Legal Systems: Recent Trends and Missed Steps », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 38, no. 4, 2022, p. 469; similarly, J. L. Gil Gil, « Collective bargaining for the self-employed », *Comparative Labor Law and Policy Journal*, no. 42, 2021, p. 327.

126 O. Razzolini, « Self-employed workers and collective action: necessary response to increasing income inequality », *Comparative Labor Law and Policy Journal*, no. 42, 2, 2021, p. 293.

127 E. Gramano, « Self-Employment in the EU and Italian Legal Systems: Recent Trends and Missed Steps », *op. cit.*, p. 453.

128 Article 2 of Legislative Decree n. 81/2015.

129 Law n. 81/2017.

legislative provision has granted additional protection to a certain group of self-employed, such as the right to a minimum remuneration for journalists or riders¹³⁰.

The approach undertaken in the EU Platform Directive seems worthy of consideration. Several articles investigate the content of the - then proposed - platform directive. Kovacs defines the approach of the directive as ambiguous. In line with the EU traditional approach to measures protecting self-employed, with the aim of correcting the imbalance of power between the platforms and the person performing platform work and making it easier to correct bogus self-employment, on the one hand, the directive seeks to enlarge the scope of application of standard employment to include platform work. It obliges EU countries to establish an «unprecedented» rebuttable presumption of employment¹³¹. Kovacs claims that it does not address the difficulties of the binary division, as long as the presumption of an employment relationship depends on the presence of facts indicating control and direction of the performance of the work, according to national law and collective agreements in place, as well as taking into account the case law of the EU Court of Justice, which in many countries already «resembles the main requirement of subordination»¹³². On the other hand, it defines the category of “person performing platform work”, granting them some minimum rights regardless of their status, such as rules on algorithmic management to ensure human supervision on important decisions that directly affect these workers, transparency and data protection¹³³.

Another issue concerns the so-called «platform discount», i.e. the unpaid work deriving from the fragmentation of work «into smaller, more specific tasks», to exclude from the scope of remuneration «some of the time or activities necessary to complete tasks», thus transferring costs related to the organisation of work to workers and circumventing some of the obligations imposed upon traditional employers. Magan, Muszyński & Pulignano argue that existing solutions basically relying upon the reclassification can reduce this platform discount. In this respect the recent Platform work directive is an important tool. However, this approach leaves the solo self-employed platform workers unprotected. To address the working conditions of the latter, the authors suggest two «additional and alternative pathways». According to the first, the protection of working condition, at least in the areas of working time, safety and health, and labour intermediation, should cover «all persons performing work who are economically dependent on platforms», regardless of the classification of the contractual relationship. As this approach may be challenging due to the strict reliance of case law and EU regulatory framework on the employment status, as an alternative, they propose to extend to solo self-employed workers on digital labour platforms the scope of application “only” of occupational safety and health regulations, since it is the «the most feasible and promising» area for intervening with the aim of limiting unpaid labour¹³⁴.

130 E. Villa, « Lavoro autonomo, accordi collettivi e diritto della concorrenza dell’Unione Europea: prove di dialogo », *Rivista giuridica del lavoro e della previdenza sociale*, 2, 2022, p. 289.

131 E. Gramano, « Self-Employment in the EU and Italian Legal Systems: Recent Trends and Missed Steps », *op. cit.*, p. 455.

132 E. Kovacs, « The Different Rights of a ‘Worker: A Comparative View », *op. cit.*, p.155-156.

133 N. Potocka-Sionek and A. Aloisi, « Festina Lente: The ILO and EU Agendas on the Digital Transformation of Work », *op. cit.*, p. 61; E. Kovacs, « The Different Rights of a ‘Worker: A Comparative View », *op. cit.*, p. 2023.

134 D. Magan, K. Muszyński and V. Pulignano, « The platform discount: Addressing unpaid work as a structural feature of labour platforms », *European Labour Law Journal*, vol. 14, no. 4, 2023, p. 545.

In the light of socio-economic precariousness of self-employed and of their reduced market power, today, there is growing appreciation of the importance of the ability of workers to conclude collective agreement¹³⁵, as well as of the impact of «competition prohibitions against price-fixing» in workers' capacity to organize for decent wages and working conditions¹³⁶. To this respect, Razzolini interestingly refers to some piece of legislation¹³⁷ and quotes some rulings by the American Supreme Court, the Supreme Court of Canada, and the European Committee of Social Rights¹³⁸, asserting that the rationale of collective mechanisms is «the imbalance of power between providers and engagers of labor», «while the distinction between employees and the self-employed is irrelevant». On these bases, the author argues that the right to bargain collectively must be accorded to all self-employed workers «who have no substantial influence on the content of the contractual conditions»¹³⁹. Mc Crystal and Hardy describe an interesting 2021 amendment in Australian competition law regulation. The Australian Competition and Consumer Act 2010 authorizes groups of small businesses, including self-employed workers, to engage in limited forms of collective bargaining; the above-mentioned amendment established some exemptions that allow some groups of self-employed workers to negotiate collective agreements without previously requiring permission¹⁴⁰. Mc Crystal explains the concept of "public benefit" embraced by Australian competition law. This concept is «grounded firmly in notions of efficiency-efficiencies in contracting, in the allocation of goods and services, and in the provision of goods and services» and «functions as recognition within a competition based regulatory model that collective action by groups of self-employed workers can produce public good»¹⁴¹. Therefore, it seems indisputable «that it is not the legal classification of the work relation as an employment contract, but an existing condition of social and economic disparity that justifies collective rights»¹⁴². Even though the EU Commission Guidelines granting antitrust immunity to collective agreements signed by certain categories of self-employed workers are a «first important recognition of collective protections beyond subordination»¹⁴³, a pitfall to the effective application of the right to collective bargaining for self-employed may be related to the current structure of existing

-
- 135 E. Gramano, « Self-Employment in the EU and Italian Legal Systems: Recent Trends and Missed Steps », *op. cit.*, p. 453; E. Kovacs, « The Different Rights of a 'Worker: A Comparative View », *op. cit.*, p. 151; T. Novitz, « Gig work as a manifestation of short- termism: crafting a sustainable regulatory agenda », *op. cit.* m p. 636; E. Villa, « Lavoro autonomo, accordi collettivi e diritto della concorrenza dell'Unione Europea: prove di dialogo », *op. cit.*, p. 291.
- 136 S. McCrystal and T. Hardy, « 'Filling the Void? A Critical Analysis of Competition Regulation of Collective Bargaining Amongst Non-employees », *op. cit.*, p. 355.
- 137 E.g. the American Clayton Act, Section 17 exemption of collective bargaining from antitrust laws.
- 138 European Committee of Social Rights, Decisions on the Merits, Irish Congress of Trade Unions (ICTU) v. Ireland, Complaint no.123/2016, 12 September 2018.
- 139 O. Razzolini, « Self-employed workers and collective action: necessary response to increasing income inequality », *op. cit.*, p. 312.
- 140 S. McCrystal and T. Hardy, « 'Filling the Void? A Critical Analysis of Competition Regulation of Collective Bargaining Amongst Non-employees », *op. cit.*, p. 357.
- 141 S. McCrystal, «Collective bargaining by self-employed workers in Australia and the concept of "public benefit" », *Journal Comparative Labor Law and Policy Journal*, no. 42, 2, 2021, p. 288.
- 142 O. Razzolini, « Self-employed workers and collective action: necessary response to increasing income inequality », *op. cit.*, p. 307.
- 143 M. Giovannone, « Guidelines on collective agreements regarding the solo self-employed persons: another (controversial) immunity to EU competition rules », *DLM International*, 2, 2023, p. 77.

systems of industrial relations: indeed, many industrial relation systems risk to allow only a «soft or diluted versions of collective bargaining», due to rules unlikely fitting with self-employed¹⁴⁴.

C - AN APPRAISAL OF LABOUR LAW INSTRUMENTS IN PROTECTING VULNERABILITIES

Since we have defined vulnerability as a character that can interest every individual depending on the social and economic context, there are also more “general” need of protections to be addressed, in the sense that there are emerging issues that can have an impact on many workers, who are vulnerable on different grounds.

Several scholars describe the rise of in-work poverty, a phenomenon affecting «with more intensity particular groups of workers»¹⁴⁵. Indeed, according to the EU definition of in-work poverty and the Eurostat data, low-skilled standard employees employed in sectors in which a high rate of employees are low-wage earners, solo self-employed, flexibly employed workers, and casual and platform workers are especially vulnerable to experience the risk of in-work poverty. Due to the multifaceted nature of this phenomenon - on the basis of the study of the regulatory framework that may have an impact on the conditions of such workers - a «policy mix» of protective measures should be identified and made «actually applicable to and accessible to those who would be most in need of them»¹⁴⁶.

The increase of in-work poverty has also been acknowledged by the EU institutions, as we can see in the statement in Principle No 6 of the Pillar, which links the «right to fair wages that provide for a decent standard of living» to the prevention of in-work poverty, and in the Directive 2022/2041 on adequate minimum wages in the European Union. The contents and the possible impact of the directive in the EU Member States have been investigated by many scholars¹⁴⁷. The Directive introduces some procedural rules to ensure the adequacy of statutory minimum wages and - since minimum wage protection provided for in collective agreements has proved to be adequate, providing «a decent standard of living in most cases»¹⁴⁸ - the promotion of the collective bargaining on wage-setting.

144 C. Stylogiannis, « The effective application of the right to collective bargaining for self-employed (platform) workers: 'Not such an easy task' », *European Labour Law Journal*, 14, 4, 2023, p. 512.

145 L. Ratti, A. Garcia-Muñoz and V. Vergnat, « The challenge of defining, measuring and overcoming in-work poverty in Europe: an introduction », *Bulletin of comparative labour law*, no. 111, 2022, p. 16.

146 C. Hiessl, « Working, Yet Poor: a comparative appraisal, in Ratti L. (a cura di), In-work poverty in Europe. Vulnerable and under-represented persons in a comparative perspective », *Bulletin of comparative labour law*, 111, 2022, p. 359

147 L. Ratti, « The Sword and the Shield: The Directive on Adequate Minimum Wages in the EU », *Industrial Law Journal*, 52, 2, 2023, p. 477; E. Sjödin, « European minimum wage: A Swedish perspective on EU's competence in social policy in the wake of the proposed directive on adequate minimum wages in the EU », *European Labour Law Journal*, 13, 2, 2022, p. 273; V. Bavaro and G. Orladini, « Salario, legge e contrattazione collettiva in Italia », *Rivista giuridica del lavoro e della previdenza sociale*, 4, 2023, p. 507 ff; M. Bogoni, « La regulación europea del salario mínimo en la Directiva (UE) 2022/2041 de 19 de octubre », *Temas Laborales*, 166, 2023, p. 171.

148 Recital no. 13 of Directive (EU) 2022/2041 of the European Parliament and of the Council of 19 October 2022 on adequate minimum wages in the European Union.

Deakin agrees that minimum wage «is a core labour law institution» with important protective functions, including the reduction of in-work poverty and the enhancement of dignity at work. Not less important, the minimum wage can also serve «as the basis for an inclusive and sustainable economy», ensuring that firms do not externalize social costs on communities and the state¹⁴⁹. After reasoning on the arguments proposed in the past in UK for the introduction of the statutory minimum wage, the author considers the National Living Wage provided for by the legislation – that is not «a true living wage», even though «is a significant step in the direction of one» – and compares it with the “voluntary” one based on the calculation of the living costs, promoted by the LW campaign and rather widespread in UK. In his opinion, the latter is noteworthy since it is «community, not workplace, based», as this is the signal of a different – more human-centred – approach to this kind of vulnerability¹⁵⁰.

There are many other issues that could be mentioned when reasoning on the measures that can protect the most vulnerable workers. For example, Potocka-Sionek and Aloisi think that one of the major challenges in the digital transition is the information asymmetry, hindering the capacity of public authorities to monitor and enforce core labour standards and social rights¹⁵¹. Thus, they argue the importance of promoting transparency of companies’ internal and external operations. From a different point of view, transparency is also crucial in the view of limiting an abusive use of algorithmic management practices¹⁵².

We cannot list the several measures that can help in preventing that nobody is left behind. Both the legislators and the social partners must be involved in designing and implementing measures to deal with the impacts of the transition on «workers, regions and vulnerable individuals» most affected by the green transition¹⁵³, as well as by the digital innovations. Potocka-Sionek and Aloisi suitably point out that, due to the «transnational, de-territorialized and fragmented character of work organized through digital infrastructure», the ILO and the EU are in the best position – compared to domestic legislators – to stimulate the debate and identify effective solutions copying with «accelerating global inequalities and intensifying power imbalances between management and labour» brought about by the technology¹⁵⁴.

Raising the discussion at a higher level, Dermine addresses the topic of the green transition arguing that «the construction of a sustainable social law will require its progressive emancipation from the ‘productivist ideology’». Indeed, while the productivism

149 S. Deakin, « Failing to Succeed? The Cambridge School and the Economic Case for the Minimum Wage », *International Journal of Comparative Labour Law and Industrial Relations*, vol. 38, no. 2, 2022, p. 234.

150 *Ibid.*, p. 230.

151 N. Potocka-Sionek and A. Aloisi, « Festina Lente: The ILO and EU Agendas on the Digital Transformation of Work », *op. cit.*, p. 61.

152 G. Gaudio, « Algorithmic Bosses Can’t Lie! How to Foster Transparency and Limit Abuses of the New Algorithmic Managers », *Comparative Labor Law and Policy Journal*, no. 42, 2022, p. 707; M. Ginsburg, « Fostering Transparency and Limiting the Abusive Use of Algorithmic Management Practices - The View from the United States », *Comparative Labor Law and Policy Journal*, no. 42, 2022, p. 743.

153 S. Canalda, « The European Green Deal: A Useful Framework for Anticipating Change in Companies? », *op. cit.*, p.423-424.

154 N. Potocka-Sionek and A. Aloisi, « Festina Lente: The ILO and EU Agendas on the Digital Transformation of Work », *op. cit.*, p. 36.

is based on the belief that the continuous increase of production and economic growth – although it is demonstrated that these factors are not correlated to the population's well-being – are desirable, today a reduction of the production and consumption of superfluous goods will be necessary to cope with the environmental change¹⁵⁵. Therefore, Dermine asserts that social law «must break free from the ideology of productivism» to enable a transition towards a more sustainable future¹⁵⁶. In line with this approach, Deakin presents the idea of «Capitalocene» to describe the «anthropogenic climate change» as the outcome of capitalism and to demonstrate that there are some structural limits in the idea of sustainability underpinning the recent initiatives that are seeking to reconcile corporate profit making with cost internalization¹⁵⁷.

Conclusion

The set of journals analysed provides a comprehensive overview of the transformations that the digital and ecological transitions are bringing about in industrial relations. These transitions present both opportunities and challenges, with the promise of technological and economic advances. The implementation of artificial intelligence and digital technologies has changed the way in which work is organised and managed, posing significant challenges in terms of privacy protection and environmental sustainability; in addition, digital platforms and the use of algorithms in labour management can lead to fragmentation of labour relations and precariousness, underlining the urgency of developing regulatory frameworks that recognise and protect workers on these platforms. In this context, just transition stands as a fundamental principle to ensure that the changes do not come at the expense of workers: the importance of worker participation in decision-making and the need for policies that promote inclusion and equity in the transition to a green and digital economy are emphasised. Due diligence is presented as a crucial tool to ensure that companies act responsibly, but the lack of effective mechanisms to monitor and ensure compliance with these obligations may undermine its purposes; also, in this respect, the need to incorporate the voice of workers in these processes is highlighted.

The present contribution has also analysed some of the main vulnerabilities that risk being exacerbated by the described transitions and some labour law instruments and institutions aimed at protecting the most vulnerable workers, in the view of offering some elements to build critical perspectives on political and social institutions. From the described framework, the balance between protecting against vulnerabilities and keeping up with digital and environmental transitions appears difficult. In addressing these transformations, many articles emphasise the need to keep in mind the gender perspective, to promote a truly gender substantive equality, otherwise their role in social reproduction risks adding barriers and burdens to already existing inequalities. The need for social protection for solo self-employed is also emphasized: the current legal framework is insufficient and does not fully reflect the organization of different forms of work. Maybe this matter should be well investigated and addressed – overcoming the binary division between employees and

155 E. Dermine, « Towards a Sustainable Social Law: What Role for Legal Scholars? », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 39, no. 3&4, 2023, p. 317.

156 *Ibid.*, p. 334

157 S. Deakin, « Labour Law and the 'Capitalocene': Law, Work and Nature in the Ecological Long Durée », *International Journal of Comparative Labour Law and Industrial Relation*, vol. 39, no. 3&4, 2023, p. 282.

self-employed - by adopting the purposive approach proposed by Kovacs, starting from questioning what protection these workers should be entitled to¹⁵⁸.

In conclusion, the vulnerability of workers to these transitions requires a comprehensive policy response. The creation of robust legal frameworks that incorporate labour rights protections, transparency in the use of artificial intelligence and worker participation is essential to ensure that the digital and green transitions are fair and equitable. It requires an approach that not only focuses on corporate risk management, but also actively promotes quality job creation, social protection and the inclusion of workers in the economy of the future. Only concerted action and cooperation between policy makers, business and labour can ensure that current and future transitions are made in a way that benefits society. In light of the recent transitions and transformations in the way of working, it seems reasonable the request formulated by some academics for a new approach to labour law issues and a rethinking of the traditional statutory protection model.

158 E. Kovacs, «The Different Rights of a 'Worker: A Comparative View », *op. cit.*, p. 151.

CATALINA SMINTINICA

PhD Researcher, University of Castilla-La-Mancha, Spain

Research topics: Financing of the social security system, social protection of people with disabilities, gender equality, data protection, public employment policies, labor law.

Publications:

~ C. Smintinica, «Novedades destacables de la pensión de jubilación anticipada de las personas con discapacidad en grado igual o superior al 45% a la luz del RD 370/2023, de 16 de mayo, Trabajo, edad y pensiones de jubilación», *Comunicaciones del XXXIV Congreso Nacional de la Asociación Española de Derecho del Trabajo y de la Seguridad Social*, 2024, págs. 813-830.

~ C. Smintinica, «Reseña de Deslocalizaciones de empresas y despidos colectivos, Antonio Baylos Grau, Editorial Bomarzo, Albacete 2022», *Revista del Ministerio de Trabajo y Economía Social*, n°159, 2024, p. 264-271.

GIULIA MARCHI

Research fellow, University of Bologna, Italy

Research topics: The right to fair and adequate wage, in-work poverty, gender gap, social clauses and protections for employees in outsourcing processes.

Publications:

~ G. Marchi, «La questione di genere nella prospettiva di contrasto al lavoro povero: tra esigenze di conciliazione, discriminazioni e gender pay gap», *Special Issue «Il lavoro povero in Italia: problemi e prospettive»*, *Diritto del Lavoro*, 2022, p.63-96.

~ G. Marchi, «Adequate Wages Across the EU», in Ratti L., Schoukens P. (a cura di), *Working Yet Poor: Challenges to EU Social Citizenship*, Oxford, Hart Publishing, Bloomsbury Collections, 2023, pp. 117 - 138.