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Massimiliano Delfino

The ICJ Advisory Opinion on the Right to Strike: "Much Ado About Something"

Contents: 1. From an ILO supervisory principle to a treaty right. 2. Consequences for States parties. 3. The Opinion does not determine the precise scope of the right. 4. Consequences for the ILO supervisory system. 5. The possible end of the institutional impasse within the ILO. 6. Consequences for national courts. 7. The European dimension. 8. Conclusion.

1. *From an ILO supervisory principle to a treaty right*

The Advisory Opinion rendered by the International Court of Justice (ICJ) on 21 May 2026 marks a development in the international legal protection of the right to strike. The Opinion matters not only because the Court answered the International Labour Organization (ILO) Governing Body's question affirmatively, but also because that answer has consequences for the interpretation and application of Convention No. 87, the ILO supervisory system, and national legal orders.

The Court's central conclusion is unequivocal: it held that "the right to strike of workers and their organisations is protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)". This conclusion puts an end, at least as regards the existence of the right under Convention No. 87, to a controversy that had affected the functioning of the ILO supervisory system for several decades.

The Opinion's first and most important consequence concerns the legal foundation of the right to strike. Before this decision, the proposition that Convention No. 87 protects the right to strike rested primarily

upon the interpretation progressively developed by the ILO supervisory bodies. Over time, the Committee on Freedom of Association (CFA), the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and Commissions of Inquiry have converged on the proposition that the right to strike is an essential means by which workers and their organisations defend their occupational interests. The Court itself acknowledges that these bodies have progressively recognised the right to strike as protected by Convention No. 87 and have maintained that position for decades.

The employers' group had, however, persistently contested this interpretation, arguing that Convention No. 87 contains no express reference to strikes and that the supervisory bodies lacked authority to create obligations not adopted by the International Labour Conference. The resulting disagreement eventually contributed to a serious institutional impasse within the ILO.

The ICJ Opinion substantially changes the terms of that controversy. The right to strike can no longer be described simply as a principle developed by the ILO supervisory bodies through an expansive interpretation of Convention No. 87. According to the Court, the Convention itself provides the protection.

The Court reaches this conclusion principally through the general rules of treaty interpretation. In its view, strike action constitutes one of the principal activities and tools through which workers and their organisations promote their interests and improve working conditions. It therefore contributes to the effective exercise of freedom of association. The Court therefore concludes that the ordinary meaning of the Convention's provisions, interpreted in good faith, in context, and in light of the Convention's object and purpose, indicates that the protection of the right to strike is encompassed within the protection of the freedom of association.

This reasoning is significant and should not be underestimated. The right to strike is not treated as an autonomous right added to Convention No. 87. Rather, it is understood as an element of the freedom of association the Convention already guarantees. In other words, freedom of association would lose some of its effectiveness if workers' organisations could exist formally but were denied one of the principal collective means of pursuing and defending their members' interests.

2. *Consequences for States parties*

A second consequence concerns the obligations of States parties to Convention No. 87. Those States must henceforth apply the Convention on the premise that it safeguards the right to strike.

This does not mean that Convention No. 87 establishes an unlimited or absolute right to strike. It does mean, however, that a State party cannot maintain that its legislation complies with Convention No. 87 merely because it guarantees the freedom to establish and join trade unions while imposing restrictions preventing those organisations from taking strike action.

The Opinion therefore changes the starting point for assessing national legislation on the right to strike. The question is no longer whether Convention No. 87 contains such a right since the ICJ has answered that question affirmatively. The relevant question is whether national restrictions on exercising that right are compatible with the freedom of association guaranteed by the Convention.

This distinction also affects the relationship between international and domestic law. National legislation may set out procedures and conditions governing strikes, but for States parties to Convention No. 87, domestic law cannot be the sole and ultimate source of the right. The Convention defines the international framework so that domestic legislation must regulate the exercise of an internationally protected right rather than decide whether such a right exists at all.

The Court's examination of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is significant in this respect. It recalls that Article 8(1)(d) ICESCR expressly protects the right to strike, while Article 8(3) prevents States parties to Convention No. 87 from adopting legislative measures that would prejudice the guarantees contained in that Convention.

The effect is to reinforce the idea that domestic regulation of strike action is not unlimited: national legislation must operate within the framework of the international guarantees that bind the State.

3. *The Opinion does not determine the precise scope of the right*

The Opinion's significance must nevertheless be qualified in one important respect. The Court expressly states that its conclusion that Conven-

tion No. 87 protects the right to strike "does not entail any determination on the precise content, scope or conditions for the exercise of that right". This limitation is fundamental to understanding the Opinion's future consequences.

The Court has settled the question of the right's existence but has deliberately refrained from defining its full normative regime. It has therefore not determined the precise rules applicable to such matters as restrictions on strikes in essential services, minimum-service requirements, procedural prerequisites, strikes by particular categories of public employees, sympathy or solidarity strikes, political strikes, sanctions imposed on workers or trade unions, or the consequences of an unlawful strike.

The principal controversy is therefore likely to move from the existence of the right to the legitimacy of restrictions placed upon it. Before the Opinion, opponents of the established ILO approach could maintain that Convention No. 87 contained no right to strike at all. After this decision, that argument no longer aligns with the ICJ's interpretation. Disagreement will instead concern which restrictions the Convention permits and how to determine the right's content. These are potentially the most important unresolved issues arising from the Opinion.

4. *Consequences for the ILO supervisory system*

The Opinion is also likely to have profound consequences for the ILO supervisory machinery. The long-standing controversy over the right to strike had become an institutional controversy over the CEACR's authority. Employers' representatives challenged both the substantive conclusion that Convention No. 87 protected strike action and the Committee of Experts' competence to reach such an interpretation.

The Court does not resolve every aspect of the second question. Indeed, the question submitted to it was deliberately confined to whether Convention No. 87 protects the right to strike. The Court therefore did not determine the CEACR's general institutional competence to specify the scope and limits of the right.

Nevertheless, its reasoning substantially strengthens the ILO supervisory bodies' position. The Court notes that these bodies have progressively converged in recognising the protection of the right to strike. More im-

portantly, in discussing supplementary means of interpretation, the Court states that it may accord "great weight" to the pronouncements of ILO supervisory bodies and considers them to confirm the interpretation the Court independently reached.

The implications are significant. The proposition that the CEACR simply created a right having no foundation in Convention No. 87 has lost much of its force. The ICJ has reached essentially the same conclusion through its own interpretation of the Convention.

At the same time, however, the Court has not automatically transformed the entire body of CEACR or CFA jurisprudence concerning strikes into binding treaty law. This distinction is particularly important. Confirming the existence of the right does not necessarily confirm every proposition developed by the supervisory bodies concerning its scope, legitimate purposes, permissible restrictions, and conditions of exercise.

The future debate within the ILO will therefore likely concern the extent to which the supervisory bodies can derive their detailed principles from Convention No. 87 after the Court recognises the underlying right.

5. *The possible end of the institutional impasse within the ILO*

The Opinion may also remove one of the principal causes of the institutional deadlock that had affected the ILO's standards-supervision machinery.

The disagreement became particularly acute from 2012 onwards and led the Committee on the Application of Standards to refrain from addressing the right to strike in its conclusions on individual cases under Convention No. 87. The request for an advisory opinion followed unsuccessful attempts to resolve the disagreement through negotiations within the ILO.

The ICJ has now provided an authoritative answer to the foundational legal question that generated that dispute. Consequently, the argument that cases involving strike restrictions cannot properly be examined under Convention No. 87 because the Convention does not protect the right to strike can no longer be maintained consistently with the Court's interpretation.

This could permit the ILO supervisory machinery to return to substantive consideration of national strike legislation and practice under Convention No. 87.

However, institutional disagreement may not disappear entirely. Instead, it may shift to questions about the permissible limits of the right and supervisory bodies' authority to set detailed standards in this field.

6. *Consequences for national courts*

The Opinion is also likely to influence domestic judicial interpretation. It does not itself annul or invalidate national legislation. Nor does the Opinion determine the domestic legal effects of Convention No. 87 in each State party. Those consequences depend upon the constitutional system concerned, including the domestic status of treaties, the possibility of direct application of international labour conventions and the relationship between international norms and domestic legislation.

Nevertheless, when national courts, especially supreme courts, consider international labour law and relevant conventions, the Opinion will come to the fore, as it substantially strengthens Convention No. 87's relevance in strike-related litigation.

Judges can no longer approach Convention No. 87 on the assumption that its silence concerning the word "strike" excludes strike action from its scope. The ICJ has expressly rejected that logic. Instead, courts applying or taking Convention No. 87 into account must start from the opposite proposition that the right to strike forms part of the freedom of association protected by the Convention.

The Opinion may therefore be particularly important in disputes concerning statutory limitations on strike action. The legal question becomes whether the restriction preserves the substance and effectiveness of the internationally protected freedom of association.

7. *The European dimension*

For European countries, the ICJ Opinion reinforces an already existing convergence between ILO law and European human-rights law.

The Court expressly considers the European Court of Human Rights' jurisprudence on Article 11 of the European Convention on Human Rights (ECHR). It observes that the Strasbourg Court has interpreted

freedom of association to include the protection of the right to strike and has recognised strike action as one of the most significant means by which trade unions may protect their members' occupational interests. Under certain circumstances, restrictions on strike action may therefore affect the very essence of freedom of association. The conceptual convergence is evident. Under both Convention No. 87, as the ICJ now interprets it, and Article 11 ECHR, strike action is understood not as something external to freedom of association but as a means through which collective freedom becomes effective.

For European States parties to Convention No. 87, national strike regulation therefore operates within overlapping international frameworks. The ICJ Opinion strengthens the possibility of reading these systems in a mutually reinforcing manner.

As for the European Union, the Opinion seems largely irrelevant. The right to strike is a fundamental right of the Union, recognised by both Article 28 of the Charter of Fundamental Rights of the European Union and the case law of the Court of Justice, even though, under Article 153.5 of the Treaty on the Functioning of the European Union, the Union does not have general competence over this field.

8. *Conclusion*

The principal consequence of the Advisory Opinion is a transformation in the legal status of the right to strike within the framework of Convention No. 87. What had long been defended principally as the interpretation of the ILO supervisory bodies has now been authoritatively confirmed by the ICJ: the right to strike of workers and their organisations is protected by Convention No. 87.

The Opinion therefore resolves one controversy but opens another. The existence of the right under Convention No. 87 should now be regarded as settled. Its precise content, scope, permissible limitations and conditions of exercise remain to be determined. The Opinion's future significance will therefore depend largely on how the ILO supervisory bodies, national legislatures, and domestic courts develop these questions.

The resulting legal framework can be summarised in a simple distinction: the right has been judicially confirmed; its normative content remains under

construction. The centre of the international debate on strikes will therefore shift from "Does Convention No. 87 protect the right to strike?" to the more complex question, "What exactly does that protection require of States?".

Finally, major countries such as the United States, China, and India have not ratified Convention No. 87. Nevertheless, these countries are populous, industrialised, and represent a significant share of the global workforce. As a result, since 1948, billions of workers worldwide have not had their freedom of association recognised under international law and are still denied the right to strike. Moreover, as noted, the Opinion seems largely irrelevant for the 27 EU Member States, since the Union already recognises the right to strike.

Silvia Capíková, Mária Nováková

Decent Work and Environmental Sustainability: The Role of Social Enterprises in Just Transition

Contents: 1. Introduction. 2. Theoretical Background. 2.1. Decent Work. 2.2. Environmental Sustainability. 3. Intersections of labour law and green transition. 3.1. Green jobs and labour market transformation. 3.2. Social risks of the Green Transition. 3.3. The role of labour law in a just transition. 4. Social enterprises as actors of a just transition. 4.1. Social enterprises within the social economy. 4.2. Positive Impacts of Social Enterprises. 4.3. Negative effects and limitations of social enterprises. 5. Social entrepreneurship in Slovakia. 5.1. The legal framework and core concepts under national law. 5.2. Statutory criteria of social enterprises and enterprises with social impact. 5.3. Registered social enterprises. 5.4. Regulatory imbalance in the Slovak model. 6. Conclusion.

1. *Introduction*

This article examines whether and to what extent labour law and social enterprises can contribute to the promotion of decent work and environmental sustainability in the context of the green transition. While international and European policy frameworks increasingly emphasise the need for a just transition, the practical implementation of these objectives requires institutional mechanisms capable of combining environmental goals with social inclusion and employment opportunities. Social enterprises represent one of the potential instruments for achieving these objectives.

The article first outlines the concepts of decent work and environmental sustainability and discusses the relationship between labour law and the green transition. It then analyses the role of social enterprises in promoting social and environmental objectives and critically evaluates the Slovak le-

gal framework governing social entrepreneurship as a case study. Particular attention is paid to the extent to which current legislation supports social enterprises as actors of a just transition and to the challenges that limit their effectiveness in practice.

Methodologically, the study is based on qualitative strategy drawing on legislation, international and European policy documents, academic literature and expert reports. Using doctrinal and functional approaches, the article assesses the strengths and weaknesses of the Slovak regulatory framework and formulates recommendations for its further development. The article contributes to legal scholarship by extending the discussion on just transition beyond traditional labour-law instruments and examining social enterprises as potential institutional actors linking decent work, social inclusion and transition-related activities.

2. *Theoretical Background*

2.1. *Decent Work*

The right to decent work lies at the core of labour law, and its enforcement at the global level has been endorsed by the ILO since its inception. ILO's report titled "Decent Work" defines "Decent Work" as a most recent goal of ILO endeavours and the "converging focus of all its four strategic objectives: the promotion of rights at work; employment; social protection; and social dialogue"[1]. As argued by Ghai, political implications of decent work include focus on opportunities for work that are productive and deliver a fair income, provide security in the workplace and social protection for families, offer better prospects for personal development and social integration, and ensure freedom for people to express their concerns, organize, and participate in decisions that affect their lives, emphasizes equality of opportunity and treatment for all women and men. Decent work applies not just to workers in the formal economy but also to unregulated wage workers, the self-employed and home workers. It also refers to adequate opportunities for work, remuneration (in cash and in kind), and embrac-

[1] ILO, *Report of the Director-General: Decent Work*, International Labour Conference, 87th Session, Geneva, 1999.

es safety at work and healthy working conditions[2]. An attribute of decent work also includes safe working conditions in a broad sense. Workers (especially in sectors such as agriculture) should be protected from social and environmental risks.

An integrative approach to decent work and environmental protection is endorsed also by the European Union (EU). The environmental rights of employees arising from EU legislation have recently been the subject of extensive analysis by European Trade Union Institute ETUI experts[3]. Also, job quality in the context of "just transition" had been explored[4].

2.2. *Environmental Sustainability*

Environmental sustainability has become a key objective of international, European and national policies. In the European context, the concept is closely linked to the Green Transition, which refers to the shift from a fossil-fuel-based economy towards a low-carbon and resource-efficient model of development. This process encompasses decarbonisation, the expansion of renewable energy sources, the promotion of a circular economy and the reduction of environmental risks. The term appears in policy frameworks such as the European Green Deal[5] (European Commission, 2019) and in UNEP studies[6], which emphasise the need to create "green jobs" and a Just Transition to minimise social inequalities.

The concept of sustainable development challenges traditional growth-oriented economic models by emphasising that long-term economic prosperity cannot be achieved through the unsustainable exploitation of natural resources or by externalising environmental and social costs. The transition towards a sustainable economy therefore requires economic actors capable of combining economic activity with environmental respon-

[2] Ghai, *Decent Work: Concept and Indicators*, in *ILR*, 2003, 2, pp. 113-145.

[3] Arabadjieva, Tomassetti, *Towards Workers' Environmental Rights - An Analysis of EU Labour and Environmental Law*, in *ETUIWP*, 2024.02.

[4] See e.g. Zwysen, *Green Transition and Job Quality: Risks for Worker Representation*, ETUI Technical Brief 2024.02, European Trade Union Institute, Brussels.

[5] European Commission, *The European Green Deal*, COM(2019) 640 final, 2019.

[6] UNEP, *Green Jobs: Towards Sustainable Work in a Low-Carbon World*, 2008, available at www.wedocs.unep.org (accessed 18 April 2025).

sibility and social objectives. In this context, increasing attention is being paid to organisations that contribute simultaneously to environmental protection, social inclusion and the creation of decent jobs.

As Colombo argues, the Green Transition may constitute the basis for a new economic and social model combining environmental protection with social cohesion and equity[7]. This aspect is particularly relevant for labour law and social economy policies, as the transition to a "greener" economy is expected to affect employment structures, qualifications and working conditions across multiple sectors.

Against this background, social enterprises have attracted increasing attention as organisations capable of combining economic activity with social inclusion, employment creation and environmental objectives. Their potential contribution to a just transition therefore deserves closer legal examination.

3. *Intersections of labour law and green transition*

3.1. *Green jobs and labour market transformation*

The intersections between labour law and the transition to a green economy represent an important topic that encompasses various aspects of social justice, sustainable development, and environmental protection. In 1987, the United Nations "Brundtland" Commission defined sustainability as "meeting the needs of the present without compromising the ability of future generations to meet their own needs"[8]. Recently, the UN Sustainable Development Goals (SDG) form the framework for improving the lives of populations and mitigating the hazardous man-made effects of climate change.

In the last 15 years, many international strategic documents have emerged by UN, ILO[9] and EU as well[10] and publications resulting from

[7] Colombo, *Social Cooperatives and Inclusion: A Model for Labour Law Sustainability*, in this journal, 2023, 2, p. 38.

[8] UN, *Report of the World Commission on Environment and Development: Our Common Future*, Oslo, 1987, available at www.un-documents.net.

[9] ILO, *Guidelines for a Just Transition towards Environmentally Sustainable Economies and Societies for All*, 2015.

[10] European Commission, *The European Green Deal*, cit., available at www.ec.europa.eu (accessed 18 April 2025).

academic research and expert practice are continuously increasing. Environmental goals overlap with UN "Sustainable development goals" agenda. Insights into the crossectionality of labour law and environmental issues can be found also in UN AGENDA 2030[11].

The 2030 Agenda is a global framework adopted by all UN Member States in 2015. It aims to achieve sustainable development in its three dimensions – economic, social and environmental – by 2030 through 17 Sustainable Development Goals (SDGs) and 169 specific targets. The document emphasizes the principles of "leave no one behind", the universality and interconnectedness of the goals. It is a plan to transform the world towards prosperity, peace and protection of the planet. Especially SDG 13: Climate Action calls for integrating measures to prevent climate change within development frameworks.

International policy documents frequently distinguish between 'brown', 'white' and 'green' jobs according to their environmental impact. 'Brown' jobs are sometimes referred to as 'dirty' because they have the most severe impacts on environmental pollution. 'White' jobs are considered neutral in terms of such impacts, and finally, 'green' jobs actively support the restoration of the environment and natural resources or protect them from damage risks. UNEP has highlighted that the transition towards a greener economy may result in job creation, job transformation and the decline of environmentally unsustainable forms of employment.

As pointed out by R. Klimko, the first report that focused on the creation of "green jobs" in selected sectors and economies at the global level was the report by UNEP published in 2008[12], which defined "green jobs" as jobs in certain sectors (agriculture, manufacturing, research and development, administrative and service activities) that significantly contribute to the preservation or restoration of environmental quality. Specific examples of green jobs include jobs that help a) protect ecosystems and biodiversity, b) reduce energy, material, and water consumption, c) decarbonize the economy, and d) minimize or completely prevent the generation of any forms of waste and pollution. According to the authors of the report, employment will be affected in at least four ways: (1) Creation of new jobs. In some cases, new jobs will

[11] UN, *The 2030 Agenda for Sustainable Development*, available at www.unsdg.un.org (accessed 18 April 2025).

[12] UNEP, *Green Jobs*, cit.

be created, e.g., manufacturing equipment to control pollution produced by existing manufacturing facilities. (2) Replacement of 'dirty' jobs. Some jobs will be replaced, such as transitioning from fossil fuels to renewable energy sources or from landfilling to waste recycling. (3) Elimination of jobs without direct replacement. For example, when the production of non-ecological products is stopped. (4) Transformation, 'greening' of existing jobs. The report anticipates that existing jobs will be transformed and redefined due to the greening of work methods and procedures, such as construction workers[13]. According to Klimko and other authors, the specific impacts on employment vary across companies, industries, regions, and countries.

The environmental impact of employment according to Bohnenberger can be assessed in four dimensions: (1) output type: sustainable goods and services as the outputs from work, (2) occupation: green tasks and activities at the workplace, (3) work-lifestyles: working conditions that promote workers' sustainable lifestyles, (4) outcome efficiency: resource-light production processes. Thus, labour market policies are crucial leverages for sustainability transitions[14].

As pointed out by Vera Weick, "key characteristics for the process of 'greening' can be described by: (i) an increase in the share that 'green sectors' contribute to the Gross Domestic Product as well as in a country's population that is employed in these sectors; (ii) decoupling of economic growth from resource use and environmental impact; (iii) an increase in public and private investment going into green sectors; and (iv) a changing composition of aggregated consumption in which the share of environmentally friendly products and services increases"[15].

According to the UNEP's report "Towards a Green Economy"[16], key areas of policy-making which provide crucial enabling conditions for a green economy transition are cross-sectional and include:

[13] Klimko, *Zelená ekonomika a zelené pracovné miesta pre udržateľnú budúcnosť*, Ekonomická univerzita v Bratislave, Bratislava, 2023, p. 29, available at www.nhf.euba.sk (accessed 18 April 2025).

[14] Bohnenberger, *Is It a Green or Brown Job? A Taxonomy of Sustainable Employment*, in *EcE*, 2022, 200, 107469.

[15] Weick, *Green Economy and Sustainable Development*, in Kummer Peiry, Ziegler, Baumgartner (eds.), *Waste Management and the Green Economy*, Edward Elgar Publishing, 2016, pp. 121–150.

[16] UNEP, *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication – A Synthesis for Policy Makers*, 2011, available at www.wedocs.unep.org (accessed 18 April 2025).

- establishing sound regulatory frameworks that create rights, incentives, minimum standards and prohibit the most harmful forms of behaviour and substances;
- promoting investment and spending in areas that stimulate a Green Economy (e.g. in technology, infrastructure or allied industries);
- limiting government spending in areas that deplete natural capital through a reduction of environmentally harmful subsidies;
- addressing environmental externalities and existing market failures by employing taxes and market-based instruments that promote green investment and innovation; and
- strengthening international governance in areas where international and multilateral mechanisms regulate economic activity in addition to national laws.

Building on the UNEP's report, Vera Weick claims that countries have different capacities to initiate and implement policy reform and cope with transformative change, depending on their current level of development, thus, other supporting actions are needed, such as: increase capacity and strengthen institutions, provide training and skill enhancement to the workforce, and improve general education on sustainability[17].

A sudden disruption of the economy, which would reduce the number of "brown" jobs and "dirty" industries, may raise various concerns. Social change, which will consist of changes in the labour market, needs to be regulated, in which the irreplaceable role of social policy and labour law as its sui generis tool is essential. The released workforce should be "redirected" in a socially desirable way, which will consider ecological indicators and goals, while also allowing for decent jobs. An important question is whether the creation of new jobs should be left to the "invisible free hand of the market" supported by the rule of law, or "nudging", or whether it would require stronger active involvement of the state.

3.2. *Social risks of the Green Transition*

The EC's recent analysis "The Possible Implications of the Green Transition for the EU Labour Market" warns loudly, that shifts in EU labour market "are likely to occur between sectors, firms, occupations, and regions. This calls for policymakers to anticipate and address the distributional

[17] Weick, *cit*.

risks of climate policy. Three types of jobs ("green", "white" and "brown") are distinguished that would be differently affected". Brown jobs would be most negatively affected - while on aggregate, their share is relatively small, impacts may be concentrated in sectors and regions[18].

While the Green Transition may create new employment opportunities, the emergence of new jobs does not automatically compensate for the social consequences associated with the decline of traditional sectors. New jobs may differ in terms of wages, social status, professional identity, working conditions or geographical availability. Consequently, workers affected by the decline of carbon-intensive industries may not perceive newly created employment opportunities as adequate substitutes for their previous occupations. The transition may also affect established patterns of consumption and living standards, particularly in households and regions economically dependent on declining industries.

These developments may generate new forms of social conflict and resistance to environmental policies, especially where affected groups perceive the costs of the transition as being distributed unequally.

Zimmermann conceptualises "green social risks" as social risks emerging from climate change and climate-policy responses, and links them to welfare-state arrangements, social cleavages and the legitimacy of different transition pathways. She argues that welfare states remain functionally necessary to mitigate these risks through social assistance, unemployment protection, insurance schemes and active labour-market policies[19].

Zimmermann also points to the new redistributive conflicts. She claims that political push for some restrictions of use of natural and societal sources can recall refusal by some parts of the society, can be seen as a political plot of the rich or the class struggle and lead to social and political movements, such as the "French yellow vest movement" which "emerged as protest against diesel tax increases, pointed already in 2018 to new social cleavages that might emerge around the social question in a green transformation, and protests against rising energy prices bring the issue of class struggles onto the agenda"[20].

[18] Vandeplas, Vanyolos, Vigani, Vogel, *The Possible Implications of the Green Transition for the EU Labour Market*, European Commission, Directorate-General for Economic and Financial Affairs, Brussels, 2022, available at www.economy-finance.ec.europa.eu (accessed 18 April 2025).

[19] Zimmermann, *Varieties of Green Transitions? Comparative Welfare State Research and the Social Dimension of Green Transitions*, in *EPS*, 2024, 23, pp. 56-69, at p. 58.

[20] Zimmermann, *cit.*, p. 59.

Green transition thus brings various types of social risks, many "unknown unknowns" which should be mitigated by a mix of legal measures and policies.

3.3. *The role of labour law in a just transition*

The transition to a green economy brings several challenges for employment, such as:

1. Job transformation: many traditional jobs may be replaced by new, green jobs. This requires retraining workers and investing in education.

2. Technological changes: green technologies often require specific skills that are not commonly available. This can lead to a shortage of qualified labour.

3. Social justice: it is important to ensure that the transition to a green economy is fair and does not create social inequalities. This includes protecting workers' rights and ensuring equal opportunities for all[21].

Labour law can support employment in the green economy in the following ways:

1. Creation and implementation of laws that promote green jobs and assure the protection of workers' rights in new sectors.

2. Support for retraining: laws and policies that promote retraining and education of workers to adapt to new technological requirements.

3. Social protection: ensuring social protection for workers affected by the transition to a green economy, including support in finding new jobs[22].

Labour law regulation of working time, overtime, remote work can have implications on energy consumption and carbon emission. Collective labour law can support environmental sustainability and green transition also by protection of collective bargaining which relates to implementation and supervision of sustainable policies. Promotion of collaboration between employers, trade unions and environmental organisations could prevent harmful practices[23]. Labour law enforcement is crucial in motivating employees and employers to comply with safe and sustainable practices.

[21] Klimko, *cit.*

[22] European Commission, *The European Green Deal*, cit.

[23] Arabadjieva, Tomassetti, *cit.*

Other legislative determinants of "greening the economy" may involve indirect incentives related to the business environment in which employers, as economic entities, operate. These will mainly include financial incentives (grant programs, tax reliefs, etc.) and facilitating the sale of products from such employers, e.g., prioritizing offers in public procurement of services and goods for public bodies.

In this context, social enterprises deserve particular attention as potential actors of a just transition.

4. *Social enterprises as actors of a just transition*

Numerous studies support the argument, that social enterprises effectively contribute to environmental sustainability through innovative practices and community engagement[24]. Social enterprises are known for environmentally responsible products and services and promoting responsible customer behaviour by specific marketing strategies, thus, multiplying its social impact[25]. Various types of social enterprises have different potential to be social innovators in the just transition[26].

The role of social enterprises in a just transition appears to be threefold. First, social enterprises may contribute to environmental sustainability through environmentally responsible products, services and innovative practices. Second, they may create decent work opportunities and facilitate labour market integration for vulnerable groups. Third, they may complement welfare-state policies by helping to mitigate transition-related social risks and supporting socially inclusive economic transformation.

The relevance of social enterprises in the context of a just transition therefore extends beyond environmental objectives alone. Their potential contribution lies in their ability to combine environmental sustainability, labour-market integration and social protection goals within a single institutional framework.

[24] Vickers, *Social Enterprise and the Environment: A Review of the Literature*, Working Paper 22, Third Sector Research Centre, Birmingham, 2010, available at www.birmingham.ac.uk (accessed 18 April 2025).

[25] Esa, Abdul Rahman, Ahmad, Haron, *Understanding Green Marketing Strategies in Social Enterprises and Responsible Purchase Behaviour: A Literature Review*, in *IJEMP*, 2023, 23, pp. 75-90.

[26] Calderini, Fia, Gerli, *Social Enterprises: Organizations for Transformative Innovation*, in *AMP*, 2022, 1.

This raises an important question from the perspective of labour law and social policy: to what extent does the existing legal framework enable social enterprises to fulfil these multiple functions in practice? To explore this issue, the following chapter examines the concept of social entrepreneurship and its role in promoting decent work and environmental sustainability.

4.1. *Social enterprises within the social economy*

Social economy is increasingly recognised for its capacity to address structural poverty, social exclusion and sustainable development challenges. According to the OECD, it forms part of a plural economy alongside the public and private sectors and contributes to the creation of employment opportunities, particularly for disadvantaged or marginalized groups excluded from the active participation in the labour market, and it produces new goods and services that serve the public interest. By integrating social, economic and environmental objectives, social economy entities are frequently regarded as potential contributors to inclusive and sustainable development[27].

Social enterprises represent one category of entities operating within the broader social economy. According to the European Commission, social economy entities systematically pursue a social and/or environmental purpose while placing people before profit. The concept of social enterprise has been incorporated into several EU legal instruments, including Regulation (EU) No 1296/2013 on a European Union Programme for Employment and Social Innovation; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) 2021/1057 establishing the European Social Fund Plus[28].

According to EU action plan on social economy (2021) and related EU initiatives, the social economy covers entities sharing the following main common principles and features:

- the primacy of people as well as social and/or environmental purpose over profit,

[27] OECD, *Improving Social Inclusion at the Local Level Through the Social Economy*, 2014, available at www.oecd.org (accessed 18 April 2025).

[28] European Commission, *Building an Economy That Works for People: An Action Plan for the Social Economy*, 2021, p. 5, available at www.socialeconomy.eu.org (accessed 18 April 2025).

- the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users ("collective interest") or society at large ("general interest"),
- and democratic and/ or participatory governance[29].

These principles are broadly consistent with the ILO Guidelines for a Just Transition (2015), which emphasise inclusive policies, social dialogue and the protection of vulnerable groups during the green transition.

If social enterprises are expected to contribute to environmental sustainability, labour-market integration and the mitigation of transition-related social risks, it is necessary to examine their actual strengths and weaknesses.

4.2. *Positive Impacts of Social Enterprises*

Social enterprises may contribute to a just transition because of their specific organisational logic. Unlike conventional firms primarily driven by profit maximisation, they are often based on prosocial motivations, compassion and a commitment to addressing unmet social needs[30]. This orientation may increase their willingness to operate in disadvantaged regions, employ vulnerable groups and engage in environmentally beneficial activities even where financial returns are limited.

Research has shown that social enterprises frequently operate under conditions of resource scarcity and therefore rely on bricolage, i.e. the creative recombination of available resources to address social and environmental challenges[31]. This flexibility may constitute an important advantage in the context of a just transition, particularly at the local level where financial and institutional resources are often limited.

There exist various legal and organizational models of social enterprises. Indeed, many recent models of social entrepreneurship have roots in the cooperative tradition, which historically combined economic activity with social and community objectives. Social cooperatives, for example, may

[29] European Commission, *Building an Economy*, cit.

[30] Bacq, Janssen, Sabbatucci, Wuillaume, *The Dark Side of Doing Good: A Guiding Framework for Advancing Research on the Negative Outcomes of Social Entrepreneurship*, in *SBE*, 2025, p. 3.

[31] Bacq, Janssen, Sabbatucci, Wuillaume, *cit.*

contribute to sustainable local development[32] and, in some cases, develop into energy cooperatives or other environmentally oriented forms of collective enterprise and thus multiply the positive social impact[33].

Community-based social enterprises may also support locally accepted transition pathways by involving local stakeholders, responding to specific community needs and strengthening local identity. Recent case-based research has identified social innovations in various sectors, including circular economy initiatives, fair trade, gender equality, local economic development, employment of disadvantaged persons and employee empowerment[34]. These examples suggest that some social enterprises are able to combine economic activity with ecological goals and inclusive employment[35].

4.3. *Negative effects and limitations of social enterprises*

Most frequently addressed issues in academic literature include financial strain, balancing social goals with economic reality in competitive markets, inability to achieve declared social goals, distrust or lack of the local community support.

Despite their potential contribution to a just transition, social enterprises often face significant economic constraints. Commercial revenues may fluctuate and may not cover mission-related costs, creating tension between social objectives and economic survival[36]. Dependence on a limited number of funding sources may further reduce organisational resilience and long-term sustainability.

A further challenge concerns the quality and long-term sustainability of employment created by social enterprises. While social enterprises may facilitate labour-market integration, it remains debated whether they provide stable pathways to decent work or primarily function as transitional mechanisms helping beneficiaries acquire skills and subsequently enter the

[32] Colombo, *cit.*, p. 59.

[33] Huybrechts, Pérez Suárez, Cobeña, Sánchez-Torné, *Energy Co-operatives in Spain: The Role of Social Enterprises in the Energy Transition*, in *Fut*, 2024, 160, 103381.

[34] Kim, Fairley, *Social Enterprise as a Catalyst for Progress Toward the Sustainable Development Goals: A Multi-Case Study*, in *IJCF*, 2024, 2, pp. 27-40.

[35] Barna, Zbuchea, Stănescu, *Social Economy Enterprises Contributing to the Circular Economy and the Green Transition in Romania*, in *CIRIEC-E*, 2023, 107, pp. 47-69.

[36] Bacq, Janssen, Sabbatucci, Wuillaume, *cit.*

open labour market. In some cases, efforts to secure revenues, donations or market access may create dependency rather than empowerment among beneficiaries[37].

As social and environmental objectives increasingly become part of corporate strategies, both for-profit and non-profit organisations may overstate their social or environmental impact, creating a gap between declared objectives and actual practices. The problem of 'social washing'[38] appears if declared commitment toward social sustainability issues proves to be false or exaggravated, if there is distinction between "what is claimed" and how the entity operates[39]. Similarly, "greenwashing" is currently understood as a PR tactic used to make a company or product appear environmentally friendly without significantly reducing its negative impact on the environment. The goal is to improve the company's image in the eyes of the public or increase its sales by convincing us that buying from them aligns with customer values[40]. Such behaviour undermines public trust and may weaken the legitimacy of social and environmental initiatives.

From a legal perspective, above limitations demonstrate that the positive effects of social enterprises cannot be taken for granted. Their ability to contribute to a just transition depends not only on organisational motivations and community engagement but also on the legal and institutional framework governing their operation.

Legal regulation therefore plays a central role in shaping incentives, promoting transparency, accountability and effective monitoring of social and environmental claims to prevent and punish practices such as social washing or greenwashing[41].

The following chapter examines whether the Slovak legal framework provides adequate conditions for social enterprises to fulfil their environmental, labour-market and social welfare functions effectively.

[37] Bacq, Janssen, Sabbatucci, Wuillaume, *cit*.

[38] "Social washing practices include hiding negative information, spreading false positive information, and misleading advertisements on topics concerning human rights, work conditions, gender equality, and local community empowerment": Emerick, *What Is Social Washing?*, in *ESGR*, 2021, available at www.esgthereport.com.

[39] Locatelli, Zagaria, Dei, Sainati, *Social Washing in Architecture, Engineering, and Construction Firms*, in *JMEng*, 2025, 41, 04024060, pp. 2-3.

[40] De Freitas Netto, Sobral, Ribeiro, Soares, *Concepts and Forms of Greenwashing: A Systematic Review*, in *ESE*, 2020, 32, 19, p. 2.

[41] Locatelli, Zagaria, Dei, Sainati, *cit.*, p. 32.

5. *Social entrepreneurship in Slovakia*

This chapter examines the Slovak legal framework for social entrepreneurship from the perspective of its capacity to support social enterprises as actors of a just transition.

5.1. *The legal framework and core concepts under national law*

In Slovakia, a social enterprise, specifically of the WISE (Work Integration Social Enterprises) type, was for the first time anchored in legislation in 2008 with an amendment to Act No. 5/2004 Coll. on Employment Services[42]. Under this act a social enterprise was assigned among the instruments of an active labour market policy. The 2008 framework required social enterprises to employ disadvantaged jobseekers, reinvest part of their income into job creation or the improvement of working conditions, and supported them through allowances for creating and maintaining jobs during the initial period of operation. However, this model was relatively narrow. After the relevant allowances were abolished in 2013 and other active labour-market measures were no longer linked to social enterprise status, interest in obtaining this status declined. The period between 2013 and 2017 may therefore be understood as a phase of stagnation in the development of social entrepreneurship in Slovakia[43].

From the perspective of a just transition, this early development is significant. It confirms that the Slovak regulatory model initially framed social enterprises primarily as tools of labour-market integration rather than as broader actors capable of combining employment, social inclusion and environmental sustainability. As a result, the employment-related and welfare functions of social enterprises became more strongly institutionalised than their environmental function.

[42] Cooperative traditions in the territory of present-day Slovakia date back to the nineteenth century, with the *Gazdovský spolok* in Sobotište (1845-1861) often cited as an early example of self-help and cooperative organisation. Social enterprise as a legal category developed much later and became closely linked to active labour-market policy. See Lehocká, Holeková, Schinglerová, Kubalová, Nehaj, Ondruš, *Výzvy sociálneho podnikania v SR (Ekonomické a sociálne prínosy sociálneho podnikania)*, Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky, Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky, 2023, p. 8.

[43] Pongrácz, *Social Economy and Social Entrepreneurship - The Manifestation of Social Responsibility in the Era of Globalization*, in *SHS*, 2020.

Recently, the Ministry of Labour of the Slovak Republic emphasizes inclusive function of social economy as part of social welfare: "The social economy can be characterized and considered as a part of the economy driven by solidarity, with its primary role being the fulfilment of social goals, often pursuing societal objectives. In its basic understanding, the social economy can be expressed as a tool for modernizing the welfare state and its partner"[44].

Currently, Act No. 5/2004 Coll. on Employment Services generally addresses the support of employment and defines tools for active labour market measures. Part Eight of the Act pertains to the employment of persons with disabilities and their retention in employment. It establishes conditions for providing wage subsidies and costs associated with employing disadvantaged persons. It sets conditions for providing financial support for projects aimed at social inclusion, regardless of whether the employers are regular employers or specifically social enterprises, and other indirect support measures such as the quota system.

The recent legal framework for social entrepreneurship is based primarily on Act No. 112/2018 Coll. on Social Economy and Social Enterprises, as amended[45], as *lex generalis,* with the Ministry of Labour, Social Affairs and Family of the Slovak Republic[46] as its promoter.

The successive amendments to Act 112/2018 suggest that the Slovak legislator continues to search for an appropriate regulatory balance in this field. On the one hand, the legal framework must create sufficiently attractive incentives for the development of social enterprises. On the other hand, it must ensure transparency, accountability and effective control in order to prevent the misuse of public support, tax advantages or other benefits associated with registered social enterprise status.

This Act broadened the regulatory framework by defining entities of the social economy and social enterprises. It also introduced the concept of measurable positive social impact and established institutional support structures. The regional assistance shall be provided through the Social Economy Institute and its eight regional offices to provide technical assistance to social economy entities and entrepreneurs. Also strengthened the role of

[44] Ministry of Labour, Social Affairs and Family of the Slovak Republic, *Sociálna ekonomika*, available at www.employment.gov.sk (accessed 18 April 2025).

[45] Hereinafter referred to as "Act 112/2018".

[46] Hereinafter referred to as "the Ministry of Labour".

regional governments in supporting the social economy in a given specific region. Municipalities are allowed to establish their own social enterprises.

This confirms that the Slovak legal framework is, at least formally, capable of accommodating the threefold role of social enterprises identified above: environmental, labour-market and welfare-related.

5.2. *Statutory criteria of social enterprises and enterprises with social impact*

In the logic of the Act, a social enterprise represents a specific institutional form operating within a wider social economy ecosystem.

This Act contains its own legal definition of subjects of social economy: "An entity of the social economy can be a civic association, foundation, non-investment fund, non-profit organization, church-related institution, business company, cooperative, or a self-employed individual who is an employer, who:

a) is not predominantly controlled by a state authority, is not primarily financed[47] by a state authority, does not appoint or elect the statutory body or more than half of its members, and does not appoint or elect more than half of the members of the management or supervisory body,

b) engages in economic or non-economic activities within the framework of social economy activities, and

c) if they conduct business or other profit-making activities according to special regulations, they do not do so exclusively for the purpose of making a profit or use the profit in a manner according to this law".

Act 112/2018 defines social enterprise as a social economy entity through several key criteria: (1) continuous economic activity, (2) the pursuit of a measurable positive social impact, (3) reinvestment of more than 50% of profit, and (4) the involvement of stakeholders in governance[48]. These criteria reflect a hybrid model combining entrepreneurial activity with social objectives.

From the perspective of a just transition, these criteria are important because they may enable social enterprises to combine employment creation, social inclusion and environmental objectives. However, the effec-

[47] Under Section 4, para. 2, financing does not include the provision of support according to this Act or to special regulations.

[48] Act 112/2018, Section 5, para. 1.

tiveness of this model depends on how positive social impact is defined, measured and supported in practice.

The requirement of measurable positive social impact is central to the Slovak model. Normatively, it creates a mechanism through which social enterprises should demonstrate that their activities produce benefits beyond ordinary market activity. However, if measurement focuses predominantly on employment outcomes, the environmental contribution of social enterprises may remain insufficiently visible.

The obligation to reinvest more than 50% of profit supports the primacy of social purpose over profit maximisation. This criterion may strengthen the social and welfare function of social enterprises. At the same time, it may create tensions with economic sustainability, particularly where enterprises operate in sectors with low margins or limited access to stable funding.

The involvement of stakeholders in governance may support participatory decision-making and local embeddedness. This is relevant for a just transition, as locally accepted solutions are particularly important in communities affected by economic restructuring. However, the practical impact of this criterion depends on the actual quality of participation rather than on its formal existence.

A central element of the Slovak statutory model is the requirement of a positive social impact. Pursuant to § 2, a positive social impact for the purposes of this law is the fulfilment of public interest or community interest. The fulfilment of public interest for the purposes of this law is the provision of socially beneficial services for society as a whole or for an unlimited circle of individuals, the provision of socially beneficial services to disadvantaged or vulnerable persons, and the provision of socially beneficial services according to subsection 4, letters g), i), and j). The fulfilment of community interest for the purposes of this law is the provision of socially beneficial services for a group of persons that can be defined and identified according to territorial, membership, interest, or other objective criteria, excluding the provision of socially beneficial services to disadvantaged or vulnerable persons and socially beneficial services according to subsection 4, letters g), i), and j).

Socially beneficial services for the purposes of this law under art. 2, para. 4 include:

a) the provision of healthcare,
b) the provision of social assistance and humanitarian care,

c) the creation, development, protection, restoration, and presentation of spiritual and cultural values,

d) the protection of human rights and fundamental freedoms,

e) education, upbringing, and the development of physical culture,

f) research, development, scientific and technical services, and information services,

g) the creation and protection of the environment and the protection of public health,

h) services to support regional development and employment,

i) ensuring housing, management, maintenance, and renewal of the housing stock,

j) providing financial resources to social economy entities for the performance of socially beneficial services according to letters a) to i).

Section 5 of Act 112/2018 distinguishes between a (1) social enterprise and (2) an enterprise with social impact. A social enterprise is a social economy entity that carries out continuous economic activity while pursuing measurable positive social impact as its primary objective. It must contribute to this impact through its goods, services or the manner of their provision, reinvest more than 50% of its post-tax profit to achieve its main social objective, and involve stakeholders in the governance of its economic activity.

An enterprise with social impact represents a broader and more flexible category. It may take various legal forms, including civic associations, foundations, non-profit organisations, business companies, cooperatives or self-employed individuals. The primary goal of at least one of their economic activities is to achieve a positive social impact, and they meet at least two of the following conditions:

a) The goods or services they produce, supply, provide, or distribute contribute to achieving a positive social impact, or the manner of their production or provision contributes to it,

b) Within one year from the date of approval of the regular financial statements, which demonstrated a positive economic result for the relevant accounting period, they use more than 50% of the post-tax profit from the economic activity, whose primary goal is to achieve a positive social impact, to achieve this primary goal,

c) They involve interested persons in the management of the economic activity, whose goal is to achieve a positive social impact.

The distinction between social enterprises and enterprises with social impact creates a graduated regulatory model. Social enterprises are subject to stricter cumulative criteria, whereas enterprises with social impact provide a more flexible form of participation in the broader social economy. From the perspective of a just transition, this model is potentially useful because it allows different types of actors to combine economic activity with social or environmental objectives. Its effectiveness, however, depends on the meaningful measurement of positive social impact, monitoring of profit reinvestment and the availability of incentives supporting environmental, labour-market and welfare-related functions.

Normatively, Act 112/2018 creates a broader basis for social enterprises than the earlier WISE model. It allows social enterprises to pursue public-interest or community-interest objectives and recognises a wide range of socially beneficial services. It is particularly important that these services include not only social assistance and employment-related activities, but also the creation and protection of the environment, public health, education and regional development. This approach indicates that Slovak legislation understands the social economy not merely as a set of legal forms, but as a sector oriented towards activities producing benefits beyond ordinary market exchange.

5.3. *Registered social enterprises*

Act 112/2018 introduced the registration and distinguishes (1) registered social enterprises and (2) unregistered (*de facto*) social enterprises, which are active in the broader context of social economy. It also establishes criteria and classification of registered social enterprises based on the extent of its operation or based on the object of its operation.

Registered social enterprise status transforms a socially oriented economic actor into a formally recognised legal category. It confirms compliance with statutory criteria and links social enterprise status to support mechanisms, incentives and public oversight.

Control over registered social enterprises operates at two main levels. First, registration functions as an *ex ante* control mechanism. Registered social enterprise status is granted by the Ministry of Labour, Social Affairs and Family only after assessment of whether the applicant fulfils the statutory conditions. In this sense, control begins already at the entry stage: the state

examines whether the applicant has the legal, organisational and governance arrangements necessary to achieve measurable positive social impact. Second, registered social enterprises are subject to continuing obligations during the period in which their status remains valid. These include obligations concerning the reinvestment of more than 50% of post-tax profit to achieve the primary social objective, annual reporting, submission of the annual report to the Ministry and publication of the annual report. Registered social enterprises must also comply with rules attached to public support, including obligations concerning wages declared in connection with public support, limits on certain wage and non-wage costs, reporting of beneficial owners in prescribed cases, and restrictions concerning transactions with related persons or the disposal of assets acquired from public support.

In addition, transparency is supported by the public register of registered social enterprises[49]. The register contains information such as the name of the social enterprise, its legal form, certificate number, type of registered social enterprise, registered seat, date of recognition of status, date and reason for termination or cancellation of status, measurable positive social impact and the socially beneficial service performed by the enterprise[50]. The register therefore functions as an instrument of public transparency, enabling external monitoring.

Section 11 of Act 112/2018 classifies registered social enterprises according to two criteria. First, it distinguishes them according to the type of interest through which they achieve positive social impact. A registered social enterprise that fulfils public interest is classified as a public-benefit enterprise, whereas a registered social enterprise that fulfils community interest is classified as a community-benefit enterprise[51].

Second, the Act distinguishes registered social enterprises according to the focus of their activities. From this perspective, a registered social enterprise may be an integration enterprise, a social housing enterprise or a general registered social enterprise. "Integration enterprises" are particularly linked to employment and regional development, as their function is to support the labour-market integration of disadvantaged or vulnerable persons. "Social housing enterprises" pursue housing-related socially beneficial

[49] Act 112/2018, Section 27.

[50] Register of Registered Social Enterprises, available at www.registre.socialnaekonomika.gov.sk.

[51] Act 112/2018, Section 11, para. 1.

objectives. "General registered social enterprises" may perform a broader range of socially beneficial services, including activities related to healthcare, social assistance, education, culture, environmental protection, regional development and employment[52].

The integration function is reinforced by the broad statutory definitions of disadvantaged[53] and vulnerable persons[54]. These categories include, inter alia, long-term unemployed persons, young persons without stable employment, persons over 50 years of age, persons with low educational attainment, single carers, persons from least developed districts, members of national or ethnic minorities requiring skills development, persons with disabilities, recipients of social services, persons leaving institutional care, carers returning to the labour market, former prisoners, stateless persons and persons granted international protection. This broad personal scope confirms that integration enterprises are designed as instruments of active labour-market policy and social inclusion.

This typology confirms the flexibility of the Slovak legal framework. It allows registered social enterprises to pursue different public-interest or community-interest objectives and to operate in several fields relevant to a just transition. At the same time, it also reveals an important structural feature of the Slovak model: the most explicitly defined and practically significant category is the integration enterprise. This reflects the historical orientation of Slovak social entrepreneurship towards labour-market integration and active labour-market policy, while the environmental function of social enterprises remains legally possible but less specifically institutionalised.

5.4. *Regulatory imbalance in the Slovak model*

The Slovak model of social entrepreneurship reveals a certain regulatory imbalance. Formally, Act 112/2018 allows social enterprises to pursue a broad range of socially beneficial services, including environmental protection, public health, regional development and employment. However, the practical development of the sector suggests that these functions are not equally activated.

[52] Act 112/2018, Section 11, para. 2.
[53] Act 112/2018, Section 2, para. 5.
[54] Act 112/2018, Section 2, para. 6.

First, the Slovak model has developed primarily through the logic of active labour-market policy and work integration. Social entrepreneurship was initially linked to the employment of disadvantaged and vulnerable persons, and this historical orientation continues to shape the sector. Many social enterprises are established by municipalities or regional self-government and focus on creating employment opportunities in regions with limited job opportunities[55]. This confirms the strength of the labour-market and welfare-related functions of social enterprises in Slovakia.

Second, the environmental function of social enterprises remains less developed in practice. Although environmental protection is legally recognised as a socially beneficial service, explicitly environmentally oriented social enterprises appear to be less prominent than integration enterprises. Some social enterprises operate in fields such as landscape maintenance, forestry, gardening or agriculture[56], but environmental activities often appear to be secondary or indirect rather than forming the central identity of these enterprises. The environmental function of social enterprises is therefore legally possible, but less strongly institutionalised and less systematically supported. This does not necessarily mean that social enterprises should be expected to become direct instruments of environmental policy. Their potential contribution lies rather in activities where the green transition creates or reshapes local social and labour-market needs.

Third, weaknesses in data collection, monitoring and evaluation limit the capacity of the state to assess the real contribution of social enterprises. The effectiveness of the Slovak framework depends not only on the formal recognition of registered social enterprises, but also on reliable information about their actual outcomes. Without robust data on employment effects, quality of jobs, social inclusion and environmental contribution, it is difficult to evaluate whether social enterprises genuinely fulfil their declared functions, especially where public or EU funds are used to support the sector.

A share of social enterprises is recently over 600. However, the publicly available catalogue of social enterprises[57] based on the register is outdated,

[55] Ministry of Labour, Social Affairs and Family of the Slovak Republic, *Sociálna ekonomika*, cit.

[56] Ministry of Labour, Social Affairs and Family of the Slovak Republic, *Mapa registrovaných sociálnych podnikov*, available at www.katalogsp.gov.sk (accessed 18 April 2025).

[57] Ministry of Labour, Social Affairs and Family of the Slovak Republic, *Mapa registrovaných sociálnych podnikov*, cit.

there is data chaos and lack of intersectionality in operation in field of social economy and lack of clear strategy by the Ministry of Labour, as pointed out by the latest report based on of social enterprises of the national Supreme Audit Office of the Slovak Republic[58]. Social enterprises, which are meant to be an active tool for integrating disadvantaged groups of people and the long-term unemployed into the work environment, are not being fully utilized in Slovakia. Due to the lack of an information system, the Ministry of Labour does not have sufficient data on the employees of these enterprises, and therefore has been unable to evaluate the effectiveness of individual support mechanisms. As a result, most forms of support for disadvantaged groups either did not work at all or were ineffective, according to SAO report[59].

Fourth, the Slovak context suggests that market demand alone may not be sufficient to activate the environmental potential of social enterprises. The INTERCEPT study indicates that Slovak stakeholders perceive environmental regulation rather than market demand for green products or services as the main driver of the Green Transition[60]. This supports the argument that legal regulation, active labour-market measures and targeted education are particularly important in Slovakia. If spontaneous market incentives are weak, public policy must create conditions enabling social enterprises to link employment creation, social inclusion and environmental objectives.

Overall, the weakness of the Slovak model is not the absence of environmental objectives in legislation, but their insufficient practical activation and weak governance and limited evaluation. Future reforms should therefore focus not only on increasing the number of registered social enterprises, but also on improving the effectiveness of their contribution and its measurement. This requires better monitoring without unnecessary administrative burden, targeted support for environmentally oriented social enterprises, and clearer links between social and green transition policies.

At the same time, the Slovak model provides relatively favourable preconditions for the labour-market and welfare-related functions of social

[58] Hereinafter referred to as "SAO".

[59] Najvyšší kontrolný úrad Slovenskej republiky, *Správa o výsledku kontroly 2023: Sociálne podniky*, 2024, available at www.nku.gov.sk (accessed 18 April 2025).

[60] Intercept Project, *Slovakia: Country Report*, 2022, available at www.interceptproject.eu (accessed 18 April 2025).

enterprises. Integration enterprises are legally and institutionally designed to support the employment of disadvantaged and vulnerable persons, and public incentives may be justified where social enterprises help develop work habits, skills and access to employment for groups facing barriers in the labour market. In this respect, social enterprises may operate as instruments of active labour-market policy and social inclusion.

The possibility of profit generation is particularly relevant for the long-term sustainability of social enterprises. Public incentives may be justified where social enterprises perform labour-market and welfare-related functions, especially by integrating disadvantaged persons into employment. However, if social enterprises are to become sustainable actors of a just transition, they must also be capable of developing viable business models. The Slovak model reflects this dual logic: it permits entrepreneurial activity and profit generation, while requiring that profit be primarily reinvested in the achievement of positive social impact. If a social enterprise generates profit, more than 50% of its post-tax profit must be used to achieve its primary social objective. The Slovak model therefore does not treat social enterprises as purely charitable, incentive-dependent or non-profit actors, but as hybrid economic entities whose market activity is legally linked to social purpose, profit reinvestment and stakeholder involvement.

6. *Conclusion*

International frameworks, including the UN SDGs, ILO Guidelines and the EU Green Deal, provide important guidance for national strategies on the green transition. However, the transition towards a greener economy must also be aligned with the principles of decent work and social inclusion. While environmental transformation may create new employment opportunities, it may also generate social risks for workers, households and regions dependent on traditional sectors. Labour law, social policy and active employment measures therefore play an essential role in ensuring that the Green Transition is also a just transition.

Three conclusions follow. First, the legal framework should more explicitly connect social entrepreneurship with environmental and climate-policy objectives. Second, the measurement of positive social impact

should be complemented by clearer tools for assessing environmental impact. Third, support mechanisms should reduce unnecessary administrative burdens while strengthening transparency, monitoring and accountability.

Social enterprises may contribute to a just transition through their environmental, labour-market and welfare-related functions. They may support sustainable activities, facilitate access to employment for vulnerable groups and complement welfare-state policies aimed at mitigating transition-related risks. However, their contribution cannot be taken for granted. It depends on their economic sustainability, organisational capacity and the legal framework governing their operation.

From the perspective of decent work, social enterprises should not be evaluated only in terms of job creation, but also in terms of job quality, adequate remuneration and long-term employment prospects. Their attractiveness may remain limited if wages and career opportunities are significantly weaker than those offered by large industrial employers. Moreover, if social enterprises are to become economically sustainable actors of a just transition, they cannot remain permanently dependent on public subsidies or project-based funding. Hybrid business models and targeted public education may strengthen both their viability and social recognition.

The Slovak legal framework provides a basis for social entrepreneurship, but its role in a just transition remains insufficiently articulated and depends on stronger governance, monitoring and impact evaluation. Future reforms should not simply expect social enterprises to pursue environmental objectives as such, since activities with primarily environmental goals may have limited commercial viability and may remain dependent on public support. Rather, regulation should identify areas where social enterprises can realistically combine labour-market inclusion, decent work and socially useful activities related to the green transition, while strengthening impact measurement, targeted incentives and long-term economic sustainability.

Abstract

This article examines the role of social enterprises in linking decent work, social inclusion and environmental sustainability in the context of a just transition. It contributes to legal scholarship by extending the discussion on just transition beyond traditional labour-law instruments and by examining social enterprises as potential institutional actors linking decent work, social inclusion and transition-related activities. The article argues that social enterprises should not be understood as direct substitutes for environmental policy, but rather as actors in the social dimension of the green transition. The Slovak case study shows that a formally broad legal framework does not automatically ensure the balanced development of their ability to combine environmental, labour-market and welfare-related goals. Instead, the Slovak model reveals a regulatory imbalance and governance weaknesses, particularly in data collection and impact measurement, that limit the effective contribution of social enterprises to a just transition.

Keywords

Labour law, Social entrepreneurship, Vulnerable workers, Social inclusion, Just transition.

Olga Chesalina

Elderly Care (Platform) Work in Germany: Ensuring a Level Playing Field

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1. *Introduction*

The growth of care platforms is understandable in light of demographic developments, the eldercare crisis, and escalating costs of residential care, not to mention the fact that many elderly people prefer home-based care to full inpatient care. Care work via digital platforms and the business model of care platforms have started to become the subject of academic research. Until now, however, this issue has largely been rather the subject of some sociological projects and publications. Legal research on this topic, and in particular in labour law and social law research, is still in its infancy. This

article seeks to contribute to addressing this gap, focusing on the German perspective.

The article is structured as follows. Since family is still seen in Germany as the main provider of care[1], the article starts with an analysis of labour law and social law guarantees for informal caregivers (i.e., family caregivers), taking into account the implementation of Directive (EU) 2019/1158 of 20 June 2019 on work-life balance for parents and carers in German law. Furthermore, the article provides a short overview of German social law regulations concerning the provision of home-based care services and social benefits for care-dependent persons. As a next step, the author analyses care platforms operating in Germany, comparing platforms' website content and their general terms and conditions (GTC). The analysis of these sources helps to understand contractual relationships within a platform, its market strategies and control mechanisms. In addition, the author compares private regulations of platforms with the German labour law and the case law of European countries concerning the employment classification of platform workers. In the conclusion, the author underlines the shortcomings of the Care Leave Act and the Family Care Leave Act and explains the reasons for a marketisation and platformisation of care. Further, the article correlates the outcomes of the analysis of platform regulations with German law and analyses, in particular, to what extent the framework of social law favours the market entry and dissemination of care platforms at national level. Finally, the author provides some recommendations for further research and legal regulations.

2. *Labour Law and Social Law Guarantees for Informal Caregivers*

2.1. *Situation at a Glance*

For a long time after the introduction of social security, the support of persons in need of care remained the responsibility of families (informal caregivers)[2], and in particular of non-employed women on an unpaid, in-

[1] Reinhard, *Long-Term Care in Germany*, in Becker, Reinhard, *Long-Term Care in Europe. A Juridical Approach*, Springer, 2018, p. 129.

[2] Becker, *Long-Term Care in Europe: An Introduction*, in Becker, Reinhard, *Long-Term Care in Europe. A Juridical Approach*, Springer, 2018, p. 3.

formal basis[3]. Informal (non-professional) care for relatives still remains the most important part of the eldercare landscape[4].

At the same time, family and employment patterns are changing. Due to demographic developments such as population ageing and low fertility rates, the number of people able to provide informal care is declining. Fewer and fewer children continue to live with their parents in the same household; for work reasons, many of them have to live in a different city or country. At the same time, in Germany there are still differences concerning care behaviour in rural areas and urban settings: in rural areas, the average weekly amount of care provided by informal carers is significantly higher than in urban environments[5]. At the same time, it was and it is still common, especially in rural areas, where several generations often live(d) and work(ed) under the same roof, that some sort of "remuneration" for care is arranged through family property transfer, in which children are contractually obligated to provide maintenance and care for their elderly parents for their entire lifetime or at least until they reach a high level of dependency.

2.2. *Guarantees for Informal Caregivers*

Germany is a country that represents neither the explicit familialism model nor the de-familialism model, but rather a country in which a mixed approach is provided: in the classification of Leitner[6] it belongs to countries with the optional familialism model, where formal care services as well as supportive policies for family carers are provided[7]. Section 3 of Social Code Book XI (hereinafter - SGB XI) stipulates that home-based, infor-

[3] Bonoli, *The politics of the new social policies. Providing coverage against new social risks in mature welfare states*, in *PP*, 2005, 33, 3, pp. 431-449.

[4] Of the 5.7 million people in need of care in 2023, 86% were cared for at home. Cf. Destatis, December 2024, https://www.destatis.de/DE/Presse/Pressemitteilungen/2024/12/PD24_478_224.html.

[5] Koch, *Comment on § 3 SGB XI*, in *Kasseler Kommentar* (beck-online. Grosskommentar), 2025.

[6] Leitner, *Varieties of Familialism: The Caring Function of the Family in Comparative Perspective*, in *ES*, 2003, 5, 4, pp. 353-375.

[7] Cited by: Llena-Nozal, Barszczewski, Rauet-Tejeda, *How do countries compare in their design of long-term care provision? A typology of long-term care systems*, OECD Health Working Papers, 2025, No. 182, p. 14, https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/06/how-do-countries-compare-in-their-design-of-long-term-care-provision_035a4e96/44f5453a-en.pdf.

mal voluntary care takes precedence over institutional care[8]. The concept of social insurance presupposes the participation of informal caregivers in home-based care. For this reason, German legislation provides some support measures for informal caregivers through labour law, social law and tax law. Some measures are linked directly to informal carers, while others (cash benefits for home-based care) are delivered to the recipients of care services (i.e., care-dependent persons).

2.2.1. *Social Protection of Informal Caregivers*

Section 44 para. 2 SGB XI grants pension entitlements to informal caregivers under the following conditions: (1) provision of care to an eligible relative; (2) care recipient has a care dependency of at least level 2; (3) care provision of at least 10 hours of care per week, distributed over at least two days, in accordance with Sec. 19 and Sec. 44 SGB XI; (4) care is being provided in the care recipient's home; and (5) caregiver is working no more than 30 hours per week. When these criteria are met, caregivers can accrue pension entitlements equivalent to up to 100% of those earned in an average income job. The level of entitlement depends on the level of care dependency of the assisted person and the type of social benefit obtained (Sec. 166 para. 2 SGB VI).

During the period of caregiving, carers are covered by the statutory accident insurance and unemployment insurance (Sec. 44 paras. 2a and 2b SGB XI). It should be stressed, however, that the collection of pension contributions for informal caregivers is provided only on the condition that the care recipient is insured in the long-term care insurance and has fulfilled a waiting period of at least two years.

2.2.2. *Care Leave Act*

Several laws have been passed in Germany in order to improve the compatibility of work and family care and to create additional opportunities for the home-based care of a close relative who has a care dependency of at least level 1, e.g. the Care Leave Act (*Pflegezeitgesetz - PflegeZG*) of 28 May

[8] Greiner, *Finanzierung des deutschen Sozialleistungssystems solidarisch – nachhaltig – gerecht. Pflegeversicherung*, in *SRa*, 2025, pp. 182-186.

2008[9] and the Family Care Leave Act (*Familienpflegezeitgesetz - FPfZG*) of 6 December 2011[10].

The Care Leave Act provides the following rights: (1) The right to be off work for up to 10 working days if this is necessary to organise appropriate care or assistance for a close relative in need of care in an acute care situation or to provide nursing care during this period (Sec. 2). This right applies to every employee irrespective of the size of the company. It presupposes an acute, newly arisen care situation. This situation justifies submitting an application without prior notice[11]. (2) The right to be fully or partially released from work to care for a close relative in need of care at home for a maximum period of 6 months (Sec. 3). The employer must comply with the wishes of the employee to be partially released from work, unless there are urgent operational reasons to the contrary. This right applies to employers who employ more than 15 employees.

2.2.3. *Income Replacement during the Time Off Work for up to Ten Days*

The employer is not obliged to continue paying a remuneration (*Entgeltfortzahlung*) during the periods described in section 2.2.2, unless such an obligation arises from other statutory provisions or on the basis of an agreement (Sec. 2 para. 3 of the Care Leave Act). Nevertheless, since 1 January 2015, employees, employee-like persons and trainees can apply for carer's allowance (*Pflegeunterstützungsgeld*) from the nursing care insurance fund for the time of temporary impediment of work for the maximum period of 10 working days (Sec. 44a SGB XI). Since 1 January 2024, this carer's allowance, in accordance with Sec. 44a SGB XI, is guaranteed for 10 working days every year and not only once. In the academic literature, it has been suggested that this amendment may have influenced the future interpretation of the maximum duration of the entitlement to time off work[12]. During this period, the mandatory health insurance of a caregiver is maintained (Sec. 44a para. 1 SGB XI).

[9] BGBl. I S. 874, last amendment of 22 December 2025.
[10] BGBl. I S. 2564, last amendment of 23 October 2024.
[11] Bubach, *Comment on § 2 Pflegezeitgesetz*, in *Erfurter Kommentar zum Arbeitsrecht*, 2026.
[12] See Brose, *Die Reform des PflegeZG*, in *ZESAR*, 2023, 8, p. 313.

2.2.4. *Family Care Leave Act*

The Family Care Leave Act provides for part-time care leave, that is, the right to be partially released from work in order to care for a close relative in need of care at home for a maximum period of 24 months. The reduced working time of a caregiver should not be less than 15 hours per week. This law applies to employers who employ more than 25 employees. Care leave and family care leave together may, in total, not exceed 24 months per close relative in need of care.

2.3. *Implementation of Directive (EU) 2019/1158*

Directive 2019/1158 provides a duty of Member States to take the necessary measures to ensure that each employee has the right to carer's leave of five working days per year. The right to be off work for up to 10 working days does not have the same content and goal as the abovementioned right to carer's leave. In the explanatory memorandum to the Care Leave Act, the legislator assumes that an acute care situation "generally" occurs only once per relative in need of care and therefore the right to be off work can be exercised only once per care case[13]. Germany used the option of Art. 6 para. 2 of Directive 2019/1158 to allocate carer's leave not on the basis of the reference period of one year but per person in need of care. In practice, however, such situations may occur more often than once per care case[14].

Directive 2019/1158 does not contain any thresholds or any exceptions for the rights of caregivers working in small businesses[15]. In Germany, in 2019, the Independent Advisory Board for the Reconciliation of Caregiving and Employment set out some principles in order to better reconcile caring and employment. In particular, the Advisory Board stressed that "operational feasibility in companies should be considered. Small companies with few employees find it more difficult to compensate for absences due to family care. Care must be taken here to adapt the law in future so that small companies are not excessively burdened but their employees can also

[13] BT-Drucks. 16/7439, p. 91.

[14] Cf. the Pflegeunterstützungs- und Entlastungsgesetz of 19 June 2023, BGBl. I S. 155, under which, since 1 January 2024, the income replacement benefit for such absences (Pflegeunterstützungsgeld) can be claimed for up to ten working days per calendar year.

[15] See Brose, *Die Reform des PflegeZG*, cit., p. 315.

benefit from the regulations on care leave"[16]. Although the Advisory Board, in its recommendation, sought to balance the interests of small businesses and those of employees with caring responsibilities, certain employers' organisations opposed the introduction of carer's leave in small businesses[17]. Nevertheless, the Care Leave Act was amended in 2022 with a view to implementing Art. 9 of Directive (EU) 2019/1158. In particular, the newly inserted Sec. 3 para. 6a of the Care Leave Act provides employees of employers with 15 or fewer employees with the opportunity to apply for the conclusion of an agreement on care leave. The employer, in turn, must respond to the application within four weeks of its receipt. In the case of a refusal, reasons must be given[18].

In my view, Art. 9 of the Directive has thus been largely implemented[19]. Since this provision only requires a right to request flexible working arrangements, but not an entitlement to them, the exclusion of employees of small employers from the entitlement to a complete or partial release from work (Sec. 3 para. 1 sentence 2 of the Care Leave Act) is in principle compatible with the Directive, now that these employees can at least apply for an agreement on such a release[20]. However, for these employees, the special protection against dismissal under Sec. 5 of the Care Leave Act only begins with the start of the agreed release and not already with their application (Sec. 5 para. 1 sentence 2), although Art. 12 para. 1 of the Directive also prohibits dismissal on the grounds that a worker has requested flexible working arrangements[21]. A further problem lies in the link between the adaptation of working time and the release from work: under the Care Leave Act, working time can only be redistributed together with its reduction, i.e. as part of a partial release (Sec. 3 para. 4), whereas the Directive also covers

[16] Knauthe, Hoff, *Germany*, in Hamblin, Heyes, Fast, *Combining Work and Care*, Bristol University Press, 2024, p. 174.

[17] Hamblin, Heyes, Fast, *Critical comparative analysis: similarities, differences and lessons learned*, in Hamblin, Heyes, Fast, *Combining Work and Care*, Bristol University Press, 2024, p. 257.

[18] Law of 19.12.2022 (BGBl. I S.2510).

[19] See also Brose, *Die Reform des PflegeZG*, *cit.*, p. 315; Wietfeld, Hinrichsen, *Das Gesetz zur Umsetzung der Vereinbarkeitsrichtlinie - Elternurlaub, Vaterschaftsurlaub, Urlaub für pflegende Angehörige, flexible Arbeitsbedingungen und Arbeitsfreistellung aufgrund höherer Gewalt*, in *EuZA*, 2023, 4, p. 364.

[20] See Brose, *Die Reform des PflegeZG*, *cit.*, pp. 314-315; BT-Drucks. 20/3447, pp. 10, 18.

[21] See Brose, *Die Reform des PflegeZG*, *cit.*, p. 316; BT-Drucks. 20/3447, p. 19.

flexible working schedules without any reduction of working hours (Art. 3 para. 1 lit. f). It is doubtful whether this gap is closed by the general duty of employers under Sec. 7 paras. 2 and 3 of the Part-Time and Fixed-Term Employment Act to discuss an employee's wish to change the scheduling of working time and to give a reasoned reply in text form within one month[22].

Furthermore, the right to request flexible working arrangements under the Directive also covers remote working arrangements (Art. 3 para. 1 lit. f). A right to request remote working has, so far, not been provided for in German legislation – neither for caregivers nor for other categories of employees[23]. It is only as part of a general trend towards remote work that a right to work remotely can be stipulated in individual and collective agreements, but not necessarily for care purposes.

As regards carers' leave, Art. 6 of Directive 2019/1158 only provides for a short-term entitlement and leaves the question of payment to the Member States (Recital 32). In this respect, by contrast, German legislation goes beyond the requirements of the Directive: in addition to longer-term unpaid care leave, it provides for up to ten working days off work, for which an income replacement benefit is paid by the long-term care insurance.

2.4. *Evaluation*

Overall, the right to be off work for up to 10 days provides an opportunity to cope with an acute care situation of the assisted person rather than to provide home-based care over a long period.

While the Directive does not contain any thresholds or any exceptions for the rights of carers working in small businesses[24], German law provides obligations concerning carers' leave only for employers with more than 15 employees (under the Care Leave Act) or 25 employees (under the Family Care Leave Act). This is also the reason why – according to a recent study – around 16% of respondents were not legally entitled to these measures[25].

[22] See Brose, *Die Reform des PflegeZG*, *cit.*, pp. 315, 317; Wissenschaftliche Dienste des Deutschen Bundestages, *Zur Umsetzung der Vereinbarkeitsrichtlinie (EU) 2019/1158 in deutsches Recht. Erfordernis eines isolierten Anspruchs auf Beantragung einer Neuverteilung der Arbeitszeit*, WD 9 - 3000 - 063/22, 2022, pp. 7, 13.

[23] Brose, *Die Reform des PflegeZG*, cit., p. 315.

[24] *Ibid.*, p. 315.

[25] See Ehrlich, Bünning, Kelle, *Doppelbelastung ohne Entlastung? Herausforderungen und*

German labour law provides for longer-term but unpaid care leaves. It is therefore not surprising that the study carried out in 2024 demonstrates that only around 4% of carers have made use of the opportunities provided by the Care Leave Act and the Family Care Leave Act[26].

The guarantee of pension entitlements in accordance with Sec. 44 SGB XI depends on different factors, in particular, the amount of the caregiver's working time; if the caregiver works more than 30 hours per week, he or she is excluded from the scope of Sec. 44 SGB XI[27]. The positive feature of the regulation on the accumulation of pension contributions is that it is disconnected from care leave and goes beyond the employee status. Theoretically, the personal scope of the right to pension entitlements during caregiving also covers self-employed persons; however, many of them are not insured in the mandatory pension insurance, which is a precondition for pension credits.

3. *Long-Term Care in Germany*

3.1. *Employment Relationship for the Provision of Home-Based Care Services*

In April 1994, Germany introduced long-term care insurance, which came into force on 1 January 1995 and is regulated in the Eleventh Book of the Social Code (SGB XI). Care at home may be provided by official care providers, who must have an individual contract with the long-term care insurer. Private individuals may also provide care at home if they have concluded a contract with the long-term care insurer (Sec. 77 SGB XI). Such care contract may be terminated by the care recipient at any time without notice (Sec. 120 para. 2 sentence 2 SGB XI). The contract shall regulate the content, scope, quality, quality assurance, remuneration as well as control of the quality and cost-effectiveness of the agreed services. It is forbidden for care workers providing at-home-care to enter into an em-

gesetzliche Maßnahmen für die Vereinbarkeit von Pflege und Beruf in einer alternden Gesellschaft, in *DZA aktuell*, 2024, 3, Deutsches Zentrum für Altersfragen, p. 4, https://doi.org/10.60922/a3f4-7758.

[26] *Ibid.*, p. 4.

[27] Brose, *Die sozialversicherungsrechtlichen Nebenwirkungen von Pflegezeit und Familienpflegezeit*, in *NZS*, 2012, p. 500.

ployment relationship with the recipient of care services; they conclude care contracts instead. Unlike care workers in outpatient and inpatient care facilities, the Social Code does not legally require individual carers to be "trained professionals". In individual cases, the suitability (qualification) of the individual care worker may be also determined by the dependency characteristics of the person for whom care services are to be provided[28]. This means that, theoretically, a long-term care insurer may also conclude a contract with a care worker working via a digital platform and the care worker will receive the remuneration agreed with the long-term care insurer.

In addition, non-professional care providers and volunteers, under the guidance of nursing professionals, may provide support in everyday life for persons with general or special care needs (Sec. 45a SGB XI). Services of support in everyday life require approval by the competent authority in accordance with the state law (*Landesrecht*).

3.2. *Social Benefits in the Case of Home-Based Care*

Persons with a care dependency of at least level 2 may, in the case of home-based care in accordance with Sec. 36 SGB XI, claim basic nursing care (*Grundpflege*), care-related assistance measures (*pflegerische Betreuungsmaßnahmen*) and assistance with household tasks (*Hilfen bei der Haushaltsführung*) as benefits in kind (*Pflegesachleistung*) that are settled directly with the care providers. In other words, elderly persons in need of care do not receive such social benefits directly. Only if carers are close relatives and close associates, a cash-for-care social benefit (*Pflegegeld*), which is much lower, can be paid directly to the care recipient.

Persons with a care dependency, also with a care dependency of level 1, may claim a further cash-for-care benefit, namely the "care relief allowance" (*Entlastungsbetrag*) (EUR 131 monthly), in line with Sec. 45b SGB XI. This benefit can serve different purposes, for example, to reimburse expenses incurred by the insured person in connection with the use of day or night care services; short-term care services (*Kurzzeitpflege*); and also to reimburse the assistance of volunteers providing support in everyday life.

[28] Schmidt, *Comment on § 77 SGB XI*, in Rolfs, Körner, Krasney, Mutschler, *Kasseler Kommentar SGB XI* (beck-online. Grosskommentar), 2025.

In cases where an informal caregiver is prevented from providing care due to annual leave, illness, or other reasons, the long-term care insurance fund reimburses the documented costs of a necessary substitute caregiver for up to eight weeks per calendar year, so-called "respite care" (*Verhinderungspflege*), as laid down in Sec. 39 SGB XI. A substitute caregiver can theoretically be any suitable and willing person[29].

4. *Care Platforms in Germany*

4.1. *Platformisation of Care*

The "platformisation of care" is part of a broader development towards the digital transformation of work and the platformisation of work. The largest concentration of on-location platforms was, in 2024, found in the delivery sector (334) and in individual passenger transport (119), followed by care work (121)[30]. However, until now, no unified opinion has yet been formed concerning the main trigger for the growth of care platforms, be it the increasing digitalisation and platformisation of work, the national architecture of the social security schemes enabling easy access to social service provision and funding (financed via social insurance or taxes) for private providers, or simply the wish for a simplification of administrative burdens[31].

In Germany, various platforms are active which offer services for older persons, including for elderly persons with care and assistance needs. Some of these platforms have been on the market for more than ten years, others are start-ups. Apart from for-profit digital platforms there are also non-profit digital platforms through which municipal or locally organised neighbourhood assistance and support in everyday life are provided.

[29] Spitzlei, *Comment on § 39 SGB XI*, in Berchtold, Baumeister, Janda, *Soziale Pflegeversicherung*, Nomos, 2025.

[30] International Labour Conference, 113th Session, Report V(1), *Realizing decent work in the platform economy*, 2025, https://www.ilo.org/sites/default/files/2024-07/ILC113-V%281%29-%5BWORKQ-231121-002%5D-Web-EN.pdf.

[31] Becker, Chesalina, *Social Protection of Platform Workers in a Comparative and European Perspective*, in Becker, Chesalina, *Social Law 4.0: Update: Innovative Approaches to Ensuring and Financing Social Protection for Platform Workers in Europe*, Nomos, 2025, p. 181.

Search queries show that it is typically not the older persons themselves but their children or other relatives who look for everyday support for their parents or other family members. This is to be expected given the fact that, in international comparison and concerning the digital skills of the elderly, Germany ranks far behind countries such as the Netherlands (61%), Switzerland (56%) or Norway (55%), with only 28% of the 64 to 74-year-olds possessing at least basic digital skills[32].

4.2. *Non-Profit Platforms*

There are some non-profit platforms in Germany that provide or mediate support in everyday life through non-profit associations, also in the framework of neighbourhood assistance (*Nachbarschaftshilfe*). The associations, i.e., non-profit organisations offering support in everyday life, are registered with the long-term care insurance fund and authorised to bill "care relief allowance" in accordance with Sec. 45b para. 1 no. 4 SGB XI in connection with Sec. 45a SGB XI[33]. For example, *Helferportal* was founded in 2015 as a web- and app-based platform that coordinates everyday support and care-related assistance by connecting persons seeking help, relatives, volunteers, service providers, municipalities and welfare organisations. The software of *Helferportal* is used by several organisations, including *deinNachbar e. V.*[34]. The aim of the association *deinNachbar* is to help people who need support and home-based care and to provide relief for family carers. The association provides neighbourhood-based assistance, such as doing the shopping; accompanying the person to appointments; helping with household-related tasks; accompanying walks or short outings; assisting with light gardening tasks, etc. The study "NuVe" ("Benefits of placement platforms for informal carers in home care")[35] indicates that platform-supported mediation makes the provision of assistance to older persons more efficient, es-

[32] Cited by: Büchele *et al.*, *Soziale Innovationen und Soziale Digitalisierung*, in Opielka, Erfurth, *Soziale Digitalisierung. Perspektiven zu den Schnittstellen von Technik und Gesellschaft*, Springer VS, 2025, p. 87.

[33] They can also bill social benefits in kind to a certain amount, but this is rather unusual.

[34] https://helferportal.de/das-konzept/; https://www.deinnachbar.de.

[35] Geiselhart, Bernhard, Wörle, Haushammer, *Abschlussbericht Studie: "NuVe - Nutzen von Vermittlungsplattformen für informell Helfende in der häuslichen Pflege"*, April 2025, BZPD, https://opus4.kobv.de/opus4-hs-kempten/frontdoor/deliver/index/docId/2906/file/Abschlussbericht_NuVe.pdf.

pecially as regards the matching process and coordination. Algorithm-supported matching is more tailored to participants and takes their individual preferences into account. Helpers (volunteers) can also describe their preferences in their profiles concerning the type of assistance, the maximum working time per week and the frequency of assistance, etc.

4.3. *For-Profit Platforms*

On the one side, empirical evidence regarding for-profit care platforms and care workers is still limited and emerging. On the other side, given the highly dynamic nature of the sector, part of the existing empirical literature may no longer fully capture the current situation concerning care platforms. For these reasons, the author analysed care platforms operating in Germany, comparing platforms' website content and their GTC[36]. For reasons of scope, this article does not offer an exhaustive account of each and every care platform operating in Germany, but only of a selected few that represent the different types of platforms. This research from the legal angle cannot substitute qualitative case studies, yet may build a foundation for further qualitative investigations.

4.3.1. *Type of Services*

Some platforms offer services for the elderly alongside other services. For example, through the platform *Betreut.de* a variety of services can be facilitated, including childcare, au-pair placement, tutoring, pet care, domestic assistance, and, notably, elder care[37].

There are also platforms that first and foremost offer care and assistance services and household-related services especially for the elderly. For instance, the Berlin-based company "Jung Hilft Alt" (JUHI GmbH) specialises in low-threshold everyday assistance for persons in need of care; since 2018, JUHI has been offering everyday help and household assistance (household help, shopping and errands, companionship care) through its platform[38]. Another example is the platform *Careship* that was founded in 2015 and acts as

[36] All general terms and conditions of platforms and website content of platforms cited in this article were last accessed on 22 July 2026.

[37] Https://www.betreut.de.

[38] Https://www.juhi.de.

intermediary between "everyday helpers" (*Alltagshelfer*) and persons in need of support and assistance, including elderly persons, throughout Germany[39].

4.3.2. *Typology*

Care platforms operating in Germany can, at least in part, be classified along the typologies already proposed in academia (marketplace, regulated marketplace, on-demand, digital agencies)[40]. However, many platforms represent hybrid types that do not only fit one typology. Nowadays, platforms continuously offer new services, seeking to attract new groups of clients and to build new partnerships. They offer both services for persons in need of home-based care as well as technical solutions. In particular, *Comii.de*[41] also offers technical solutions for case-matching within neighbourhood networks and billing (software for order processing, invoicing on behalf of a company, and administration) for mobile care services.

The study by Bonifacio and Pais suggests that the type of service provided (cleaning versus care) exerts a stronger influence on platform organisation than welfare regimes and labour regulations of the country studied[42]. Bonifacio's and Pais' research indicates the prevalence of the marketplace model in domestic cleaning services and the digital agency model for personal care service.[43]. My analysis has shown that all platform typologies are present on the German market of personal care services. In addition, new hybrid types have emerged. Direct billing with long-term care insurance funds gives rise to a new type of platforms.

4.3.3. *Access to Cash-for-Care Benefits*

Care platforms may enter the regulated market of care services by complying with all legal requirements, including the full range of re-

[39] Careship, About Us: https://www.careship.de/about-us/; *Careship will Senioren und Pflegekräfte vernetzen*, in *VC Magazin*, 5 April 2018, https://www.vc-magazin.de/blog/2018/04/05/careship/.

[40] Bonifacio, Pais, *How platformisation is shaping the future of domestic work. A mapping of home care and cleaning platforms in six EU countries*, Working Paper 2025.08, ETUI, 2025, p. 19, https://www.etui.org/publications/how-platformisation-shaping-future-domestic-work.

[41] https://comii.de/neighborhood; https://comii.de/mobile-care.

[42] Bonifacio, Pais, *cit.*, p. 26.

[43] *Ibid.*, p. 26.

muneration and quality requirements, thereby becoming institutionalised home-based care providers. Furthermore, care platforms may explore legal gaps in areas not yet regulated within social law and grey zones, such as the unclear division between domestic and care services. In addition, care platforms may, at a minimum, exploit the most unbureaucratic opportunities of the long-term care insurance scheme, as is the case in Germany.

In Germany, some care platforms seek to attract clients through the direct billing of respite care and relief allowances (see above 3.2) with long-term care insurance funds. For example, the platform *Careship* specifically advertises this for Berlin, Hamburg, Heilbronn and some other cities, where, accordingly, the possibility also exists to settle accounts for services provided through "Careship Ambulant" in line with Sec. 45b SGB XI (relief allowance – *Entlastungsbetrag*) and Sec. 39 SGB XI (respite care – *Verhinderungspflege*) directly with the long-term care insurance funds.[44] Careship Ambulant can be found in the official registers of recognised offers of support in everyday life for example in Berlin, Hamburg and Heilbronn[45]. *JUHI* also advertises direct billing with the long-term care insurance fund, at least for the relief amount and presumably also respite care[46], and publicly presents itself more as an organised provider model than as a purely neutral marketplace. Moreover, JUHI is listed, at least for some Bavarian locations, in the official Bavarian register of recognised offers of support in everyday life; publicly verifiable entries include JUHI GmbH – Nürnberg and JUHI GmbH – Augsburg[47]. Also *FLEXXI Care* offers such opportunity, especially for respite care[48].

[44] Https://www.careshipambulant.de; https://www.careshipambulant.de/csa-cu/ (accessed 9 July 2026).

[45] See for example Careship Berlin: https://www.pflegeunterstuetzung-berlin.de/aua/angebot-finden?tx_sekis_search%5Baction%5D=search&tx_sekis_search%5Bcontroller%5D=Offer&cHash=b25d7c049a769d262d1e434d6ffdf9b5#results; see for Hamburg and Heilbronn: https://www.pflegelotse.de/presentation/pl_treffer.aspx.

[46] Https://info.juhi.de.

[47] Https://www.lfp.bayern.de/angebote-zur-unterstuetzung-im-alltag-haeusliche-betreuung/.

[48] Https://flexxi.care/de/verhinderungspflege.

4.3.4. *Employment Status of Care Platform Workers*

The majority of platforms operating in Germany emphasise the self-employed status of care workers (so-called "everyday helpers" - *Alltagshelfer*). JUHI offers assistance provided by school pupils, students, or trainees as a side job[49]. On the website of the *Careship* platform, the available forms of involvement/employment for everyday helpers are described. "Everyday helpers" may cooperate with the platform as self-employed service providers. In that case, they are obliged to register a trade (*Gewerbe*) beforehand[50]. They receive online training through the "Careship Academy" as part of the platform's infrastructure. According to the information on the website, everyday helpers may also be employed as employees (part-time, full-time, mini-job and working student (*Werkstudent*)) and work within the unit "Careship Ambulant" in Berlin or Hamburg[51]. In order to do so they are required to complete a professional expert training programme with the "Careship Academy"[52]. However, clause 3.7 of the GTC stipulates that "only in rare individual cases, Careship reserves the right to designate a qualified internal employee instead of an external service provider, for the fulfilment of the requested services"[53]. According to clause 3.6 of the GTC, Careship itself does not provide care, nursing and/or domestic services. Contractual relationships concerning the provision of services are concluded exclusively between the service provider and the user[54].

4.3.5. *Care Rates*

The regulations on pricing vary. Some platforms offer the possibility for the client and the care worker to negotiate the service price between themselves, other platforms have fixed hourly and monthly care rates that the client and care worker have to accept and comply with.

[49] Https://helfer.juhi.de/#start.

[50] Https://www.careship.de/hilfe/.

[51] Https://www.careship.de/senioren-ratgeber/alltagshelfer-festanstellung/.

[52] *Ibid*.

[53] Https://www.careship.de/agb/; Clause 3.7 of the GTC refers for these cases to a separate "service agreement" (*Dienstleistungsvertrag*) with Care Companion GmbH, https://www.careship.de/agb/.

[54] Https://www.careship.de/agb/.

For example, the platform *Comii* provides the following regulations: on the one side, according to clause 7.2.2 of the GTC for elderly clients, the remuneration for the services is to be defined by the client him-/herself. On the other side, the platform "gives recommendations" to elderly clients in terms of how much to pay per hour for the respective care services: the platform recommends paying EUR 25 per hour (clause 7.2.2. GTC for elderly clients)[55]. By contrast, clause 6.2.2 of the GTC for everyday helpers specifies the amount each everyday helper receives per hour (currently EUR 25 gross)[56]. Costs for travel to and from the client are not reimbursed under the GTC for everyday helpers. The platform then issues an invoice on behalf of the everyday helper to the elderly client (clause 6.2.6. sentence 1 GTC for everyday helpers). In the event of a cancellation after acceptance of the assignment, a cancellation fee of EUR 9.50 may be charged "by Comii" to the cancelling party (clause 7.1. of the GTC for everyday helpers and clause 8.1. of the GTC for elderly clients).

4.3.6. *Algorithmic Management*

Non-profit as well as for-profit platforms broadly employ algorithms for matching elderly clients and everyday helpers (including platform workers). For-profit platforms use algorithms also for various other goals.

By way of example, the *Comii* platform seems to use algorithms and GPS data widely. Both elderly clients and everyday helpers are required to enable their GPS or geolocation when using the app (clause 5.4. sentence 2 of the GTC for elderly clients and clause 3.2. sentence 2 of the GTC for everyday helpers)[57]. The GPS data serve, first and foremost, the purpose of matching, by enabling the platform "to find corresponding everyday helpers within a defined geofence of approximately 10 km" (clause 5.4 sentence 3 of the GTC for elderly clients). When an everyday helper is requested, the helper who is located in the vicinity of the elderly client and who first confirms the assignment is to be dispatched (clause 3.2 of the GTC for elderly clients)[58]. Furthermore, the GPS data of everyday helpers serve the purposes of route planning and live tracking. In a published interview, this

[55] Https://comii.de/conditions-senior#_Toc82156897.
[56] Https://comii.de/conditions-everydayhelpers.
[57] Https://comii.de/conditions-senior#_Toc82156888.
[58] Https://comii.de/conditions-senior#_Toc82156888.

function is described as follows: "The helper who accepts first receives a route planner and drives to the elderly client. The elderly client can see via live tracking how long the helper will need to reach them"[59]. Furthermore, GPS tracking is used for pricing and control of working time. As the starting point of the daily helper's activity, the senior's place of residence is specified. Only at that location may everyday helpers activate the status notification "start assignment" (clause 6.2.2 sentences 2 and 3 of the GTC for everyday helpers). Working time is credited to everyday helpers from the moment of this status notification. The GTC for everyday helpers provides that time recording is carried out via status notifications within the app, so that elderly clients can review the details in the invoice, which is generated separately for each assignment/service and made accessible in the respective customer profile (clause 6.2.2 sentence 3 of the GTC for everyday helpers). Moreover, the platform uses algorithms to apply sanctions. Clause 6.2.3 of the GTC provides: "Abusive use, for instance by starting the timer prior to arrival at the elderly client's location, can be detected by us (for this purpose we use geomatching algorithms), and we may suspend you in accordance with our everyday helper policy for a certain period (first offence: 1 week; second offence: 4 weeks)."

The *FLEXXI Care* app incorporates matching algorithms and requires the use of GPS. The procedure for commissioning and billing is described in the End Customer Agreement (EULA 03.2026), Section Software, page 2, as follows: "The first nurse/care worker to accept the request is awarded the assignment. Both the care worker and the client receive further, detailed information about the respective other party via the respective app. The selected nurse/skilled care worker and the client may communicate via a chat tool. As a rule, a deposit is charged to the client's credit card upon commissioning or acceptance and held as security. During the assignment period, the location of the nurse and skilled care worker may be recorded and stored at intervals. Upon completion of the work, the exact amount is debited from the guarantee and the credit card, and the agreed remuneration less commission, payment service provider fees, and value-added tax

[59] Buschbacher, Managing Director of Comii GmbH, in *Comii: Alltagshilfe für Senioren per Klick - Ein Beitrag von COMII APP*, https://www.inpactmedia.com/medizin/meine-gesundheit-06-23/comii-alltagshilfe-fuer-senioren-klick; on the Comii website, "live tracking & encrypted voice recording of everyday helpers" is mentioned as a feature available only with the Premium subscription, cf. https://comii.de/for-seniors/prices?category=committees.

accruing on the commission and payment service provider fees is transferred to the nurse or skilled care worker"[60].

4.3.7. *Reputational Ratings*

Platforms actively employ ratings. On the website of *Comii*, both elderly clients and everyday helpers are asked to rate each assignment. According to clause 3.5 sentence 3 of the GTC for everyday helpers, the ratings may be decisive for whether third-party providers are permitted to continue providing services or not. In this connection, the FAQ section of the platform's website states: "We regularly review all helpers with unsatisfactory ratings. In such cases, we will discuss possible causes and remedial measures with the helper personally and initiate them promptly. Should none of the measures prove effective, we will, in the worst case, also suspend such helpers"[61]. Accordingly, clause 4.7 of the GTC for everyday helpers provides for the possibility of temporary or permanent suspension by the platform where concrete indications justify the assumption that a breach of duty by the everyday helper has occurred[62].

4.3.8. *Ban of Direct Contacts with the Client*

Platforms try to influence the care market and the behaviour of care workers through so-called "lock-in"[63] clauses. For example, the *FLEXXI Care* platform prohibits direct contact outside the app between care workers and clients whom the care workers have met through the app, whether through referral or through clients to whom a referral was made, in particular for the purposes of communicating, submitting, or accepting offers[64].

[60] Https://flexxi.care/terms/EULA_DE.pdf.

[61] Https://comii.de/for-seniors/faqs.

[62] Https://comii.de/conditions-everydayhelpers.

[63] Cf. McDonald, Williams, Mayes, *Means of Control in the Organisation of Digitally Intermediated Care Work*, in *WESoc.*, 2021, 35, 5, p. 885.

[64] EULA 03.2026, Section Software and Online Services, pp. 2-3, https://flexxi.care/terms/EULA_DE.pdf.

4.4. *Evaluation*

4.4.1. *The Case Law of European Countries*

The intensive use of GPS tracking, reputational ratings and algorithms to (1) manage the activities and working time of care workers, (2) to control the pricing and billing process as well as the quality of services and (3) to ban direct contacts between the client and the service provider beyond the app, could, depending on the criteria for classifying employee status in the case law of the respective country, be assessed as an indicator of subordination of care platform workers and be ground for the reclassification of the self-employed status. There are already many examples of such interpretation in the case law of different European countries. Here are some of them.

4.4.1.1. *Pricing Mechanisms and Ratings*

In the judgement concerning the caregiving platform *Joyners*, it was taken into account, among other indicators of employee status, that the platform determined and processed the payment of tasks carried out by care workers and used customer ratings to evaluate the caregiver's performance[65].

In the Netherlands, *Helpling* was regarded as a temporary work agency, not least because the platform influenced pay rates and used payment recommendations. Furthermore, "the platform also processed the payment and managed a rating system, which the court also saw as a control mechanism serving the platform's own interests"[66].

4.4.1.2. *Ban of Direct Contacts with the Client*

Dominik Ledwon and Tolga Topuz stressed that in Uber UK cases drivers were not allowed to make contact with the passenger after a ride had been carried out and build up a certain customer base, which demonstrates the drives are always supported to be personally dependent

[65] Hiessl, *Domestic Platform Work as a Multiparty Relationship: Regulatory Loopholes and Ways to Address them*, in Hiessl, Kocher, Poblete, *Digital Intermediaries in Care and Domestic Work Sectors*, 2026, p. 7.

[66] Hiessl, *cit.*, p. 8.

on the assignment of jobs through the Uber platform.[67] The UK Supreme Court confirmed that Uber drivers are workers rather than independent contractors[68].

4.4.1.3. *Combination of Geo-Tracking with Sanctions*

In France, couriers using the *Take Eat Easy* platform for food delivery were considered employees not at least because "the combination of real-time geo-tracking applications and disciplinary sanctions amounted to a degree of direction and control that warranted the establishment of employment status"[69].

4.4.2. *German Labour Law*

According to German case law, the key factor in determining employee status is whether someone is obliged to perform an activity in personal dependency, meaning to follow instructions concerning the content, performance, time and place of the activity (Sec. 611a para. 1 of the German Civil Code – BGB)[70]. In order to determine whether an employment contract exists, an overall assessment of all circumstances must be made (Sec. 611a para. 1 sentence 5 BGB).

In Germany there is, until now, no case law on the employment status of persons working via care platforms. In the only case concerning the status of a platform worker, the Federal Labour Court has modified the existing case law and decided in favour of the platform worker because of the incentive system that induced the worker to continuously accept tasks, which were not freely designed in terms of place, time and content[71]. In particular, the Federal Labour Court addressed the problem of "a lack of a duty to work", stressing that also "factual constraints, created by an organ-

[67] Ledwon, Topuz, *Comments from Other Jurisdictions: Germany*, in *EELC*, 2021, 21, pp. 125-126.

[68] UK Supreme Court 19 February 2021, [2021] UKSC 5 (*Uber BV and others v Aslam and others*).

[69] Gruber-Risak, *There is a crack, a crack in everything…*, in *IUR*, 2021, 28, 1, p. 14.

[70] Krause, *"App-Based" Work: The German Case*, in Carinci, Dorssemont, *Platform Work in Europe*, Cambridge [UK], 2021, p. 37.

[71] *Ibid.*, p. 40.

isational structure established by the principal may be capable of inducing the worker to act in the desired manner, without any need for specific instructions to be issued"[72]. At present, the empirical evidence is missing in how far incentive systems are used by care platforms in Germany. For this reason, it is not possible to apply the reasoning of the Federal Labour Court from this individual case to all possible future cases involving care platform workers, having regard to the different types of care platforms operating in Germany. Consequently, in order to determine whether an employment relationship exists, all circumstances of the case, including the circumstances under which platform work is performed, should be taken into account.

5. *Conclusion*

1. The major obstacle to taking care leave concerns the inadequacy of income replacement during such periods: on the one hand, employers are not required to continue paying remuneration during care leave, and on other hand, no social benefits for caregivers are provided for during such leave. Social benefits for caregivers from the German long-term care insurance are provided only for a maximum period of up to ten days off work. Such modalities are often incompatible with full-time employment and career development, which contributes to the modest take-up of such measures. In total, this explains why informal caregivers would prefer to pay for care, including care organised via care platforms. The marginal social protection of informal caregivers may contribute to the further commodification of care, the alienated use of cash-for-care benefits, and a referral to care organised via care platforms.

2. It is estimated that, by 2040, a total of 163,000 to 380,000 additional full-time employees will be needed in institutional care and 97,000 to 183,000 in outpatient care[73]. In addition, the care sector is strongly characterised by part-time work: in 2024, around half of professional carers worked

[72] Federal Labour Court (BAG) 1 December 2020 – 9 AZR 102/20, para. 36, referring to Schubert, *Crowdworker – Arbeitnehmer, arbeitnehmerähnliche Person oder Selbständiger – zugleich eine Besprechung zum Urteil des LAG München vom 4.12.2019 – 8 Sa 146/19*, in *RdA*, 2020, 4, p. 251.

[73] RWI – Leibniz-Institut für Wirtschaftsforschung, Pressemitteilung, *Pflegeheim Rating Report 2022*, 29 November 2021.

part-time. By comparison, a total of 31% of employees in Germany work part-time[74]. Although only 14% of those in need of care are cared for in care homes,[75] waiting times for a care place, not least because of the shortage of professional care workers, are lengthy. High demand for care services contributes to the marketisation and platformisation of care.

3. Without being official care service providers in accordance with Sec. 71 *et seq*. SGB XI themselves, some care platforms have already entered the market of "support in everyday life" (an area in which in the past only non-profit associations, also in the framework of neighbourhood assistance, and non-profit platforms were active). As a provider of support in everyday life, they are entitled to bill "care relief allowance" (a cash-for-care benefit) with the long-term care insurance. By doing so, they contribute to the marketisation of this form of assistance. In addition, care platforms sometimes seek to reshape the care market by offering new services not only to individuals but also to businesses (B2B), such as technical solutions and intermediation between skilled nursing professionals, auxiliary care workers, and household helpers with B2B partners. For these reasons, platform business models and their typologies are highly dynamic.

It is highly unlikely that care platforms would want to adjust their business models and become institutionalised home-based care providers complying with the full range of remuneration and quality requirements prescribed by Social Code Book XI. At the same time, platforms are willing to attract clients through direct billing options with long-term care insurance funds in which only low barriers to access for cash-for-care benefits (such as respite care and care relief allowance) exist.

4. In the field of labour relations, care platforms, in general, seek to avoid the status of employer. Platforms emphasise that they are only an intermediary and care workers are self-employed. At the same time, the analysis of private regulations and of the content of their websites demonstrates that some platforms use control mechanisms attributive to the business model of labour platforms that have already been recognised in many jurisdictions as indicators of an employment relationship. In particular, the fact that a care platform worker has no influence over pricing and is prohibited from hav-

[74] Deutscher Pflegetag 2025, https://deutscher-pflegerat.de/dpt25/DPT25_Factsheet-Pflege.pdf.

[75] Cf. fn. 4.

ing direct contact with clients, means that the worker is not free to organise his or her activity and is instead bound by the instructions of the platform provider, which speaks in favour of employment relationship. Furthermore, through reputational ratings a part of the control functions (which are in its essence employer's functions) is delegated to the clients. The application of sanctions, such as the suspension of activity on a platform depending on ratings, also points to personal subordination. Nevertheless, as an overall assessment of all circumstances of the individual case is required, it is only possible to determine whether an employment relationship exists on the basis of a case-by-case approach.

The recognition of platform workers as employees has both labour law and social law consequences (such as the back payment of social security contributions) and may also lead to criminal law consequences (regarding the withholding or misappropriation of wages-related contributions). However, this would not automatically make the platform a care service provider in accordance with Sec. 71 *et seq.* SGB XI.

The opaque regulations of platforms governing algorithmic management and algorithmic control, as well as the continuously changing private regulations of these platforms, pose a significant challenge to asserting the legal nature of the relationship with a care worker operating via a care platform. Professor Countouris and Professor De Stefano emphasise "a new and groundbreaking approach to shaping the personal scope of applications of EU Directives in the social field", namely, the introduction of the new concept of "persons performing platform work" in the Platform Work Directive (Directive (EU) 2024/2831 of 23 October 2024 on improving working conditions in platform work, hereinafter – PWD) and the provision of rights addressed to persons performing platform work.[76] To such rights belong, *inter alia*, the majority of the regulations in Chapter III, "Algorithmic Management" (Arts. 7, 8, 9, 10, 11 and 15), as well as certain provisions in Chapter IV, "Transparency".[77] Art. 7 para. 1 PWD, which prohibits digital labour platforms from using automated monitoring systems or automated decision-making systems to process any personal data in relation to private conversations, may serve as a solution against the critical practice of

[76] Countouris, De Stefano, *"Not the usual gig": The personal scope(s) of application of Directive 2024/2831 on improving working conditions in platform work*, in *ELLJ*, 2025, 16, 4, p. 435.

[77] *Ibid.*, p. 436.

platforms prohibiting direct contact outside the app between care workers and clients. In addition, the realisation of the transparency obligation with regard to automated monitoring systems and automated decision-making systems (Art. 9 PWD) may assist in analysing which categories of data and actions are monitored, supervised or evaluated by automated monitoring systems (under the condition that an effective enforcement of this regulation is realised) in order to circumvent labour law regulations and, likely, also social law regulations. Furthermore, it is of great importance that Art. 17 para. 1 PWD stipulates that Member States shall ensure that digital labour platforms make information available to competent authorities and to representatives of persons performing platform work, specifically, the general terms and conditions determined by the digital labour platform and applicable to those contractual relationships. Art. 17 para. 4 PWD stipulates that such information shall be updated at least every six months and, regarding the terms and conditions, each time they are modified in substance. This regulation may allow platforms to adjust their GTC, pretending not to make a "modification in substance" but in effect substantially affect platform workers, without submitting the updated version of GTC to the competent authority.

5. To conclude, some recommendations for further research and legal regulations shall be given:

1) Empirical research on care platforms and care platform work in Germany is still in its infancy. The existing body of research and publications[78] indicates a heterogeneous picture of care platform workers, their demographic and occupational characteristics as well as their motivation. This activity, on the one hand, could be the only employment option available to vulnerable groups, such as migrant and low-skilled workers, particularly women.[79] In this way, the platformisation of care may exacerbate their

[78] Baum, *Platforms Don't Care - Qualified and Experienced Women Do: A Case Study on Self-Employment and On-Demand Platforms in Eldercare*, in *CrS*, DOI: https://doi.org/10.1177/08969205241304281; Baum, *Digitalization as Imaginary: A Study of Self-Employment in Care and Platformization of German Eldercare*, in [Vasilis, Vasileios-Spyridon], *Digitalization, Data and Welfare*, Edward Elgar Publishing, 2025, pp. 141-155; Korn, *Informal Home Care in the Digital Transformation: Platform Design and Work Ethics of Care*, in *SoSc*, 2025, 14, 4, 225, https://doi.org/10.3390/socsci14040225.

[79] See for example: Pulignano, Mará, Franke, Muszynski, *Informal employment on domestic care platforms: A study on the individualisation of risk and unpaid labour in mature market contexts*, in *Transfer*, 2023, 29, 3, pp. 323-338.

precarious situation. On the other hand, qualified and experienced care workers who have switched from inpatient care facilities[80] to working via platforms, do not seem to consider this job situation to be precarious and prefer the self-employed status[81].

It would be worth investigating in further empirical research: the kind of assistance services predominantly booked via platforms – basic (medical) care or rather household help and companionship care; the characteristics of service recipients, such as whether they live alone or with a partner or children; which level of care dependency they have; whether persons in need of care live in urban settings or rural areas; how and by whom – long-term insurance funds/children/relatives or recipients of care services – care work provided via platforms is financed; how platforms utilise the algorithmic management and control mechanisms, including ratings, as well as provisions of their GTC in general.

2) Often, for-profit care platforms advertise with unbureaucratic and technically innovative solutions. Care workers (in the formal care sector) attach great importance to the simplification of documentation[82]. Also, Germany's Commission on Welfare State Reform advocates a modern social administration that makes effective use of existing technical potential – in particular artificial intelligence – to increase its efficiency[83]. At the moment, a variety of technical solutions and software beyond the platform economy is already available on the market that allows the simplification of planning, administration, quotation preparation and invoicing for care services[84]. This approach should be further developed in the traditional care sector.

3) However, technical solutions are only secondary solutions in respect of the shortage of care personnel, workplace marginalisation and insufficient funding in the care sector. On 29 December 2025 (in force since 1 January 2026) the Law on the Expansion of Competences and the Re-

[80] Studies show that care workers, especially those in the inpatient care sector, often feel marginalised in the workplace. Cf. Trumpa, Schöner, *Nicht-monetäre Einflüsse auf die Arbeitszufriedenheit in der Pflege*, in Brockmann, Welti, *Sozialrecht und Tarifbindung - Regulierung von Arbeitsbedingungen durch Leistungserbringungsrecht?*, Band 55 HSI-Schriftenreihe, 2025, pp. 214-251.

[81] Baum, *Platforms Don't Care*, cit.

[82] Trumpa, Schöner, *cit.*, p. 228.

[83] *Abschlussbericht Sozialstaatskommission. Empfehlungen der Kommission zur Sozialstaatsreform*, 2026, https://bmds.bund.de/aktuelles/aktuelle-meldungen/detail/sozialstaatskommission-legt-bericht-zur-modernisierung-und-digitalisierung-des-sozialstaats-vor, p. 34.

[84] See for example: https://baercare.de.

duction of Bureaucracy in Long-Term Care (*Gesetz zur Befugniserweiterung und Entbürokratisierung in der Pflege*)[85] was adopted. This law aims, *inter alia*, at strengthening nursing professionals and their powers in care provision in order to make the profession even more attractive and thus addresses the shortage of skilled workers in the care sector[86]. Through this law, nursing professionals are permitted to independently perform certain functions normally carried out by a physician if they have the appropriate academic education. Empirical investigations show that many professional nurses and care workers have left the formal care sector (in favour of work via platforms) due to its unbearable conditions[87]. Increasing the responsibility and autonomy of some groups of nursing professionals does not automatically lead to fair treatment among colleagues and superiors (which is considered as the most important working condition for a return to the nursing profession)[88]. It is very important to consider the factors that lead to job dissatisfaction, implement appropriate measures and monitor them in practice.

4) Platforms as intermediaries are primarily subject to commercial law and, where applicable, data protection regulations, but not to social law and residential care law concerning licensing and quality assurance requirements. Only if it is proven that the platform acts as a service provider will the comprehensive social law and regulatory requirements applicable to traditional care services apply. The main challenge is to investigate in which cases and to what extent the activity of care platforms is subject to such regulations. The most important issues in this context are: compliance with national regulations in the care sector; the state authorisation and state control of care service provision; the proper use of cash-for-care benefits; the quality of care provided via platforms; the distinction between care services and domestic services.

[85] BGBl. 2025 I No. 371.
[86] BT-Drucks. 21/1511, p. 3.
[87] Baum, *Digitalization as Imaginary*, cit., p. 144.
[88] Trumpa, Schöner, *cit.*, p. 228.

Abstract

This contribution aims to analyse care work via digital platforms in the context of the German legal system. The paper starts with an analysis of labour and social law guarantees for informal caregivers and provides a short overview of regulations concerning the provision of home-based care services and social benefits in the case of home-based care. As a next step, the author analyses care platforms operating in Germany and their private regulations and correlates the outcomes of this analysis with the case law of European countries on employment classification. In conclusion some recommendations for further research and legal regulation are provided.

Keywords

Care work, Digital platforms, Informal caregivers, Home-based care, Social security benefits.

Juliette Germain

Two Proposals for a European Directive on Just Transition: Pragmatic or Transformative Approaches?

Contents: 1. Introduction. 2. Two concepts of just transition: between social integration of change and redesigning the production model. 2.1. Just transition as a tool for "anticipating and managing change". 2.2. Just transition as structural transformation. 3. Two normative architectures for a just transition: social regulation or democratisation of work? 3.1. Social governance as a lever for competitiveness and stability: Proposal 1. 3.2. The just transition as a field for the democratisation of work: Proposal 2. 4. Conclusion.

1. *Introduction*

Emerging in the United States between the 1970s and 1980s under the impetus of Tony Mazzocchi – an American trade unionist from the *Oil, Chemical and Atomic Workers Union* – the concept of "just transition" foregrounded the need to balance environmental protection and job protection[1]. Initially focused on the American energy sector and the social consequences of deindustrialisation, the concept became part of a broader reflection on justice in the face of economic change.

Over the decades, in response to the growing threat of climate change and its socioeconomic effects[2], the idea of a just transition has spread globally. The concept has become embedded in climate change debates, appear-

[1] On this point, see Stevis, *Just transitions*, Cambridge University Press, 2023, pp. 12-15.

[2] See the work of the Intergovernmental Panel on Climate Change (IPCC) on climate change, available online at: https://www.ipcc.ch.

ing in international agreements[3] and sustainable development strategies[4] as an imperative to ensure that the transition towards climate neutrality is both inclusive and equitable.

In Europe, the principle of a just transition, notably implemented as part of the European Green Deal[5], has been integrated into climate and industrial policies, particularly within the European Union (hereinafter EU) law, where it has been formalised as a guiding principle of the energy transition, while guaranteeing support for the territories and professions most affected by decarbonisation. As a key pillar of the European Green Deal, the European Just Transition Mechanism is based on the idea that climate transition cannot be effective or legitimate without specific compensation and support measures for the regions and workers most affected by the phase-out of fossil fuels and carbon-intensive industries. To this end, the EU has set up a Just Transition Fund to finance the economic conversion of the regions concerned.

Today, the EU appears intent on going further by drafting a specific legal instrument on just transitions. The European Parliament has called on the European Commission to propose a directive on just transition, aimed at setting common standards to support workers, assist affected regions and integrate social justice into climate and growth strategies[6]. Precisely, the members of the Employment and Social Affairs Committee agreed on a series of recommendations for new European legislation on just transition in the world of work. The proposed directive would set minimum standards on working conditions, worker information and consultation, health and safety, and labour market inclusion, while establishing an EU framework to support regions affected by the green and digital transitions. It would require timely worker consultation, strengthen social dialogue and collective bargaining, provide an individual right to training during working hours,

[3] This is particularly the case with the Paris Climate Agreement, see UN, *United Nations Framework Convention on Climate Change. Paris Agreement*, adopted on 12 December 2015, T.I.A.S. No. 16-1104.

[4] See the UN Sustainable Development Goals (SDGs); see also UN, *Transforming our world: the 2030 Agenda for Sustainable Development*, Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1, New York.

[5] European Green Deal; see EC, *The European Green Deal*, 2019, COM(2019) 640 final.

[6] EP, *Draft report with recommendations to the Commission on a just transition directive in the world of work: ensuring the creation of jobs and revitalising local economies*, Committee on Employment and Social Affairs, 2025/2131(INL), 3 December 2025.

mandate national just transition strategies, and include support measures for businesses, particularly SMEs, to promote a fair and inclusive transition and quality employment.

These developments raise a set of key questions: what conception of justice underlies the EU's move towards a Just Transition Directive? Is the EU idea of a "just transition" primarily an instrument of economic governance designed to facilitate the ecological transition, or does it constitute a principle of social justice in its own right? What types of legal instruments and institutional arrangements are required to implement one or the other conception of justice in the EU's transition towards climate neutrality?

Two draft proposal exercises – carried out respectively by Séverine Picard[7] for the Friedrich Ebert Stiftung[8] (hereinafter Proposal 1) and by Lucien Carré and Paolo Tomassetti[9] (hereinafter Proposal 2) – have sought to address these questions and to inform the ongoing EU debate on a Just Transition Directive. The aim of this article is to compare these two proposals, highlighting and explaining their similarities and differences, in a way as to further inform the policy making process.

With this ambition in mind, the article is structured as follows. In the first part, the article analyses the divergent conceptions of just transition, viewed either as a tool for social adaptation to economic change or as a lever for transforming production models (§2). In the second part, the article examines the normative architectures proposed by Séverine Picard and by Lucien Carré and Paolo Tomassetti, highlighting their differences in terms of the role assigned to labour law, which is conceived respectively as an instrument of social regulation or as a vehicle for increased worker participation in ecological and economic transformations (§3). Section 4 recaps the main findings and draws some conclusions (§4).

[7] Picard, *Proposal for a European Just Transitions Directive. Improving working conditions for just transitions through the anticipation and management of change*, Friedrich Ebert Stiftung, Competence centre Climate and Social Justice, June 2025.

[8] German political foundation established in 1925. The values it promotes, namely freedom, justice, solidarity and peace, are "firmly rooted in social democracy and the trade union movement", FES, "*About the Friedrich-Ebert-Stiftung. Get to know us!*" (online), accessed on 14 December 2025: https://www.fes.de/en/about-us/about-fes.

[9] Carré, Tomassetti, *Working paper. Towards a Directive on Just Transition within the European Union? A Draft Proposal Exercise*, EUI, LAW 2025/10 Department of Law, July 2025.

2. *Two concepts of just transition: between social integration of change and redesigning the production model*

This section compares the two conceptions of "just transition" underpinning the proposed directives. Proposal 1 understands it primarily as an instrument for anticipating and managing change (§ 2.1), whereas Proposal 2 conceives it as a broader structural transformation rooted in principles of social justice (§ 2.2).

2.1. *Just transition as a tool for "anticipating and managing change"*[10]

From the outset, Proposal 1 refers to two European transitions – climate and digital[11] – and deliberately adopts a broad understanding of transition – one encompassing "all situations in which a company is considering a strategic decision with a significant impact on the workforce"[12].

In this first proposal, the idea of a just transition is embedded within a predominantly procedural framework for the anticipation and management of changes in the world of work, thereby necessitating a "multidimensional approach"[13], encompassing both transitions. This integrated approach is justified by the interdependence of the digital and ecological transitions. The digital transition accelerates and reshapes the ecological transition by enabling, in particular, the optimisation of resource use and the facilitation of innovation (for example, through technologies based on artificial intelligence or machine-learning algorithms). At the same time, it introduces new social actors[14], generates additional environmental impacts[15], and transforms skills and professions. In short, the digital transition both accelerates the ecological transition and renders it more complex[16].

The ecological transition, for its part, requires the mobilisation of digital tools that enable, inter alia, the integration of renewable energies, the op-

[10] Subtitle of the directive proposed by Picard, *cit.*

[11] Picard, *cit.*

[12] *Ibid.*, p. 5.

[13] *Ibid.*

[14] Digital platforms, data managers, etc.

[15] Energy consumption of data centres, extraction of rare metals needed to manufacture certain technologies, etc.

[16] Emergence of new professions (data analysts, AI engineers, etc.).

timisation of resource use, and the measurement of environmental impacts. The digital transition thus facilitates the large-scale implementation of the ecological transition. It follows from Proposal 1 that these two transitions are systemic in nature: they are not limited to the introduction of specific technologies or to changes within particular sectors but instead reconfigure the very foundations of how societies function. From this perspective, the adoption of a single directive addressing both digital and ecological transitions makes it possible to address their combined impacts on the world of work – particularly on employment and workers' skills – in a coherent and integrated manner[17].

Although Proposal 1 adopts a functionally broad approach that goes beyond the standard employment relationship, its personal scope[18] remains more limited than that envisaged by Proposal 2. In Proposal 1, protection remains primarily connected to workers' exposure to restructuring and their position within the productive organisation, whereas Proposal 2 attaches the right to a just transition more directly to the worker as a person. In Proposal 1, the personal scope is defined functionally and expansively, encompassing any strategic decision by the company that significantly affects workers. Employees – understood primarily as the workforce directly impacted by restructuring – are at the core of this scope, although it is not confined to them. Precarious workers are included insofar as they are affected by decisions related to the transition, with their protection contingent upon their integration into productive structures. Platform workers are covered when they form part of the company's productive organisation and are affected by the transitions. Finally, indirect workers – such as subcontracted staff or those in the wider work chain – are considered indirectly, with a view to managing impacts and preventing broader social risks. In short, the personal scope of Proposal 1 extends beyond the confines of the standard employment contract, aiming to ensure socially responsible management of restructuring, regardless of the employment status of the workers concerned.

The functional approach adopted by Proposal 1 is not particularly disruptive. It forms part of a regulatory technique already employed in international, European and national labour law, which involves analysing changes in the world of work because of their practical effects on workers

[17] See, for example, Article 7 of the proposal.
[18] See recital 14.

and production, rather than based on predefined legal categories. Several measures set out in Proposal 1 – such as anticipating restructuring, training and reskilling, and the use of social dialogue and collective bargaining – are already featured in current discussions on the evolution of labour law in the face of economic and environmental change. The innovative aspect of Proposal 1 lies in the systematisation of these instruments at European level around the concept of a Just Transition.

This perspective is in line with the analysis put forward by Tonia Novitz[19], for whom sustainability can become a guiding principle for the future development of international labour law, thereby enabling existing legal instruments to be adapted to new social and environmental objectives. In line with this reasoning of thinking, we might cite David Doorey[20], who suggests exploring the field of 'just transition law', which would bring together labour law, environmental law and environmental justice.

Proposal 1 could therefore be understood, first and foremost, as an effort to systematise and streamline existing instruments within the European Union by placing them within a cross-cutting framework dedicated to anticipating and managing transitions. However, this capacity for coordination highlights a limitation of the approach: streamlining existing instruments does not guarantee that the inequalities created or exacerbated by the transition will be effectively addressed. The analysis put forward by Béla Galgóczi, particularly in his article *From a "just transition for us" to a "just transition for all"*[21], highlights the complexity of the link between climate, the environment and social inequalities. Just transition policies that address only one dimension would be insufficient. In line with this line of thinking, we can also cite Krause, Stevis, Hujo and Morena, who view the just transition as an opportunity to establish a new eco-social contract that would combine environmental and social objectives and in which "full access to social rights and a sustainable future would be guaranteed for all"[22].

[19] Novitz, *Sustainability as a Guide for the Future Development of International Labour Law*, in Langille, Trebilcock (eds.), *Social Justice and the World of Work*, Hart, Oxford, 2023.

[20] Doorey, *A Law of Just Transitions?: Putting Labor Law to Work on Climate Change*, Osgoode Legal Studies Research Paper Series, 2016.

[21] Galgóczi, *From a 'just transition for us' to a 'just transition for all'*, in *Transfer*, 2022, no. 3, pp. 349-366.

[22] Krause, Stevis, Hujo et Morena, *Just Transition for a new eco-social contract: analysing the relations between welfare regimes and transition pathways*, in *Transfer*, 2022, vol. 28, n. 3, pp. 367-382, summary of the paper.

Furthermore, Proposal 1 focuses on protecting workers as a workforce[23], and on ensuring the productive continuity of companies. "Securing Europe's industrial future"[24]: this is the main objective of a directive on just transitions, according to Ludovic Voet, ETUC Confederal Secretary[25] and author of the foreword to Proposal 1. At first glance, the directive proposed by Séverine Picard seems chiefly designed as a tool for the economic governance of major transitions in the world of work, with the stated objective of bolstering – or at minimum safeguarding – Europe's competitiveness.

Although the directive proposal pursues the aim of improving working conditions, in response to the "social and employment challenges arising from major economic transitions"[26], its underlying rationale can be subject to criticism from a radical standpoint: worker protection may be understood not only as an end in itself, but also as a means of supporting economic stability at EU level. This pragmatic approach to ecological and digital disruptions[27] can be seen as reflecting a concern for preserving employment, ensuring continuity of productive activity and maintaining European competitiveness. Accordingly, Proposal 1 prioritises measures capable of addressing immediate transitional pressures, notably by promoting the adaptation of work organisation, skills and professional trajectories to evolving economic and technological conditions.

This logic is echoed in the European Parliament's report of 3 December 2025[28], which similarly emphasises the need to anticipate restructuring, preserve jobs, and support European industrial competitiveness amid transitions. Like Proposal 1, the Parliament frames the just transition as a tool for managing economic transformations, with a primary focus on stability and the protection of career paths. However, one can contend that the underly-

[23] This term recurs throughout Proposal 1 and translates as the depersonalisation of workers, who are reduced to their labour power. The choice of an economic and management term rather than a legal term reflects an objective of production and economic growth.

[24] Picard, *cit.*

[25] The ETUC represents all workers at European level.

[26] Picard, *cit.*, p. 8.

[27] The term "crisis" is understood here as a rupture reflecting a period of instability and transformation. Here, the ecological crisis is forcing a transition from a carbon-based economy to a carbon-free economy, while the digital crisis can be understood as the upheavals caused by the massive introduction of new technologies into production models and the way employees perform their work.

[28] EP, *cit.*

ing production model itself must be critically challenged in order to ensure that transitions are genuinely fair.

2.2. *Just transition as structural transformation*

Proposal 2 is based on challenging this production model. A just transition is defined as an autonomous individual right[29], collective right[30] and effective right[31] – and not simply as a means of managing restructuring – which aims to "support structural economic change: the decarbonisation of the EU economy and the construction of a fairer society where work and environmental sustainability go hand in hand"[32].

The main rationale of Proposal 2 is that a just transition cannot exist without social justice. Just transition should therefore be conceived as a principle that both justifies and shapes the ecological transition[33]. Hence, labour law becomes a lever for reconfiguring the productive system, rather than merely serving as a buffer against the consequences of the ecological transition. Workers are not reduced to mere labour but are recognised as "persons"[34]. This lexical choice signals an understanding of human beings as subjects of law, grounded in a social and democratic approach to the ecological transition.

Consistently, the personal scope of Proposal 2 is defined in a substantive and universalist manner[35], grounded in the autonomous right to a just transition which aligns with the idea of fundamental human rights. As in Proposal 1, salaried workers remain central to this right. However, precarious workers are explicitly included, irrespective of the stability of their employment relationship. Platform workers are encompassed to the extent that they are exposed to the structural effects of the ecological transition, regardless of the legal classification of their subordination. Finally, indirect workers are considered more broadly than in Proposal 1. This scope is broader in

[29] Art. 4.

[30] Art. 5.

[31] Art. 6.

[32] Carré, Tomassetti, *cit.*

[33] This term is used frequently in Proposal 2 draft directive, unlike the Picard draft directive, which mentions it only once without defining it.

[34] Carré, Tomassetti, *cit.*, Art. 3, point 8.

[35] Art. 2.

that it does not depend on the legal form of the employment relationship or direct integration into the company, but on the actual exposure of workers to the structural effects of the ecological transition.

Lucien Carré and Paolo Tomassetti argue that, to ensure fairness, a transition cannot exclude certain categories of workers from the scope of the law. In short, the right to a just transition is attached to the worker as a person, not to the legal form of their employment. The objective is to guarantee universal and equal protection against the effects of the ecological transition, framed through the lens of social justice. This universalist approach to the personal scope of Proposal 2 is, however, not new in labour law. The debate concerning the protection of workers beyond their legal status predates the emergence of the regulatory framework for a just transition. In 2011, Mark Freedland and Nicola Kountouris proposed an approach aimed at moving beyond a view of the employment relationship based exclusively on the employment contract, in order to broaden it to encompass the working relationship as a whole, notably by developing the concept of 'personal work relations' and by examining how these relationships are legally constructed under English and European law. The idea was to focus first and foremost on the employment relationship and its characteristics, rather than confining ourselves to the traditional study of the employment contract[36]. Brian Langille and Ben Mayer-Goodman[37] emphasise that labour law has historically been built around the individual employee: "We live in a time of tremendous potential. One hundred years of labour law jurisprudence has built a fortress. Those deemed "employees" were protected inside that dichotomous fortress, and subject to labour law's protection. All the rest – especially those deemed "independent contractors"– were cast out, left unprotected and unsheltered from general commercial contract law and market forces"[38]. They challenge the notion that legal categories of workers, such as "employee", "employer", "self-employed" or "dependent contractor", or even "worker", are objective realities. According to the authors, these are legal constructs that can be identified based on

[36] Freedland, Kountouris, *The legal construction of personal work relations*, Oxford monographs on labour law, Oxford University Press, 2011.

[37] Langille, Mayer-Goodman, *Hunting for Employees, Employers, Independent Contractors, Dependent Contractors and Other Figments of the Legal Imagination*, in *DLJ*, 2025, Vol. 48, Iss. 1, Special Issue: The Christie, Symposium, article 9.

[38] *Ibid.*, p. 4.

facts. It is no longer simply a matter of determining the legal category to which a worker belongs, but of examining the reasons why the law chooses to grant them protection – or not. From this perspective, the universalisation of protection can be seen as a reflection on the very foundations and purpose of labour law, rather than as a mere extension of the category of employee. Finally, this line of thought can be linked to the writings of Adalberto Perulli and Tiziano Treu[39] who, in 2022, sought to develop a new status for work aimed at protecting work in all its forms. The aim was to move beyond the dichotomy between employed and self-employed work by placing the individual and their protection at the centre, regardless of the employment relationship.

These issues are all the more important in the context of a just transition, insofar as the unequal distribution of the costs of the ecological transition raises the question of what should determine eligibility for protection: employment status or the worker's actual exposure to the risks associated with the transition? This raises broader questions about the role of labour law in a just transition and its ability to protect workers across different forms of employment[40].

In line with these considerations, Proposal 2 calls for a rethinking of work itself, in particular by deconstructing the idea that there is a conflict between work and the environment, the latter only materialising "when workers have no choice but to work in a way that contributes to environmental degradation"[41]. The authors emphasise the need to emancipate work, particularly from economic constraints, in order to offer workers the freedom to engage in "socially and environmentally meaningful" activities[42] or, at the very least, not to be forced to choose between decent work and environmental sustainability.

The notion of a just transition is premised on the idea that ecological change without social justice is socially untenable, as illustrated by the Yellow Vest movement in France[43]. A transition is unfair if its costs fall solely

[39] Perulli, Treu, *"In tutte le sue forme e applicazioni". Per un nuovo Statuto del lavoro*, Giappichelli, 2022.

[40] See Caruso, Del Punta, Treu, *"Manifesto". Il diritto del lavoro nella giusta transizione. Un contributo "oltre" il manifesto*, C.S.D.L.E. "Massimo D'Antona", Catania, Firenze, Roma, 2023.

[41] *Ibid*., p. 4.

[42] *Ibid*.

[43] Movement initiated in France in November 2018. Originally, it was a protest against

on workers, low-income households, or vulnerable regions. Likewise, protecting workers solely to maintain economic performance is not socially just, as it instrumentalises protection to serve the productive system, leaving the productivist framework intact. Social justice, in this connection, must go beyond mitigating the impacts on the most vulnerable; it must also promote their recognition and meaningful participation, rather than being reduced to social risk management.

Nonetheless, Proposal 2 is not entirely detached from economic considerations. According to the authors, "recognising the right to a just transition prevents deindustrialisation in Europe"[44]. In this framework, competitiveness is not a foundation of the ecological transition but rather a consequence of ensuring social justice.

Refocusing the ecological transition on its social objectives rather than on economic imperatives raises the question of which legal instruments can effectively support such an ambition. In contrast to Proposal 1, Lucien Carré and Paolo Tomassetti propose a directive concentrated on the ecological transition alone, rather than one encompassing both ecological and digital transitions. While, as noted, the drafting of a joint directive could be justified by the overlapping impacts on labour law, the decision to focus exclusively on the ecological transition is not without merit. The authors of Proposal 2 justify this choice on the grounds that, unlike other industrial transformations, the ecological transition represents a "public interest imperative"[45] that is not solely oriented towards economic growth or competitiveness.

Furthermore, while parallels can be drawn with other transitions, particularly the digital transition, they argue that "confusing them risks diluting the urgency and specificity of the climate challenge"[46]. Indeed, the digital and ecological transitions are not of the same nature. While the digital transition is contingent and depends on industrial choices, the ecological transition is imperative because it is impossible to avoid climate change and its impact on human beings, societies and legal systems[47].

fuel tax increases. However, it has gone beyond this issue to become a broader protest against the cost of living and social and fiscal inequalities.

[44] Carré, Tomassetti, *cit.*, point 9.

[45] *Ibid.*, p. 6.

[46] *Ibid.*

[47] On this point, see in particular the work of the IPCC, *cit.*

Moreover, a single directive covering both digital and energy transitions risks generating standards that are too generic to effect meaningful change. Proposal 2 underscores the necessity of profound transformation, addressing the structural roots of the ecological crisis – an aim that could be compromised by a joint directive.

Overall, the two proposals reveal fundamentally different conceptions of a just transition. Proposal 1 treats it as a pragmatic tool of economic governance, while Proposal 2 advocates for a reconfiguration of a social system already marked by injustice and exacerbated by the climate crisis. Correspondingly, the legal structures proposed diverge: the former focuses on regulating the social consequences of transitions, whereas the latter seeks to transform labour relations at a systemic level.

3. *Two normative architectures for a just transition: social regulation or democratisation of work?*

This section compares the normative frameworks underpinning the two proposals. Proposal 1 structures transitions around a predominantly functional social framework (§3.1), whereas Proposal 2 conceives the just transition as a capacitating and emancipatory tool aimed at strengthening workers' power to act (§3.2). This divergence reveals profoundly different understandings of the role of labour law in shaping a just transition.

3.1. *Social governance as a lever for competitiveness and stability: Proposal 1*

As discussed above, Proposal 1 appears to be primarily oriented towards the social management of the climate crisis. To this end, it relies on social governance, understood as the institutional framework through which decisions relating to labour, employment, and social protection are formulated and implemented via mechanisms of consultation and negotiation among the State, the social partners, and specialised institutions[48].

[48] The very concept of "governance" is difficult to define. It seems to imply a plurality of actors (state, businesses, social partners, etc.), forms of coordination and pooling of ideas (negotiation, consultation, incentives, private standards, etc.) and a partial shift of power from the state to processes involving several actors at different levels. See Rhodes, *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability*, Open University Press,

Grounded in Article 153 of the Treaty on the Functioning of the European Union (hereinafter "TFEU"), Proposal 1 promotes a form of functional social governance centred on information and consultation rights for workers and their representatives[49], the elaboration of transition plans "in collaboration with workers"[50], and the deployment of training and skills management mechanisms[51].

While these instruments of European social law are primarily intended to facilitate anticipation and coordination in the context of restructuring, skills adaptation and social change, the way in which they are deployed might be subject to criticism. Critical scholars could argue that social governance is conceived mainly as a framework for managing and mitigating social risks, rather than as a means of fundamentally reshaping labour relations. Workers are accordingly approached both as rights holders and as key participants in economic adjustment processes, whose skills and capacities are mobilised to support EU competitiveness and to accompany the digital and ecological transitions. In this sense, social governance is promoted to the extent that it enables the productive system to adapt to and absorb the effects of digital and climate-related transformations.

Arguably, the system proposed by Séverine Picard reflects a logic of compatibility with the internal market, aiming to protect workers insofar as this supports European industrial competitiveness, but without calling into question the productive purpose. The proposal promotes transitions that could be described as "ordinary" in that they emphasise training, job retention and professional mobility, in line with EU industrial policies. This model of social governance takes the form of a classic tripartite arrangement bringing together employers, public authorities, and social partners, in which social dialogue plays a central regulatory role without calling existing economic structures into question. The procedural architecture established under this model is primarily oriented towards anticipation and technical

1997; see also Rosenau, Czempiel, *Governance without government: Order and change in world politics*, Cambridge University Press, 1992.

[49] Picard, *cit.*

[50] *Ibid.*, p. 5.

[51] The Proposal 1 for a directive introduces, in particular, the idea of workers acquiring an individual right to paid training during their working hours in order to avoid the main obstacles to professional retraining, such as time or cost, or the establishment of coordinated skills planning at regional and sectoral levels; mentioned above, p. 6 and Articles 26 to 29.

management, relying on mandatory transition plans, skills mapping, and social impact assessments, coordinated through change-management instruments such as audits, reporting requirements, and indicators.

Within this framework, institutions of social dialogue function chiefly as bodies for consultation and coordination, fulfilling a largely procedural and stabilising role. This stands in contrast to the approach advanced by Lucien Carré and Paolo Tomassetti, who conceive social dialogue as a space for substantive deliberation. Social partners are thus involved in managing transitions, notably through their participation in the drafting of transition plans, the identification of skills needs, and the support of restructuring processes. Employers, for their part, bear responsibility for implementing transitions in a manner that ensures productive continuity and economic competitiveness. Public authorities likewise contribute by supporting production through training, financing, and regulatory policies, while safeguarding economic and industrial stability.

Proposal 1 seeks to strike a balance between economic growth and the social impacts of major transitions in an emergency context, relying in particular on consultation mechanisms, economic stability, and the preservation of industry. European industrial competitiveness is framed as a strategic objective, both to prevent deindustrialisation and to respond to international competition. Arguably, questioning the existing production model is perceived as entailing the risk of industrial decline, while redefining the purpose of production is seen as potentially leading to capital flight. Although the proposed directive does not explicitly use the term competitiveness and sets out clear social objectives[52], these remain structured around a logic of supporting the existing production system.

Beyond the sense of urgency, Proposal 1 also reflects a political commitment to protecting European industry. Moreover, by relying on Article 153 TFEU[53], Proposal 1 aligns closely with the existing framework of EU

[52] See article 3.

[53] It should be noted, however, that Proposal 1 for a directive refers to Article 153(2)(b) TFEU, in conjunction with Article 153(1)(a), (b), (e), (h), (i) and (j). The author therefore excludes from the scope of application points relating to social security and social protection for workers (c)), the protection of workers in the event of termination of the employment contract (d)), the representation and collective defence of the interests of workers and employers, including co-determination (f)), and the conditions of employment of third-country nationals legally residing in the territory of the Union (g)).

law. It largely mobilises instruments that are already in place – such as social dialogue (Article 151 TFEU) and the involvement of social partners (Article 152 TFEU) – without envisaging a reconfiguration of the institutional architecture. The European Parliament's report of 3 December 2025[54] is consistent with this approach, likewise emphasising social dialogue, consultation with the social partners, and the development of common transition frameworks.

Furthermore, the risk-management-based approach set out in Proposal 1, through its monitoring, audit and reporting mechanisms, is not limited to labour regulation but is typical of the regulatory techniques employed in EU law. The approach taken in Proposal 1 is neither isolated nor unique. Today, it is found in particular in recent legislation relating to the ecological and digital transitions. For example, Claire Bright and Karin Buhmann[55] highlighted how the duty of care, through a risk-based approach, links the protection of human rights, the fight against climate change and the requirements of a just transition, whilst requiring companies to identify, prevent and mitigate the risks that their activities pose to people and the environment. The approach taken by Proposal 1 is similar. The digital transition, particularly the regulation of artificial intelligence, is underpinned by the same logic, as Isabel Kusche points out[56]. The author draws on the EU AI Act[57] and notes that the text is also based on a gradation of the risks that AI poses to fundamental rights.

Rather than fundamentally challenging productivity objectives, ecological and digital transitions tend to be integrated into a broader logic of optimisation and continuity within the EU market economy. In this framework, one could argue that ecological imperatives are not primarily framed as external constraints, but are increasingly incorporated as factors guiding adaptation and adjustment. Social justice considerations are thus often ar-

[54] European Parliament, *cit*.

[55] Bright, Buhmann, *Risk-Based Due Diligence, Climate Change, Human Rights and the Just Transition*, in *Sustainability*, 2021, 13, 10454, p. 1.

[56] Kusche, *Possible harms of artificial intelligence and the EU AI act: fundamental rights and risk*, in *JRR*, 2024, pp. 1-14.

[57] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial intelligence Act).

ticulated in ways that support the management of these transitions, notably by facilitating acceptance and reducing social tensions, without necessarily calling into question existing production structures. As a result, dynamics that could potentially disrupt prevailing economic arrangements of capitalism are transformed into "instruments of its own perpetuation"[58] .

A genuinely "just" transition would require moving beyond the mere framing of transformations towards a more explicit and demanding conception of social justice, understood not as an instrument but as an end in itself. To this end, Proposal 2 draft directive suggests to ground the concept of a just transition in the redistribution of power within companies.

3.2. *The just transition as a field for the democratisation of work: Proposal 2*

Like Proposal 1, Proposal 2 is grounded in Article 153 of the TFEU, aiming to establish "common minimum standards that guarantee the effective enjoyment of the right to a just transition in the context of climate change mitigation and environmental restructuring"[59]. The joint reliance on Article 153 TFEU represents a point of convergence between the two proposals, as it situates the just transition within the EU's social competences and provides a legal basis for adopting common minimum standards on working conditions, social protection, and worker participation.

However, the use of this legal foundation differs between the two proposals. Proposal 1 employs it as a tool to support continuity and manage transitions without challenging the existing production model, whereas Proposal 2 treats it as an opportunity for regulatory innovation. The latter is grounded in a right-based conception of a just transition, which extends beyond contexts in which social rights are exercised and becomes the very object of that right. This recognition entails the identification of duty-bearers: employers, who are required to anticipate changes, adapt the organisation of work, and co-construct the transition with workers; and public authorities, which must, for instance, finance the transition and ensure effective access to rights.

The autonomous right to a just transition is not solely aimed at pro-

[58] Gorz, *Métamorphoses du travail. Quête du sens. Critique de la raison économique*, Galilée, Débats, 1988, p. 298: "Capitalism never ceases to integrate and recover what seemed to be slipping away from it, transforming threats against it into instruments of its own perpetuation".

[59] Carré, Tomassetti, *cit.*

tecting individuals, but also at guiding industrial choices. It rests on a substantive conception of social justice, which goes beyond compensating losses or managing risks, and entails recognising workers as legal subjects and ensuring their meaningful participation in decision-making processes.

This approach reflects a broader drive to democratise work, conceived as the redistribution of decision-making power within firms, allowing workers' representatives to influence work organisation, production choices, and the design of the transition. In this framework, representative democratisation is not a peripheral goal or a tool to facilitate the ecological transition, but a necessary condition for achieving it.

Furthermore, this conception of worker participation raises a difficulty in light of the traditional limits on worker participation under EU law. As Anna Maria Alaimo noted in 2009[60], the European regulatory framework has gradually favoured forms of involvement based on information and consultation. Following "strong" worker participation, EU law has moved towards a regulatory framework based on information and consultation which, according to Anna Maria Alaimo, goes so far as to enshrine these as the main forms of "employee involvement". This concept ("*coinvolgimento dei lavoratori nell'impresa*") encompasses the mechanisms that enable workers to influence company decisions, generally through their representatives. Unlike Proposal 1, Proposal 2 departs from this by seeking to make worker participation a key element in company decisions relating to the transition.

This difference therefore raises a fundamental question: could the recognition of an individual and collective right to a just transition constitute a normative basis that would make it possible to overcome the limitations imposed by Article 153 of the TFEU? The question is all the more significant given that the ecological transition is viewed as an imperative in the general interest that could affect the enjoyment and exercise of fundamental social rights. The question of striking a balance between environmental imperatives and freedom of enterprise also arises, particularly where worker participation is likely to influence the company's strategic decisions.

Recent EU law does not appear to have addressed these issues. As Joana Nunes Vicente noted in 2024[61], even in the area of companies' duty

[60] Alaimo, *Il coinvolgimento dei lavoratori nell'impresa: informazione, consultazione e partecipazione*, in Sciarra, Caruso, *Il lavoro subordinato*, Giappichelli, Torino, 2009.

[61] Vicente, *Neglecting the Involvement of Trade Unions in Due Diligence processes? A Critical Appraisal of the EU's Corporate Due Diligence Directive*, in this journal, 2024, no. 1, p. 268.

of care[62] – which is based on similar objectives regarding sustainability and the protection of human rights – workers' involvement remains organised primarily around information and consultation mechanisms, rather than genuine co-decision-making mechanisms: "According to those recommendations, while stakeholders' involvement, in particular trade unions' involvement, is a key component of the due diligence process, this involvement should be interactive, covering information, consultation, and comprehensive/structural, it means an ongoing process. To the contrary, in the proposed directive, trade unions were not explicitly mentioned as stakeholders. A clear obligation to consult stakeholders was only referred when enacting preventive or corrective action plans"[63].

Thus, the two directives differ not only in the participatory techniques they employ, but also in their two different conceptions of the role that workers should be called upon to play in the governance of the transition.

Proposal 2 rests on the premise that a socially just ecological transition requires active worker engagement, rather than leaving workers passive in the face of unilateral production decisions. Accordingly, Article 3 of the directive stresses the necessity of "meaningful participation"[64] by trade unions and workers' representatives, extending beyond conventional information and consultation procedures[65] to facilitate genuine deliberation with both companies and national authorities[66].

In Proposal 2, work is conceived not merely as an economic factor but as a space for democratic decision-making. Workers are therefore recognised as political actors in the ecological transition. Social dialogue institutions are understood as arenas for co-constructing pathways for the ecological transition, enabling the effective realisation of the right to a just transition. Unlike Proposal 1, where social partners are primarily tasked with managing transitions, Proposal 2 positions them as political and legal actors with the capacity to challenge trajectories that conflict with social

[62] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

[63] Vicente, *cit.*, p.17.

[64] Carré, Tomassetti, *cit.*, art. 3.

[65] Article 8(3), on information, consultation and collective bargaining, proposes that the just transition plan be "discussed and agreed with trade unions, workers' representatives or works councils at company level".

[66] Carré, Tomassetti, *cit.*, art. 3.

and environmental justice. Employers, accordingly, are bound by substantial obligations stemming from the autonomous right to a just transition: they are not only responsible for implementing the transition but must also align their productive choices with the requirements of social justice.

Public authorities act as guarantors of the right to a just transition. They bear responsibility for financing the transition, ensuring territorial coherence, preventing structural inequalities, and establishing a legal framework for productive transformations. In sum, the mechanism proposed by Lucien Carré and Paolo Tomassetti seeks to render the ecological transition a democratic and legally regulated process, oriented toward both the transformation of the productive model and the advancement of social justice.

Moreover, the goal of democratising work reaffirms the principle that "work is not a commodity"[67] and highlights the necessity of imbuing it with meaningful content. Workers should not be compelled to trade off decent working conditions against sustainability. The directive seeks to empower workers, placing them in a "situation of absolute freedom of individual choice and equality between rational persons, regardless of their actual status"[68], thereby enabling them to engage in "socially and environmentally meaningful activities"[69].

Organised in this way, labour law would become a vehicle for social and environmental justice. However, despite this transformative ambition, Proposal 2 raises questions about its legal feasibility within the EU framework. The recognition of an autonomous right to a just transition raises questions about both the scope of the EU's powers under Article 153 TFEU and its articulation with freedom of enterprise[70] and the diversity of national industrial relations systems. It must therefore be understood both as a project for normative reform and as a contribution to "the effective transposition of the principle of just transition into binding European legislation"[71].

[67] Principle adopted in the Declaration of Philadelphia in 1944 when defining the objectives of the International Labour Organisation. See Supiot, *L'esprit de Philadelphie. La justice sociale face au marché total*, Seuil, 2010.

[68] Carré, Tomassetti, *cit.*

[69] *Ibid.*

[70] See Charter of Fundamental Rights of the European Union, Art. 16.

[71] Carré, Tomassetti, *cit.*

4. *Conclusion*

In conclusion, the analysis of the proposals put forward by Séverine Picard and by Lucien Carré and Paolo Tomassetti reveals a potential compatibility between their respective approaches. While the former places emphasis on social regulation and the protection of workers, the latter foregrounds participation and the democratisation of work, thereby offering two complementary perspectives for ensuring that transitions are both effective and fair. From this standpoint, the notion of a "just transition" emerges both as an instrument of economic governance for structuring transitions and as a principle of social justice in its own right.

That said, the European Parliament's report of 3 December 2025, which calls for the drafting of a directive on just transitions, appears – at least at this stage – to be more closely aligned with Proposal 1, favouring a normative framework centred on social regulation and support for territories and workers. This orientation suggests that, notwithstanding the recognised importance of participatory dimensions, current European policy choices tend to privilege a pragmatic and stabilising approach.

Nevertheless, in order to maximise both the effectiveness and the social acceptability of transitions, it would seem desirable to articulate these two dimensions more closely: strengthening social regulation while simultaneously integrating mechanisms for the active participation of workers and local communities. This would also imply adapting measures to specific territorial and sectoral contexts and establishing robust monitoring and evaluation tools capable of adjusting policies in light of their outcomes. By reinforcing social protection, ensuring meaningful worker participation, and subjecting transition policies to continuous assessment, ecological and economic transitions may be pursued in a manner that is fair, inclusive, and sustainable.

Abstract

This article analyses two proposals for European directives on implementing a just transition in the world of work. It compares an approach focused on social regulation and anticipating restructuring with an approach based on worker participation and the democratisation of work, revealing two complementary concepts of social justice. The just transition thus appears to be both a tool for economic governance and a principle of social transformation. The article also examines, in a cross-cutting manner, the European Parliament's report of 3 December 2025, putting it into perspective with these two proposals in order to assess the current direction of European policies on just transition.

Keywords

Just transition, Social regulation, Protection of workers, Social justice, Sustainability.

Fabiola Lamberti

Temporary Agency Work in European Labour Law: Evolutionary Perspectives between Harmonisation and Heterogeneity

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1. *The evolutionary process of temporary agency work in the European Union*

1.1. *From restrictive approaches to promotional intent within the flexicurity paradigm*

Temporary agency work constitutes one of the most emblematic institutions of the flexicurity paradigm characterising the contemporary Euro-

pean labour law framework, which continually seeks an appropriate balance between workers' protection and companies' adaptability needs[1].

The evolution of the European approach to temporary agency work indeed reflects a broader rethinking of labour policies in the European Union, marked by a shift from a protection model based on job security to one centred on employment security.

This paradigmatic shift, theorised precisely within the flexicurity concept developed by the European Commission[2], has found in the regulation of agency work one of its most significant fields of application[3].

As is well known, Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work constitutes an instrument of minimum harmonisation of standards concerning agency work and represents the culmination of a troubled legislative process that took over six years to complete, highlighting profound divergences among Member States in their approach to this form of atypical work.

Historically, the majority of European Member States had adopted restrictive or even prohibitive approaches towards temporary agency work.

Countries such as Germany, France and Italy had developed complex systems of authorisations, sectoral limitations and quantitative quotas reflecting a conception of agency work as a potentially dangerous phenomenon for the stability of employment relationships. This approach was rooted in the continental labour law tradition[4], which privileged the open-ended employment contract as the normal and socially "desirable" form of labour organisation[5].

The critical review process of these restrictive approaches had already begun in the 1990s, driven by various converging factors. Firstly, the experience of Anglo-Saxon and Nordic countries, which had already adopted

[1] Treu, *Sustainable social security. Past and future challenges in social security*, in *RDSS*, 2018, 4, pp. 621-655.

[2] Delfino, *Note su "Jobs Act", "flexicurity" e ordinamenti sovranazionali*, in *DLM*, 2015, 2, pp. 407-417.

[3] Ales, *Il Modello Sociale Europeo dopo la crisi: una mutazione genetica?*, in *DLM*, 2017, 3, pp. 485-494; Sartori, *Temporary agency work in Europe after the 2008/104/EC directive*, in *ELLJ*, 2016, 7, 1, pp. 107-124.

[4] Spattini, *Agency Work: a Comparative Analysis. E-Journal of International and Comparative Labour Studies*, ADAPT University Press, 2012, 1.

[5] Aa.Vv., *The Role of Temporary Agency Work and Labour Market Transitions in Europe: Institutional frameworks, empirical evidence, good practice and the impact of social dialogue*, Hamburg, 2013.

more liberal approaches, demonstrated how this contractual form could effectively contribute to job creation and facilitate labour market transitions. Secondly, empirical studies started to show that agency work, far from being a form of extreme precariousness, could represent a step towards stable employment, especially for the most vulnerable groups in the labour market[6].

The adoption of the Directive marked a paradigm shift in the European approach to regulating agency work, requiring Member States to abandon purely restrictive approaches in favour of balanced regulation combining flexibility and security[7], with the declared aim of effectively contributing to job creation and the development of flexible forms of work, recognising temporary employment agencies as a legitimate and functional actor in the European labour market[8].

1.2. *Directive 2008/104/EC as a pillar of European regulation*

The Directive obliges Member States to conduct a "review of restrictions and prohibitions" limiting the use of temporary agency work (Article 4) present in national legal systems and provides provisions to ensure equal treatment (Article 5) and access to employment, collective facilities, and vocational training (Article 6).

A fundamental premise for understanding the current state of implementation of temporary agency work in Europe is that the Directive does not aim to fully harmonise national regulations, but rather seeks to establish a common regulatory framework that prevents social and economic dumping among Member States and between workers from different States[9].

The Directive's declared objective is indeed to guarantee the protection of agency workers and to improve the quality of agency work "ensuring compliance with the principle of equal treatment towards them and recognising temporary work agencies as employers" (Article 2), while care-

[6] Davies, *The Implementation of the Directive on Temporary Agency Work in the UK: A Missed Opportunity*, in *ELLJ*, 2010, 1, 3, pp. 307-331.

[7] Ales, *Modello sociale europeo e flexicurity: una sorta di patto leonino per la modernizzazione*, in *DLM*, 2007, 3, pp. 523-534; Rosin, *Applying the Temporary Agency Work Directive to Platform Workers: Mission Impossible?*, in *IJCL*, 2020, 36, 2, pp. 141-168.

[8] Robin-Olivier, Lo Faro, *Non standard Employment contracts,* in Jaspers, Pennings, Peters (eds.), *European Labour Law*, Intersentia, 2024, pp. 327 ff.

[9] Piglialarmi, Serrani, *Lo staff leasing finisce alla Corte di Giustizia dell'Unione Europea*, in *Boll. ADAPT*, 2024.

fully regulating the use of this instrument to contribute effectively to job creation (Recital 9) and to the development of flexible forms of work with respect to minimum homogeneous protections[10].

Thus, unlike fixed-term contracts[11], the European legislator recognises temporary agency work as a promotional tool for stable employment[12], with particularly incisive protection for workers engaged in fixed-term agency work, as Member States are required to adopt "the necessary measures [...] to avoid abusive use [...] and, in particular, to prevent successive assignments aimed at circumventing the provisions of this Directive" (Article 5 para. 5).

It must be clarified from the outset that Directive 2008/104/EC, unlike Directive 1999/70/EC on fixed-term contracts, does not aim to prevent the abuse of temporary agency work[13], but rather to protect agency workers in comparison to directly employed workers[14]. Indeed, a textual analysis of the Directive clearly shows that employment through agencies at the European level is not considered hazardous; on the contrary, it is supported as a form of flexible employment that can effectively contribute to job creation.

It is therefore important, to properly approach the Directive's objectives and assess the coherence of national regulatory frameworks, to highlight that its inspiration, unlike that underlying fixed-term contract regulation, is intended to promote and not hinder recourse to temporary agency work, provided an adequate system of sanctions[15] or, more simply, "counterbalances" to flexibility established by the legislator and sectoral collective bar-

[10] Esposito, *Somministrazione di lavoro e rapporti interpositori nella nuova stagione comunitaria della flexicurity*, in Zoppoli, Delfino (eds.), *Flexicurity e tutele. Il lavoro tipico e atipico in Italia e in Germania*, Ediesse, 2008.

[11] Bollani, *La somministrazione di lavoro liberalizzata*, in Magnani, Pandolfo, Varesi (eds.), *I contratti di lavoro. Commentario al d.lgs. 15 giugno 2015, n. 81*, Giappichelli, 2016, p. 157.

[12] Passalacqua, *La somministrazione di lavoro alla prova del decreto dignità*, in *DML*, 2019, 1, pp. 97 ff.; Cataudella, *La somministrazione di lavoro dopo il c.d. decreto dignità*, in *LPO,* 2019, 1-2, pp. 1-16; Miscione, *Il lavoro somministrato dopo il "decreto dignità" e momenti di storia del diritto*, in *LG*, 2019, 2, pp. 123-136.

[13] Aimo, *La nuova disciplina sul lavoro a termine e somministrazione a confronto con le direttive europee: assolto il dovere di conformità?*, in *DLRI,* 2015, 3, p. 635.

[14] As already established by the CJEU, 11 April 2013, C-290/12, Della Rocca.

[15] Filì, *Prime note sulla somministrazione di lavoro (artt. 30-40)*, in Carinci (ed.), *Commento al d.lgs. 15 giugno 2015, n. 81: le tipologie contrattuali e lo jus variandi, ADAPT*, 2015, pp. 197 ff.; Ferrara, *Uso e abuso della somministrazione di lavoro: la reiterazione di missioni successive al vaglio della Corte di Giustizia dell'Unione Europea*, in *ADL*, 2021, 2, pp. 425 ff.

gaining, through quantitative limits and specific protective rules for agency workers such as equal treatment, the solidarity regime between agency and user undertaking, and sectoral welfare through bilateral bodies[16].

On the one hand, the Directive promotes the diffusion of agency work as a form of organisational flexibility capable of triggering virtuous employment processes; on the other, it guarantees employment quality through incisive protective instruments for workers involved in non-standard contractual forms[17].

This systematic reading of the Directive's provisions, respecting the peculiarities of labour markets and industrial relations systems in Member States, is today more necessary than ever because, as will be seen, the latest case law outcome, while abstractly aligned with the Directive's protective aims, tends to interpret, even almost "quantify", the concept of flexibility underpinning the Directive itself, thus identifying a substantial prerequisite of the temporary agency work institution[18].

The normative structure of the Directive rests on two fundamental pillars reflecting the political compromise reached between different Member States' positions[19].

The first pillar imposes on Member States the obligation to "review restrictions or prohibitions" that limit the use of temporary agency work, with the goal of favouring a more liberal approach to the use of this contractual form. Article 4 establishes that restrictions and prohibitions related to temporary agency work are justified only "for reasons of general interest regarding the protection of temporary agency workers, health and safety requirements at work, or the need to ensure the proper functioning of the labour market and to prevent possible abuses".

The second pillar, governed by Article 5, establishes the principle of equal treatment between agency workers and workers directly employed by the user company, ensuring that "the basic working and employment

[16] Ciucciovino, *I nuovi limiti al ricorso alla somministrazione dopo il D.L. 34/2014*, in Calcaterra (ed.), *La somministrazione di lavoro*, Giuffrè, Milano, 2014.

[17] Melin, Parthenopoulos, *Overview of Recent Cases Before the Court of Justice of the European Union (January-June 2024)*, in *EJSS*, 2024, 26, 3, pp. 369-386.

[18] Lamberti, *La somministrazione di lavoro come connubio tra flessibilità del mercato e tutela dei lavoratori*, in Ciucciovino, Crespi, Toscano (eds.), *Il lavoro in somministrazione in Italia: quadro regolatorio, percorsi professionali e transizioni. Un'analisi attraverso i big data*, Roma Tre-Press, 2024, pp. 48 ff.

[19] Riesenhuber, *European Employment Law. A systematic exposition*, Intersentia, 2021.

conditions are at least identical to those which would apply to them if they were directly employed by the same company to carry out the same work".

This normative architecture reflects the "dual nature" of the institution, as effectively described by Italian doctrine, which sees temporary agency work as simultaneously "pro-market" and "pro-labour"[20].

Temporary agency work, therefore, represents the legal-dogmatic emblem of the tension between companies' flexibility needs and the protection of workers' fundamental rights, while highlighting the internal contradictions – or rather, the complex heterogeneities – of European labour law[21].

This study aims to propose a comparative analysis of current temporary agency work regulation in European legal systems, requiring a methodological approach that considers the complexity of interactions between European law and national rights and combines doctrinal, normative, and jurisprudential analysis regarding the conformity of national regulation with the Directive[22].

The Court of Justice of the European Union has indeed played a decisive role in delineating the scope and interpretation of Directive 2008/104/EC, establishing – as will be seen in more detail later – stringent constraints on deregulation and promoting the principle of equal treatment and effective protection of agency workers[23]. More recently, the Court has ruled decisively on the notion of "temporariness of assignments", and at the time of writing, it is called to decide on the preliminary ruling raised by some Italian Courts on the compatibility of staff leasing with the Directive's provisions (see *infra*).

Particular attention is thus devoted to the role of Court of Justice jurisprudence[24], which in recent years has produced a series of key decisions for interpreting Directive 2008/104/EC such as the TimePartner case (C-311/21) on the "overall protection" of agency workers, the KG and Daimler rulings on limits to the "reasonable temporariness" of assignments (C-

[20] Biasi, *L'arrêt KG e la temporaneità del lavoro somministrato: essere o dover essere?*, in *DLRI*, 2021, 170, pp. 301 ff.

[21] Spattini, *cit*.

[22] Kullmann, *The 'temporariness' of temporary agency work assignments*, in *ELLJ*, 2024, 15, 1, pp. 4-16.

[23] Robin-Olivier, Lo Faro, *cit*., pp. 327 ff.

[24] Ulber, *The Role of the Social Partners and the 'Overall protection of temporary agency workers': The ECJ decision in the TimePartner case and the legal and actual situation in Germany*, in *ELLJ*, 2024, 15, 1, pp. 38-49.

681/2018 and C-232/2020), and the currently pending Italian preliminary ruling on staff leasing[25]. National judges, for their part, have helped delineate the operational limits of temporary agency work by adding important pieces to the jurisprudential mosaic.

Only a precise normative and jurisprudential triangulation enables the study of regulated flexibility and social protection dynamics in a scenario of European legal pluralism that integrates supra-national and national competences.

2. *National models compared: liberal vs restrictive approaches*

2.1. *The Italian regulatory framework between flexibility enhancement and application restrictions*

Within the Italian legal system, the regulation of the *contratto di somministrazione*, described as a complex contractual arrangement in which two contracts combine to create a dissociation between the employer and the recipient of the work performance, through an intermediation authorised by the legal system and subject to specific controls and guarantees aimed at preventing the risk that imputation of the relationship to a person different from the actual user leads to forms of circumvention of worker protections[26], is currently governed by Articles 30 to 40 of Legislative Decree No. 81/2015.

The Italian legislator's approach has echoed the "dual nature" of the European perspective[27]; the Italian compromise has been marked by regulatory discontinuities alternating between flexible and more rigid systems[28].

Nationally, until 1997, agency work was precluded by Law No. 1369/1960, which prohibited labour intermediation, effectively preventing

[25] Trib. Reggio Emilia, 7 November 2024, and Trib. Milan, 14 January 2025.

[26] Cons. St., sez. III, 3 May 2022, n. 3468.

[27] Calcaterra, *La somministrazione di lavoro dal pacchetto Treu al Decreto Dignità*, in Calcaterra, (ed.) *La somministrazione di lavoro. Problemi e prospettive tra diritto nazionale e diritto dell'Unione europea dopo il Decreto Dignità*, Editoriale Scientifica, 2019.

[28] Siena, *La Corte di Giustizia si pronuncia su missioni successive e prevenzione degli abusi nella somministrazione*, in *MGL*, 2021, 1, pp. 270 ff.; Ferrara, *Somministrazione di lavoro e tecniche anti abusive tra diritto europeo e diritto interno,* in Chiaromonte, Ferrara (eds.), *Bisogni sociali e tecniche di tutela giuslavoristica. Questioni aperte e prospettive future*, Franco Angeli, 2018, pp. 177-178.

a worker from holding employment relationships with anyone other than the actual employer exercising standard employer powers.

The legal breach in this general prohibition occurred with Law No. 196/1997, which introduced temporary agency work, reserved for authorised agencies registered in a ministerial roll, initially admitted only on a fixed-term basis and in strictly defined cases identified by legislation and collective bargaining[29].

After the regulatory phase marked by the so-called Biagi Reform (Legislative Decree 276/2003), which expanded utilisation possibilities[30], and the subsequent phase closed by Law No. 92/2012 (Article 1, para. 9 letter b), which required the presence of a justificatory reason for initial fixed-term contracts not exceeding 12 months, fixed-term agency contracts remained subject solely to quantitative limits set by collective agreements as established in Articles 20(3) and (4), with exemptions and prohibitions in para. 5: a) agency contracts could be concluded either on a fixed-term or open-ended basis; b) open-ended agency contracts were permitted only in types specifically listed or identified by collective bargaining; c) fixed-term agency contracts were subject only to compliance with quantitative limits delegated to the most representative national collective agreements.

These legislative interventions[31], in practice, encouraged increased use of the institution, which is suited to meeting market flexibility needs without imposing rigidity on organisational structure, while providing well-designed protections for workers, as explained below.

The subsequent rationalisation of labour relationship regulation effected by Legislative Decree 81/2015 essentially confirmed the previous legislation, linking the legitimacy of fixed-term agency contracts solely to compliance with quantitative limits fixed by collective agreements applied by the user employer (Article 31), while for open-ended agency contracts (so-called staff leasing), unless otherwise specified by the same collective agreements, it limited their use to no more than 20% of the user employer's

[29] Treu, *Flessibilità e tutele nella riforma del lavoro,* in *GDLRI*, 2013, 137, pp. 1-51; Carinci M.T., *Agency Work in Italy,* in *WP CSDLE "Massimo D'Antona".IT,* 36/2011; Canavesi, *Agenzie per il lavoro e lavoratori a tempo indeterminato nella somministrazione,* in *DRI,* 2023, 2, pp. 407 ff.

[30] Tiraboschi, *Lavoro temporaneo e somministrazione di manodopera. Contributo allo studio della fattispecie lavoro temporaneo tramite agenzia,* Giappichelli, 1999.

[31] Bollani, *Contratto a termine e somministrazione nelle scelte del legislatore del 2018,* in *DPL*, 2018, 40, pp. 2367 ff.

permanent workforce, requiring exclusively the use of permanent employees hired by the agency[32].

The overall framework of the Jobs Act was thus oriented towards positive regulation rather than repression of flexible contract types[33].

In this regulatory context, the 2018 reform introduced through Decree-Law No. 87/2018, converted into Law No. 96/2018, the so-called "*Decreto Dignità*," which, opposing the previous framework, rewrote the applicable regulation of the contract in question. In brief, Article 2 of Decree-Law No. 87/2018 extended the ordinary fixed-term employment regulation to fixed-term agency contracts. Essentially, the legislator equated fixed-term agency contracts with fixed-term employment contracts, save for specific exceptions, adopting a perspective diametrically opposed to the previous national regime and also to the EU-wide framework, which had always distinguished the two contract types[34], marking a sharp reversal from the process of liberalisation that characterised the Italian system from 2003 to 2015[35]. This extension introduced causal limits, duration caps, and quantitative ceilings that significantly reduced the use of the institution[36].

Hence, under the "*Decreto Dignità*", the Italian user is currently subject to two thresholds: firstly, a 20% limit concerning permanent employees; secondly, an overall 30% limit calculated considering both fixed-term and agency workers. The 2023 "*Decreto Lavoro*" partly corrected this framework by reintroducing causelessness for the first 12 months of the relationship and delegating causal definitions for subsequent periods to collective bargaining. Moreover, Italian collective bargaining developed an articulated system of limits distinguishing between agency work at the same user (24-month

[32] Casale, *I presupposti di legittimità della somministrazione di lavoro e la conversione alle dipendenze dell'utilizzatore*, in *ADL*, 2009, 2, pp. 515 ff.

[33] Filì, Riccardi, *La somministrazione di lavoro*, in Ghera, Garofalo (eds.), *Contratti di lavoro, mansioni e misure di conciliazione vita-lavoro nel Jobs Act 2*, Cacucci, 2015, pp. 303-304.

[34] Treu, *Una seconda fase della "flexicurity" per l'occupabilità*, in *DRI*, 2017, 3, pp. 597-633; Calcaterra, *Lo staff leasing dall'ostracismo alla liberalizzazione*, in Calcaterra (ed.), *La somministrazione di lavoro. Problemi e prospettive tra diritto nazionale e diritto dell'Unione europea dopo il Decreto Dignità*, Editoriale Scientifica, 2019.

[35] Ciucciovino, Toscano, *Il contributo del lavoro delle agenzie di somministrazione al mercato del lavoro italiano: bilancio e prospettive*, in Ciucciovino, Crespi, Toscano (eds.), *Il lavoro in somministrazione in Italia: quadro regolatorio, percorsi professionali e transizioni. Un'analisi attraverso i big data*, Roma Tre-Press, 2024, pp. 7 ff.

[36] Giubboni, *Somministrazione di lavoro e tecniche antiabusive alla prova del diritto dell'unione europea*, in *RIDL*, 2021, 1, I, pp. 27 ff.

limit, subject to user collective bargaining provisions) and work at different users (48-month limit)[37].

While the progressive liberalisation of agency work produced positive utilisation performance, the tightening enacted by the *Decreto Dignità* significantly impacted actual use[38].

Empirical data from the Observatory at Roma Tre University, in which the author participates, show that the introduction of new limits caused a reduction in use, confirming concerns expressed by scholars[39] regarding the effects of restrictive policies on labour market flexibility[40].

2.2. *Regulation in continental Europe: France and Germany between restrictions and liberalisation*

Both France and Germany have developed approaches to agency work reflecting their distinct labour law traditions and specific labour market conditions.

The French model of agency work, *travail temporaire or intérim*, is characterised by a precise legal structure codified in the *Code du travail*, particularly Articles L.1251-1 *et seq.*, exhibiting a structurally restrictive approach limit-

[37] The two National Collective Labour Agreements, signed by ASSOLAVORO and ASSOSOMM on the employer side and FELSA-CISL, NIDIL-CGIL, UILTEMP on the union side, currently effective as of 22 July 2025 (and in previous versions), thoroughly govern the maximum duration and sequence of fixed-term contracts in Art. 21, establishing that for agency work with the same user, the computation criteria and maximum duration are identified by the collective agreement applied by the user, with a fallback maximum duration of 24 months for contract succession. For agency work with different users, the total succession duration of fixed-term contracts between agency and worker cannot exceed 48 months.

[38] Lamberti, Caravaggio, *La somministrazione di lavoro: analisi di impatto nel mercato del lavoro tra esigenze di flessibilità e tutela del lavoro*, in Levrero (ed.), *Mercato del lavoro, contrattazione e salari in Italia: 1990-2021*, Roma Tre-Press, 2023, pp. 203-235.

[39] Maresca, *Contratto di lavoro e somministrazione a termine: il regime transitorio nel decreto dignità*, in *ADL*, 2018, 4, 1, pp. 10-12.

[40] The JointLAB "*Agency Work in Italy*", active since 2019 and coordinated by Professors Silvia Ciucciovino, Francesco Crespi and Alessandro Toscano, conducts research on temporary agency work in Italy and develops analyses of the employment dynamics of agency workers, with particular regard to contractual types and durations, commencements and terminations, job classifications, occupations, sectors of employment, and socio-demographic characteristics. Data analysis and processing are carried out in scientific collaboration with LabChain (Inter-university Centre for Advanced Studies on Blockchain, Innovation and Labour Policies). The Laboratory's activities are available at the following link: Laboratorio "JointLAB Lavoro in somministrazione in Italia" - JLS - Dipartimento di Economia.

ing agency use to specific reasons and imposing strict authorisation systems for agencies, with significant sanctions for abuse. In France too, the triangular legal relationship involving the *entreprise de travail temporaire* (ETT), *entreprise utilisatrice* (EU) and the temporary worker materialises through two separate contracts: the *Contrat de mise à disposition* between ETT and EU, commercial in nature; and the *Contrat de mission* between ETT and worker, labour law in nature. The French model provides procedural and substantive guarantees analogous to the Italian system, such as mandatory written form for the *contrat de mission* under penalty of requalification into an indefinite contract (CDI); the principle of equal treatment regarding working conditions, hours, safety and remuneration; and the *indemnité de fin de mission* (10% of gross remuneration) and *indemnité compensatrice de congés payés*. A major innovation is the introduction of the *contrat à durée indéterminée intérimaire* (CDII), i.e., an open-ended contract for temporary workers[41], guaranteed by a 2013 collective agreement and formalised through subsequent laws[42]. The CDII allows workers stable relations with the agency despite successive assignments to different users, ensuring income continuity through the *Rémunération minimale* even during intermission periods[43]. In particular, under the current Article L. 1251-58-6 of the Code du travail, the statutory maximum duration applicable to ordinary contracts of mission does not apply to workers employed by the agency under a CDII; by contrast, ordinary contracts of mission remain, in the absence of an applicable extended sectoral agreement, generally subject to an 18-month maximum and may be renewed twice[44]. The end-of-assignment indemnity is excluded due to the continuity of the working relationship[45].

A distinctive aspect of the French system is the role of *organismes paritaires*, bilateral entities managing sectoral welfare for agency workers. This model influenced the Italian approach in setting up *FormaTemp* and *EbiTemp*, demonstrating how bilateralism can be an effective tool to com-

[41] Vivés, *Sécuriser les intérimaires sans toucher au CDI? La création négociée du CDI intérimaire*, in *Rev.IRES*, 2016, 1.

[42] Collective agreement of 10 July 2013 signed by social partners with generalised effects by ministerial decree 22 February 2014.

[43] Aa.Vv., *cit.*

[44] *Loi Rebsamen* of 17 August 2015 introducing the CDII into the *Code du travail*; final establishment with law no. 2018-771 of 5 September 2018.

[45] D'Ascenzo, *Francia: lavoro a tempo indeterminato nella somministrazione dopo la Loi Rebsamen*, in *Boll. ADAPT*, 23 July 2018.

bine flexibility with security. In summary, the French model, akin to the Italian one, features a highly regulated system imposing strict limits both on the use of agency work and on the conditions under which it operates, with consolidated worker protections and innovations aimed at greater contractual stability and legal protection.

German doctrine describes the German model of temporary work regulation, contrasting it with the French model[46].

The German system of temporary agency work, *Arbeitnehmerüberlassung*, is among the most complex and elaborate models in Europe, shaped extensively by the Hartz reforms of 2003-2004, with the latest amendment to the *Arbeitnehmerüberlassungsgesetz* (AÜG) effective from 1 April 2017.

Germany adopted a fundamentally restrictive approach characterised by stringent authorisation requirements, well-defined time limits (18 months maximum assignment to the same user), and a multi-tiered architecture with collective agreements providing systematic derogations from the principle of equal pay. Operating as a temporary work agency requires licensing from the *Bundesagentur für Arbeit* (§ 1 AÜG); unlicensed operation entails nullity of contracts and administrative and criminal sanctions. Workers may be assigned to the same user for no more than 18 consecutive months (§1 Abs. 1b AÜG); after which they must be directly employed or reassigned elsewhere, except where collective bargaining allows exceptions.

German case law does not allow the dismissal of temporary workers at the end of an assignment to be justified solely on the ground that no alternative placement is immediately available.

The "business risk" is inherent in temporary agency business and cannot be shifted to workers; the agency must continue to pay and seek opportunities for the worker. Dismissal is only justified after prolonged unemployment and inability to requalify the employee.

Section 8 AÜG guarantees the right of temporary workers to essential working and employment conditions equal to those of user company employees (e.g., pay, holidays, working hours), except for permitted collective agreement derogations, provided overall worker protection is ensured, implementing Directive 2008/104/EC[47].

[46] Corti, *Il lavoro interinale "Modell Deutschland". Dall'europeizzazione al ritorno della regolazione*, in this journal, 2018, 3, pp. 523-556.

[47] Spinelli, *Il lavoro tramite agenzia interinale nella legislazione europea: natura temporanea senza rimedio. La vicenda di un lavoratore tedesco,* in *RIDL*, 2022, 3, 2, pp. 518 ff.

The Court of Justice of the European Union ruled specifically on the German system in case C-232/20, forbidding the use of agency work to fill permanent or ordinary stable jobs within the user enterprise. The ruling of 17 March 2022 clarified that the EU Temporary Agency Work Directive only requires the job covered to be temporary in nature, not the post itself. It emphasised the need to prevent and sanction abuse, requiring Member States to provide mechanisms to avoid abusive use, specifying that repeated and continuous placement with the same enterprise may constitute abuse if unreasonable.

The CJEU also addressed issues relating to the German system in case C-311/21 TimePartner Personalmanagement GmbH, setting fundamental principles for interpreting Article 5(3) of Directive 2008/104/EC, to which we will return later. The TimePartner case highlighted tension in the German system, showing how the extensive use of collective agreement derogations may conflict with the "overall protection" principle developed by the Court. The CJEU clarified that derogations to the equal treatment principle permitted by Directive 2008/104/EC and incorporated in the AÜG are lawful only if they ensure effective "overall protection" of agency workers through collective agreements.

The Court established that the concept of "general protection of temporary workers" does not require a specific protection level higher than that of workers generally, but collective agreements allowing differential treatment must provide "compensatory advantages" in basic working and employment conditions, so the compliance assessment must be concrete, comparing conditions of directly hired and temporary workers[48].

The Court also set criteria to evaluate whether such protection is effectively guaranteed. The *Bundesarbeitsgericht* confirmed the validity of the German system of compensatory advantages, while highlighting the need for a stricter assessment of their real balance of wage disparities.

2.3. *The Spanish model: the authorisation system and judgment C-441/23*

The temporary agency work system in Spain is governed by a comprehensive legal framework based on *Ley* 14/1994, *de 1 de junio, por la que se regulan las empresas de trabajo temporal* (ETT), continuously updated by

[48] Jaehrling, Kalina, *'Grey zones' within dependent employment: formal and informal forms of on-call work in Germany*, in *ETUI*, 2020, 26, 4, pp. 447-463.

implementing regulations including the *Real Decreto* 417/2015, *de 29 de mayo*, and very recently by Orden TES/1324/2024, *de 20 de noviembre*, which implements the *Real Decreto* 417/2015 approving the regulation of temporary work agencies.

In Spain, ETTs must obtain administrative authorisation to operate (Article 2 of *Ley* 14/1994; Article 13 of *Real Decreto* 417/2015). The authorisation is national and unique, requiring registration in a dedicated public register. ETTs are obliged to periodically report contracts activated and use updated official forms (Article 17 *Real Decreto* 417/2015; *Orden* TES/1324/2024). In implementing the equal treatment principle (Article 11 *Ley* 14/1994), agency workers are entitled to the same essential working and employment conditions as employees of the user company, with particular attention to pay, working hours, holidays, and health and safety at work (Article 22 *Ley* 31/1995 on risk prevention). Only collective bargaining may, in certain cases, provide derogations within the limits of the European Directive. The recent *Orden* TES/1324/2024 updated procedures regarding authorisation numbers, contract templates and monthly communications, aligning with the labour reform under Royal Decree-Law 32/2021, enhancing transparency and traceability of ETT operations [49].

On the question of authorisations to carry out agency work, the Court of Justice recently intervened in a Spanish case, judgment C-441/23, clarifying the criteria for classifying temporary work agencies and their workers [50]. The Court specified that an entity must be classified as a temporary work agency if its activity consists in employing workers who are temporarily assigned under the control and direction of a user company, regardless of its formal recognition as an agency in the country of origin, even if it lacks administrative authorisation as a recognised temporary work agency under national law.

This principle significantly broadens protections, including within the Directive's scope all workers temporarily at the disposal of a user en-

[49] AA.VV., *cit*.

[50] CJEU, C-441/23, concerns a Spanish case involving a worker (LM) assigned to Microsoft Ibérica through a chain of intermediation companies (Omnitel Comunicaciones, Leadmarket, Indi Marketers). Following maternity leave, the worker was dismissed and sought recognition of unlawful dismissal with joint liability of all involved companies. The CJEU clarified the scope of Dir. 2008/104/EC and the effective notion of the remuneration equal treatment principle.

terprise, irrespective of the legal qualification of their relationship, thus preventing companies from circumventing Directive protections by employing contractual arrangements that formally do not constitute authorised temporary work agencies[51].

The Court also confirmed that temporary agency workers must receive remuneration at least equal to what they would have received if directly employed by the user company, applying Article 5(1) of Directive 2008/104, reinforcing the principle of joint and several liability even in cases of unlawful dismissal.

2.4. *Self-regulation and the role of social partners in the Swedish and Danish systems and the Dutch Waadi Act*

The Nordic regulatory systems for agency work represent a distinctive model characterised by the central role of collective bargaining and a consensual approach among social partners. This tradition of self-regulation has produced systems that combine high flexibility with robust social protections, consistent with the flexicurity model developed in these countries.

The Swedish model effectively exemplifies this approach. Swedish legislation on agency work (*Lagen om uthyrning av arbetstagare - Lag* 2012:854) implemented Directive 2008/104/EC through a system that grants broad regulatory powers to collective bargaining. The legislation, in line with the Directive, requires that agency workers have at least the same working conditions and pay they would receive if directly employed by the client company for the same role. Exceptions and derogations under Article 2.2 are only permissible if established in collective agreements signed or approved by central trade union organisations. Notably, the "24-month rule" in Sweden dictates that workers employed for a total of 24 months at the same client operational unit (not necessarily consecutive but within 36 months) must be hired on a permanent basis by the client or receive compensation equivalent to two months' salary. This mechanism is an interesting example of how temporal limits can incentivise transitions to stable employment relationships without prohibiting extended agency work.

[51] Van Schadewijk, *The concept of 'temporary agency work' in EU law. C-441/23 (Omnitel Comunicaciones and Others)*, in *ELLJ*, 2025, 16, 3, pp. 411-416.

The Danish system arguably represents the most advanced example of self-regulation in the agency work sector, governed by the Act on the legal rights of temporary agency workers upon assignment by a temporary-work agency (*Lov om midlertidigt ansattes retsstilling ved udstationering af en vikarvirksomhed*), effective from 1 July 2013. Denmark imposes no specific legislative limits on assignment durations, fully entrusting operational rules to collective bargaining. This approach is enabled by a high collective bargaining coverage rate (over 80%) and a strong tradition of social partner collaboration [52]. Danish legislation also establishes the equal treatment principle: Article 3 obliges agencies to guarantee temporary workers conditions regarding working time, overtime, breaks, rest periods, night work, holidays, public holidays and remuneration that are at least equal to those applicable if the worker were directly employed by the user company. A particularly relevant element is the collective derogation clause in Article 3(5), which excludes the application of equal treatment principles when an agency is covered by a nationwide collective agreement concluded by the most representative social partners, respecting the general protection of temporary workers. The CJEU jurisprudence has progressively limited union discretion, requiring substantive judicial review even in systems like Denmark with strong social partner autonomy.

The Netherlands presents a particularly interesting case in the European agency work panorama, having developed an innovative system combining operational flexibility with robust control and worker protection mechanisms. The *Wet allocatie arbeidskrachten door intermediairs* (*Waadi* Act) constitutes the pillar of Dutch regulation together with the Civil Code (*Burgerlijk Wetboek*, Book 7 Articles 690-692). Agency work is governed by a combination of Dutch Civil Code, Collective Labour Agreements (central to the contractual discipline), company-level policies and individual employment contracts. The *Waadi* Act adopts a preventive approach favouring registration and transparency over operational restrictions. All companies engaging in agency work must register with the Business Register and obtain a *Waadi* Registration, a system facilitating oversight and preventing fraud, illegal work, and worker exploitation (Article 7 *Waadi*). The Admission for Allocation of Workers Act (Wtta) will enter into force on 1 January 2027 and

[52] Munkholm, *The 'overall protection' of temporary agency workers, the role of social partners, and the case of Denmark*, in *ELLJ*, 2024, 15, 1, pp. 17-37.

will introduce an admission system; enforcement of the prohibition on supplying or hiring workers without admission will begin on 1 January 2028.

This complex regulatory architecture demands careful compliance management. In the Netherlands, agency workers have the right to the same essential working conditions (including pay) as employees of the user for the same assignment (Article 8 *Waadi*).

Regarding contract duration and security (*ketenregeling*), since 2020 there has been a maximum of three temporary contracts within three years with intervals shorter than 6 months at the same user or agency: exceeding this limit without collective agreement exemptions triggers conversion to a permanent contract.

The Dutch model also provides innovative mechanisms managing the transition from temporary to permanent contracts. Under the *Wet meer zekerheid flexwerkers*, approved in 2026, the basic rule remains a maximum of three fixed-term contracts or three years of continuous fixed-term employment, while the interruption period required to start a new chain will be extended from six months to three years; these changes are expected to apply from 1 January 2028.

2.5. *Post-Brexit United Kingdom: the survival of the Agency Workers Regulations*

Brexit represented a moment of testing for the robustness of the British approach to regulating agency work. Contrary to expectations of immediate post-Brexit deregulation, the UK has essentially maintained in force the Agency Workers Regulations 2010, which implemented Directive 2008/104/EC and remain applicable post-Brexit through retained EU law[53].

Before Brexit, the UK agency work system was primarily regulated by the Agency Workers Regulations (AWR), effective from 1 October 2011, implementing Directive 2008/104 on temporary agency work. The UK regulations embody a pragmatic approach balancing business flexibility and worker protections. Under this system, after a 12-week qualifying period in the same role with the same user, agency workers gain the same entitlements as directly employed staff (Regulations 5-6 AWR 2010). The UK ap-

[53] O'Connor, Harvey, *Freedom of Movement and the Normative Value of the Right to Work in the United Kingdom Post-Brexit*, in *Cambridge Yearbook of European Legal Studies*, 2023, 25, pp. 174-197.

proach thus features a graduated rights progression: agency workers immediately acquire fundamental rights (national minimum wage, paid holidays, maximum working time, health and safety protections) while after 12 weeks in the same position at the same user, they obtain equal treatment regarding basic working conditions and pay.

Primary liability rests with the agency, but the user must provide access to collective facilities and opportunities; the former pay-between-assignments derogation was repealed with effect from 6 April 2020; agency workers are therefore entitled to equal pay after the 12-week qualifying period even where they have a permanent contract with the agency[54].

Brexit introduced the retained EU law regime via the European Union (Withdrawal) Act 2018, keeping all EU-derived law as UK domestic law after 31 December 2020 (IP completion day) until formally amended[55].

The AWR 2010 remain fully applicable pending future revision. The UK government has contemplated revising agency work laws within the Brexit Freedoms Bill, permitting repeal, replacement or amendment of retained EU legislation by 31 December 2023 ("sunsetting"), but to date the AWR remain substantially unchanged[56].

3. *The principle of equal treatment and its operational variants*

3.1. *Equal treatment in the directive and possible derogations*

Article 5 of Directive 2008/104/EC, as previously mentioned, represents the normative cornerstone of the principle of equal treatment in European labour law concerning temporary agency work.

The provision establishes that the agency worker must be assured, for the entire duration of the employment relationship, the basic working and employment conditions they would benefit from if directly employed

[54] Watts, *The Institutional Context for Temporary Staffing: A European Cross-national Comparative Approach*, University of Manchester, 2013.

[55] De Mars, Murray, *With or Without EU? The Common Travel Area After Brexit*, in *GLJ*, 2020, 21, pp. 815-837.

[56] Current constraints also stem from the UK-EU Trade and Cooperation Agreement (TCA) which requires maintaining worker protection levels no lower than those ensured at end 2020, under threat of EU trade countermeasures in case of "diverging down".

by the user undertaking to perform the same work. This principle unfolds across several operational dimensions: remuneration conditions, working time, occupational health and safety, and access to the user undertaking's collective facilities.

However, the Directive allows significant derogations through three distinct mechanisms: collective agreements concluded by social partners (Art. 5, para. 3), workers hired on permanent contracts by the agency and remunerated between assignments (Art. 5, para. 2), and national agreements that nonetheless guarantee an adequate level of overall protection (Art. 5, para. 4). This regulatory flexibility has generated significantly heterogeneous national interpretations, creating what doctrine describes as a regulatory mosaic. Comparative analysis of national systems highlights how differing labour law traditions influence the interpretation of "remuneration", a concept on which the Court of Justice has repeatedly ruled, notably with respect to the Spanish system in the 2022 judgment of 12 May in case C-426/20, and more recently in the 22 February 2024 judgment in case C-649/22.

Regarding the notion of "overall protection" of agency workers, the connection between the Directive's general principles and the system of collective derogations permitted therein appears pivotal.

In particular, as noted, the German model is characterised by extensive use of collective derogations from the principle of equal treatment and is based on a complex architecture of sectoral collective agreements envisaging wage derogations for agency workers relative to directly employed staff[57].

Nevertheless, the Court of Justice, in its 15 December 2022 decision in case C-311/21 (TimePartner), as will be elaborated below, has questioned this balance, requiring a more stringent assessment of the actual compensatory capacity of the benefits offered.

The Italian system presents distinctive characteristics markedly separating it from other European regimes. Legislative Decree No. 81/2015 incorporated the principle of equal treatment in Article 35, establishing that agency workers must receive "overall economic and regulatory treatment not inferior to that enjoyed by employees of the user of equivalent level,

[57] Over 95% of the sector covered by collective agreements providing wages significantly lower than direct workers.

performing equal duties". The Italian wording differs from the European Directive's notion, employing the concept of "overall not inferior treatment" seeming to limit derogation possibilities and including welfare benefits within the overall treatment, given that extensive interpretation encompasses social, welfare, and company welfare services provided by the user undertaking. Italian collective bargaining has traditionally avoided systematic derogations from the principle of equal remuneration, focusing rather on defining supplementary welfare systems via bilateral bodies such as *FormaTemp* and *EbiTemp*. This approach reflects a view of agency work as a flexibility tool not to result in wage dumping, consistent with the promotional orientation of the European Directive.

The French model adopts an intermediate stance between the German and Italian approaches. French agency work legislation enshrines the principle of equal treatment with limited derogations through collective bargaining. French collective agreements have made moderate use of these possibilities, focusing primarily on organisational and training aspects rather than systematic wage reductions.

Indeed, the French model represents a clear compromise between flexibility and protection, characterised by full wage parity defined as the same remuneration as employees of the user undertaking performing identical tasks, a precariousness allowance amounting to 10% of gross salary at each mission's end compensating instability, combined with specialised training systems[58] and the concurrent existence of bilateral funds[59].

Significant heterogeneity in implementing the equal treatment principle generates three systemic issues: a) competitive distortions: wage discrepancies among Member States (particularly pronounced in Germany) create incentives for offshoring temporary work services and regulatory "shopping". Agencies established in countries permitting broader derogations can offer more advantageous conditions in the cross-border market; b) fragmentation of social protection: heterogeneous application of the permitted derogations in Article 5 compromises the Directive's minimum harmonisation objective; c) judicial enforcement: the principle's effectiveness increasingly depends on the Court of Justice's intervention, balancing

[58] Contributions of 2.15% of the wage bill for training (exceeding 1.5% of other companies).

[59] FAF-TT (Fonds d'assurance formation du travail temporaire) and FPE-TT for training and placement.

the Directive's fundamental principles with the margin of appreciation afforded to Member States.

3.2. *Jurisprudence of the Court of Justice on equal treatment*

The case law developed by the Court of Justice helps clarify the concrete parameters of the "adequate compensation" required for collective derogations.

The evolution of the CJEU jurisprudence on the principle of equal treatment for agency workers reflects a progressive interpretive refinement that has helped delineate Article 5's application contours.

The Court of Justice's ruling in CM v. TimePartner Personalmanagement GmbH (C-311/21) of 15 December 2022 marks a turning point in interpreting the equal treatment principle enshrined in Article 5 of Directive 2008/104/EC.

The judgment tackles one of the most contentious issues in Directive application: the scope of collective bargaining derogations permitted and the boundaries necessary to guarantee "overall protection"[60].

The facts concerned an agency worker employed by the German agency TimePartner Personalmanagement GmbH and seconded to a retail company in Bavaria. Under the collective agreement for agency workers, the employee received a gross hourly wage of €9.23, significantly less than €13.64 provided by the retail sector collective agreement for directly employed workers. The central issue was the lawfulness of this wage disparity under Article 5(3) of the Directive, which allows derogations to the equal treatment principle "provided the overall protection of agency workers is respected".

The Court clarified that the "overall protection" concept does not require consideration of a specific protection level higher than that laid down for workers generally by national and EU law provisions on basic working and employment conditions, but demands that any wage or regulatory disadvantages be compensated by corresponding advantages in other working and employment conditions. Thus, when social partners authorise through collective agreements differences in basic working and employment conditions disadvantaging agency workers, such agreements must grant compen-

[60] Ulber, *cit.*, pp. 38-49.

sating benefits for the difference in treatment to comply with the overall protection principle.

The ruling introduces a concrete evaluation criterion demanding a specific comparison of disadvantages and benefits among basic working and employment conditions at the particular user undertaking: assessment is case-by-case, comparing overall conditions for a given role. The compensation principle requires that collective derogations not merely reduce agency workers' rights but should deliver equivalent counterbalances through other benefits (e.g., training, job security, additional services). This stance constitutes a clear Court position against overly permissive interpretations of collective derogations that would undermine the equal treatment principle. The TimePartner case had immediate repercussions on national case law. The *Bundesarbeitsgericht* was compelled to verify case by case whether contractual benefits effectively balance wage disparities, abandoning prior presumptive correctness characterising the German approach.

Beyond TimePartner, other decisions have clarified specific aspects of equal treatment.

The Team Power Europe case (C-784/19), arising from a Bulgarian dispute, though not directly addressing equal treatment, clarified criteria for determining when a temporary work agency is deemed to carry out "substantial activities" in a Member State, with significant implications for national collective agreement and wage system application. The European Court of Justice in C-784/19 addressed cross-border posting and the temporary agency work regime, specifically concerning social security applicable to agency workers posted from one Member State to companies in another[61].

The Court held that agency workers employed by an agency in one Member State may maintain social security coverage of that State even while working for a user company in another Member State, provided the agency carries out substantial activities (not merely administrative) in the home country.

Regarding the "substantiality" of activities, the Court clarified that mere administrative management or creation of fictitious agencies in the home country to apply more favourable social security regimes constitutes

[61] The preliminary ruling request was filed by Bulgarian administrative court after the Bulgarian tax agency refused to issue an A1 certificate to a Bulgarian temporary work agency ("Team Power Europe") for workers posted in Germany. The A1 certificate attests application of local social security legislation even when work is performed abroad.

abuse; the agency must carry out significant functions (such as recruitment, selection, concrete management) in the Member State of origin.

This case also highlights the regulatory overlap and potential conflicts between temporary agency work regulation and posting legislation. Directive 2008/104/EC and Directive 96/71/EC on posting (amended by Directive 2018/957/EU) establish normative frameworks potentially applicable concurrently in cross-border agency work[62]. A particularly problematic aspect in posting cases concerns the identification of the "comparator" for applying equal treatment: for domestic agency workers, the comparator is clearly user's directly employed staff; for cross-border workers, the situation is more complex, as the comparison might involve agency workers in the home State, user company employees, or other agency workers in the same sector.

The Court's principles seek to avoid downward pressure on national welfare systems, preventing circumvention via fictitious postings and cross-border agency work liable to affect equal treatment, in connection with operational and administrative rules through which Member States' social security systems cooperate to ensure continuous social insurance coverage and portability of social rights within the EU under Regulation 987/2009. The ruling constitutes essential reference for verifying the genuineness of postings and cross-border agency work in European context, with significant implications for coherence between social security protection and labour rights in transnational worker movements and for the authenticity of social security certificates[63].

4. *The "reasonable temporariness" of assignments*

4.1. *Temporariness as a defining element of temporary agency work*

"Temporariness" constitutes the ontological distinguishing feature of the institution of temporary agency work, serving as a cornerstone prin-

[62] Delfino, *Ultima direttiva sul distacco transnazionale dei lavoratori e trasposizione in Italia nel prisma del bilanciamento degli interessi*, in *DLM*, 2021, 2, pp. 271-290.

[63] Schlachter, *Temporary Agency Work: How Much Equality Does the Equal Treatment Principle Provide?*, in *IJCL*, 2012, 28, 2, pp. 177-197.

ciple differentiating this form of employment from the stability typical of traditional subordinate employment[64].

The theoretical foundation of this requirement lies precisely in the triangular organisation of the employment relationship, whereby the agency's intermediary function presupposes a transitory need, temporally limited, of the user undertaking [65].

However, the lack of heteronomously imposed limiting rules regarding reiteration of fixed-term employment contracts within temporary agency work has generated interpretative spaces that have recently engaged both Union and national courts, requiring further investigation at this stage of analysis.

Directive 2008/104, as noted, aims to ensure that agency work preserves its "temporary" nature, while simultaneously protecting the worker's interest in quality employment and requiring Member States to adopt measures to prevent any form of abuse[66]. Nevertheless, no provision of the Directive obliges Member States to set a maximum duration in national law beyond which an assignment can no longer be considered "temporary"[67].

The interpretative threshold lies precisely in the space between what is physiological, hence temporary and compliant with the Directive, and what is pathological, constituting an abuse of temporariness[68].

The Court of Justice of the European Union has repeatedly clarified that temporariness is an inherent and structural requirement of agency work, emphasising that this feature should not be understood as limiting the job to be filled at the user undertaking, but as the modality of making the worker available. This approach conceptually distinguishes the permanent or temporary nature of the position from the temporally circumscribed duration of the agency employment relationship[69].

[64] Treu, *Le tutele del lavoratore nel mercato del lavoro*, in *DRI,* 2002, 3, pp. 396–403.

[65] Ratti, *Somministrazione di lavoro e temporaneità delle esigenze dell'impresa*, in *LG*, 2010, 2, pp. 703 ff.

[66] Ciucciovino, *I limiti al ricorso alla somministrazione dopo il Decreto Dignità*, in Calcaterra (ed.), *La somministrazione di lavoro. Problemi e prospettive tra diritto nazionale e diritto dell'Unione europea dopo il Decreto Dignità*, Editoriale Scientifica, 2019, pp. 83 ff.

[67] Lamberti, *La somministrazione di lavoro come connubio tra flessibilità del mercato e tutela dei lavoratori*, cit., p. 48.

[68] Ratti, *Natura temporanea del lavoro tramite agenzia e limiti derivanti dal diritto europeo*, in *RIDL*, 2021, 1, 2, pp. 100 ff.

[69] Manfredini, *Ancora sulla necessaria temporaneità del lavoro in somministrazione, tra conferme, dubbi e novità*, in *DRI*, 2024, 3, pp. 795 ff.

The principle of temporariness contrasts with the stability of standard employment, typified by the open-ended employment contract as the general form of labour relationship. This opposition does not imply a value hierarchy between contract types but reflects differing economic-organisational functions: while the standard contract responds to the structural and continuous needs of the undertaking, temporary agency work aims to meet transitory needs through a mechanism of controlled flexibility.

In particular, the Court of Justice, conducting a systematic assessment of the EU regulatory framework, starting from the clear presupposition that "Article 5(5), first sentence, of Directive 2008/104, in itself, does not preclude national legislation that does not limit the number of successive assignments performed by the same agency worker with the same user nor conditions the legitimacy of fixed-term temporary agency work on technical, production, organisational, or replacement reasons", considers that the same provision must be interpreted as precluding a Member State from "failing to take any measures to preserve the temporary nature of agency work and national legislation that does not provide for measures to prevent the assignment of successive missions to the same agency worker with the same user"[70], aiming to prevent circumvention of the Directive's provisions as a whole.

4.2. *The "reasonable temporariness" in judgments C-681/2018 and C-232/2020*

The Court of Justice's jurisprudential evolution regarding temporariness in agency work has been principally systematised in two landmark rulings: the KG judgment of 14 October 2020 (C-681/18) and the Daimler judgment of 17 March 2022 (C-232/20).

These rulings marked a hermeneutic turning point profoundly influencing subsequent national interpretative developments concerning the evaluation of assignment durations.

Case C-681/2018 involved a German worker who had been employed at the same user undertaking for over four years through successive fixed-term agency contracts without substantial interruption between assignments. The preliminary question concerned the compatibility of national

[70] CJEU, 14 October 2020, C-681/2018.

legislation lacking specific limits on assignment duration with Article 5(5) of Directive 2008/104/EC[71].

The Court ruled that although the Directive does not explicitly set temporal limits on agency assignments, Article 5(5) precludes a Member State from failing to adopt measures to preserve the temporary nature of agency work and from having national legislation that provides no measures preventing the assignment of successive missions to the same worker at the same user.

The Court provided three criteria to the referring judge to verify circumvention: whether successive missions lead to a duration exceeding what can reasonably be deemed temporary; whether such successive missions undermine the Directive's essence and constitute abuse; and whether, concretely, the user provides no objective justification for resorting to agency work.

Case C-232/2020 further refined these principles, introducing the notion of "reasonable temporariness". The Court held that abusive use of fixed-term agency work can occur when multiple consecutive assignments for the same worker at the same user result in a working period exceeding what can "reasonably" be classified as "temporary", considering case circumstances, sector peculiarities, and national regulatory context[72].

This formulation introduced a case-by-case evaluative criterion granting national judges discretion in determining the threshold beyond which temporariness becomes "unreasonable"[73].

However, the absence of precise "quantitative" parameters has created notable interpretative uncertainties, as evidenced by varied national judicial reactions, especially in Italy.

[71] In case KG, originating from a preliminary reference by the Brescia Court, the Court confronted a situation characterised by 17 successive assignments to the same user over approximately two years.

[72] Casiello, *La somministrazione di lavoro ovvero della temporaneità ragionevole*, in *RIDL*, 2022, 1, 2, pp. 73 ff.; CJEU, 17 March 2022, C-232/2020 (Daimler), the so-called Daimler case further clarified interpretative parameters concerning a worker assigned to the same user for 55 months. It reiterated that temporariness characterises "not the job within the user undertaking to be filled, but the means of making a worker available to that undertaking".

[73] Pantano, *I più recenti orientamenti della Corte di giustizia sulla temporaneità del rapporto di lavoro tramite agenzia interinale: il caso Daimler*, in ADL, 2023, 1, 2, pp. 112 ff.

4.3. *The absence of uniform criteria and consequent case-by-case application uncertainties*

The resulting national case law approach features a flexible evaluation system, based on concrete "case-by-case" analysis of the factual circumstances rather than predetermined rigid, uniform parameters.

Legal practitioners and companies thus operate in a regulatory framework whose concrete application depends on judicial discretionary appreciation, undermining legal certainty and predictability of dispute outcomes.

Such lack of predetermined quantitative parameters, while ensuring closer alignment with sectoral and national specificities, inevitably engenders application uncertainties, notably in establishing ex ante the boundaries of lawful agency use.

This uncertainty is further compounded by the diversity of national contexts in which the Directive applies. Sectors with pronounced seasonality, labour markets characterised by high intersectoral mobility, and collective bargaining systems with differing traditions contribute to rendering uniform standards of temporariness extremely complex[74].

Within CJEU case law developments, three core criteria have emerged for assessing temporariness: a) the overall duration of assignments, evaluated against market circumstances and sectoral specificities; b) balancing business flexibility with worker protection, verifying whether prolonged agency work compromises employment security; c) the continuity of the same worker's use, assessing whether repeated missions at the same user constitute an attempt to circumvent the regulation.

The Court specified that, in the absence of general criteria, determining utilisation limits is a matter for national judges on a case-by-case basis, considering all relevant circumstances including sector peculiarities. These parameters must be jointly assessed, preserving judicial discretion over factual evaluation[75].

The Italian Supreme Court has adopted and developed these European jurisprudential concepts through several rulings shaping the national approach on temporariness in agency work[76].

[74] Kullmann, *cit.*, pp. 4-16.

[75] Lamberti, *La somministrazione di lavoro come connubio tra flessibilità del mercato e tutela dei lavoratori*, cit., p. 48.

[76] Riccio, *La necessità temporanea del lavoro tramite agenzia: i possibili riflessi sull'ordinamen-*

Its consolidated position crystallised mainly in judgments of 21 July 2022 (No. 22861) and 11 October 2022 (No. 29570).

Judgment No. 22861/2022 established the principle that "the temporary character of agency work, though not expressly provided in Legislative Decree No. 81/15, must however be regarded as an implicit and structural requirement of this contract type, consistent with Directive 2008/104". This affirmed the autonomous relevance of temporariness as an inherent limit to the institution, independently of national legislative choices[77].

The subsequent judgment No. 29570/2022 further asserted that "the necessary temporariness of assignments must always be ensured, regardless of national legislative provisions". This imposes on Italian judges the burden to ensure temporariness even in absence of specific internal legislative rules.

The Supreme Court also clarified assessment criteria for lower courts, specifying that verification must "necessarily consider all successive temporary agency contracts, including those for which the appeal deadline has passed, as relevant factual circumstances to establish whether overall use of the agency worker has continued beyond a duration reasonably attributable as temporary".

That Legislative Decree No. 81/2015, and previously Legislative Decree No. 276/2003, contain no explicit temporary duration provision for agency work does not preclude considering temporariness as an implicit, inherent requirement in accordance with EU law obligations, without constituting a *contra legem* interpretation.

Specifically, the Supreme Court affirmed that since the temporariness rule characterises agency work regulation, repeated temporary contracts constitute a "contract in fraud of the law" where used – also via explicit or implicit agreements between supplying and user enterprises concerning the same worker – to circumvent temporariness rules[78].

Article 1344 of the Civil Code is thus invoked as a useful tool to prevent abusive succession of fixed-term contracts, entrusting the lower court to infer "from elements such as the number of fixed-term contracts, the

to interno, in *ADL*, 2023, 1, 2, pp. 163 ff.; Riccio, *Tanto tuonò che piovve. Ancora sulla necessaria temporaneità della missione nel lavoro tramite agenzia e sulle conseguenze nell'ordinamento italiano*, in *ADL*, 2024, 5, 2, pp. 1083-1109.

[77] Bronzini, *Il lavoro in somministrazione e le tutele dell'unione. Ribadite dalla Corte di giustizia le finalità antiabusive*, in *LDE,* 2, 2022.

[78] See e.g., Cass. No. 7702/2018; Cass. No. 23684/2010; Cass. No. 15515/2009.

overall time span, and any other facts emerging from the records, whether the contract has been misused fraudulently"[79].

This settled Supreme Court jurisprudence has been applied by lower courts, with numerous decisions applying principles formulated by higher courts. Significant examples include the judgments of the Milan Court No. 882/2023 and the Trieste Court No. 209/2023, addressing prolonged successive assignments at the same user.

The Milan Court notably held that "repeated successive assignments to the same position at the user undertaking lasting longer than what can reasonably be regarded as temporary constitute abusive recourse to successive missions". It further clarified that temporariness assessment must consider not only the total duration but continuity of the performance, nature of tasks, and absence of significant interruption between assignments.

Italian jurisprudential evolution reveals progressive alignment with European principles, strengthening judicial scrutiny over prolonged agency work legitimacy.

More recently, appellate jurisprudence[80] ruling on a notably prolonged agency work case aligned with these interpretations, reiterating that temporariness is inherent and structural to agency work and non-derogable. Abuse transforms the relationship into a genuine open-ended employment contract between worker and user with associated rights and obligations.

Ultimately, determining abusive agency work requires case-by-case scrutiny of whether cumulative assignments at the same user exceed a "reasonable" duration, with the threshold generally referenced by Italian fixed-term contract rules, incorporating contract renewal counts and justification grounds.

Significant uncertainties persist, especially regarding specific temporariness evaluation parameters and uniform principled application by lower courts, which tend to link the limit to fixed-term contract regulations, arguably distorting the Directive's essence, which is additional to and distinct from fixed-term employment.

[79] See Cass. No. 59/2015; Cass. No. 14828/2018; see also Giasanti, *La somministrazione illecita*, in Aimo, Izzi (eds.) *Esternalizzazioni e tutela dei lavoratori*, Utet, 2014, pp. 551 ff.

[80] App. Trieste, 26 June 2025.

5. *The singular case of staff leasing*

5.1. *The currently pending preliminary question*

Further interpretative issues have recently arisen regarding staff leasing.

Unlike temporary agency work characterised by fixed-term assignments, staff leasing – understood as agency work with an open-ended employment contract and likewise open-ended assignments – tends to transform the relationship into a long-term one, aimed at stabilising and protecting the worker, in a context that is typically stable and less subject to temporal fluctuations.

Comparative analysis of staff leasing across European legal systems reveals profoundly different approaches reflecting varied conceptions of the relationship between organisational flexibility and worker protection.

The Italian model, marked by substantial liberalisation of staff leasing, appears effectively unique within the European normative framework.

Most European systems adhere to the temporariness principle of assignments established by Directive 2008/104/EC, which requires agency work to be performed pursuant to assignments of limited duration and not indefinitely. In many Member States, as noted, agency work is limited by stringent temporal constraints, maximum quotas of temporary workers, or sectoral prohibitions, and an open-ended employment relationship with equally permanent assignments is disallowed.

Italy, by contrast, explicitly provides for staff leasing through Legislative Decree No. 81/2015, whereby the worker is employed on an open-ended contract by the agency and may be indefinitely seconded to the user undertaking, constituting a stability of relationship not found in other European jurisdictions. This regulatory choice reflects a conception of staff leasing as a "more virtuous form of flexible work", providing the worker with the employment stability that the Italian system identifies as a priority objective when it recognises the open-ended employment contract as the "common form of employment relationship"[81].

[81] See Calcaterra, *Lo staff leasing dall'ostracismo alla liberalizzazione*, in *RIDL*, 2016, 4, 1, pp. 579 ff. In Italy, open-ended agency work, initially abolished by Law 247/2007, was reintroduced by Law 191/2009. Initially allowed only for specific activities such as IT consultancy, cleaning, security, transport, library management, with collective bargaining empowered to

Current regulation permits indefinite assignments to the same user company only to workers under open-ended contracts with the agency, subject to a quantitative limitation: pursuant to Article 31(1) of Legislative Decree No. 81/2015, the number of workers employed under open-ended agency contracts cannot exceed 20% of the number of open-ended employees at the user company as of 1 January of the contract year (or at the contract signing if activity begins mid-year). Collective bargaining may set different quantitative limits. Open-ended agency work is explicitly excluded for public administrations.

In the case of open-ended employment, the law further requires that contracts set a monthly availability allowance, divisible into hourly quotas, paid by the agency to the worker during periods awaiting assignment, in amounts specified by applicable collective agreements and no lower than Ministerial Decree minimums. This availability allowance is excluded from calculation of any statutory or collective provision.

The Italian model, while distinct and potentially conflicting with the prevailing European approach conceiving agency work as a tool of short-term temporary flexibility rather than stable staff leasing, has generated debates and preliminary references to the Court of Justice for assessing its compatibility with the Directive.

Key legal issues concern: whether the Directive's temporariness principle also applies to open-ended agency work or whether this constitutes a lawful exception; whether Italian law complies with the Directive's aim to prevent abuses arising from repeated successive assignments fostering precariousness; whether Italian law guarantees equal treatment and sufficient protection for open-ended agency workers relative to directly employed workers; and whether temporariness and reasons for assignment cessation are relevant to conformity assessment between national and EU law.

5.2. *Textual and systematic elements underlying the preliminary question*

The order of 7 November 2024 by the Tribunal of Reggio Emilia submitting the first preliminary question concerning Italian staff leasing compatibility with Directive 2008/104/EC represents a significant moment in the evolution of European agency work law.

broaden allowed cases (Art. 20, co. 3, d.lgs 276/2003). The 2015 reform removed the exhaustive list of legitimate reasons, substantially liberalising the institution.

For the first time, the Luxembourg Court is asked whether open-ended agency work falls within the Directive's scope and is thus bound by its limits.

The facts concerned a worker sent on five fixed-term assignments to the same user prior to indefinite agency employment with the same user. Following termination of the commercial agency contract, the worker challenged all contracts with the agency contending both fixed-term and open-ended contracts violated Directive 104, since the employment relationship with the user must necessarily be temporary.

The Reggio Emilia judge noted that previous High Court rulings – both national and European – concerned exclusively repeated fixed-term agency work, whereas the case before the referring court involved an open-ended agency assignment.

The referral focused on two fundamental aspects: textually, Article 1 refers to workers "assigned to user undertakings to work temporarily and under their control and direction", while Article 3 consistently references "temporariness of the assignment"; these textual elements suggest exclusion of staff leasing from the Directive's scope since an indefinite assignment cannot be temporary.

However, it also highlights arguments favouring inclusion of staff leasing within the Directive given its aim to guarantee minimum protections for triangular relationships regardless of assignment duration, with the temporariness requirement relating not only to actual relationships between worker and user but also to the assignment contract concerning the same position.

Subsequently, the Milan Tribunal's order of 14 January 2025 presented a similar question focusing on indefinite worker presence at the same user without justifying cessation of missions and potential discriminatory profiles compared to directly employed workers due to the assignment's nature.

Both orders examine Directive applicability to open-ended agency work, noting the Directive protects workers in temporary, repeated assignments whereas Italian staff leasing is predicated on indefinite agency employment with stable assignments[82].

While Article 2 of Directive 2008/104/EC explicitly refers to temporary agency work and ostensibly excludes staff leasing, the provision's ab-

[82] Fenoglio, *Lo staff leasing: dieci anni di (in)applicazione*, in Aimo, Izzi (eds.) *Esternalizzazioni e tutela dei lavoratori*, Utet, 2014, pp. 471 ff.

sence of a precise "temporary" definition or explicit temporal limits leaves room for interpretations potentially including permanent or multi-annual assignments aimed at stable employment.

The Trieste Tribunal already held, in a 14 November 2023 ruling, that even staff leasing does not exclude precariousness which is only countered by guarantees of economic continuity and professionalisation. Unlimited staff leasing unrelated to temporary needs would deregulate this contractual form, easily circumventing job stability protections and inverting the exception-to-rule relationship between agency work and open-ended employment, transforming flexibility into dismissal prerogative[83].

Similarly, the Milan Tribunal[84] found that if the user's need is truly indefinite, agency work would be unnecessary, so staff leasing does not exclude precariousness, which only economic continuity and professionalisation can prevent.

Though open-ended agency workers receive an availability allowance during non-assignment periods, no protections restrict mission duration since contracts usually allow for reassignment or early termination, subject to allowance payment.

Reggio Emilia and Milan judges thus query whether Italian staff leasing – uniquely provided by national law – falls within Directive 104's scope and is bound by limits designed for temporary missions[85].

National provisions appear to conflict with Directive 2008/104/EC, especially Recital 15, which promotes the open-ended contracts as common form and Article 5.5, which calls for measures to prevent successive assignments designed to circumvent the Directive.

Conversely, the Bari Tribunal, in a 17 September 2025 decision (No. 3213), declined to raise a preliminary question, affirming staff leasing's legitimacy and that Italian law does not contradict European Temporary Agency Work rules, applying only to temporary placements. The judgment noted Article 1(2) of Legislative Decree 81/2015 and related provisions respect Directive timing and temporariness, conceiving staff leasing as stable employment with enhanced protections[86].

[83] Trib. Trieste, n. 209/2023.

[84] Trib. Milano, 9 May 2023, No. 882/2023.

[85] Salvagni, *Lo staff leasing e il requisito della temporaneità: la parola alla Corte di giustizia UE*, in *LG*, 2025.

[86] The case concerns a worker assigned continuously for around six years via agency to

The Bari judge recognised that Directive 2008/104/EC refers to temporariness in agency work, defined by its scope and definitions. Hence, staff leasing falls outside the Directive's scope rather than conflicting, since even when referring to indefinite agency work, EU law concerns only fixed-term assignments.

Rather, staff leasing ensures a flexible matching of labour supply and demand, combined with adequate worker safeguards: the termination of commercial staff leasing contracts triggers only an availability status, during which the agency is under a duty to seek the worker's redeployment. This is consistent with the protection against abuses which Directive 104 seeks to secure: what the Directive prohibits is the maintenance of assignments designed to circumvent the protective guarantees accorded to agency workers under labour law.

To fall under the Directive, a user must intend to temporarily make a worker available.

Thus, the Directive does not apply where worker functions permanently transfer from employer to a third party requiring long-term service provision. If the assignment is indefinite, the Directive's anti-circumvention purpose is inapplicable since stable work at the user already exists.

Ultimately, rejecting the claim, the Bari Tribunal concluded that the staff leasing model conforms to Union law and holds independent legal dignity given, inter alia, the absence of worker vulnerability tied to predetermined fixed-term agency work limits, stability of agency-worker relation, different objective justifications with better redeployment prospects, and possibility of new assignments[87].

Excluding staff leasing from the Directive's scope would profoundly impact European harmonisation.

Conversely, including staff leasing within the Directive would require fundamental re-evaluation of European agency work principles[88]. The concept of "temporariness" pervading the Directive would need reinterpreta-

the same user, first on fixed-term and later on open-ended contracts, alleging abusive use and seeking recognition of an open-ended employment relationship with the user.

[87] Di Rosa, *Il Tribunale di Bari disegna un nuovo orizzonte in tema di staff leasing in attesa della pronuncia della Corte di giustizia*, in *LPO on line*, 2025.

[88] Giasanti, *Somministrazione a tempo indeterminato e diritto dell'Unione Europea*, in *RGL*, 2025, 1, 2, p. 67.

tion to encompass employment forms that, while triangular, embody no fixed temporal limits[89].

6. *Concluding reflections: implementation status and future scenarios for a sustainable balance between flexibility and protection*

The comparative analysis of the implementation of Directive 2008/104/EC across national legal orders reveals an overall positive balance, but characterised by significant asymmetries.

The Directive has effectively contributed to promoting a more balanced approach to temporary agency work, overcoming the restrictive excesses that characterised many national systems and favouring recognition of the legitimate role of employment agencies in the European market.

The principle of equal treatment, the Directive's cornerstone, has found substantially compliant implementation in most Member States, though with varying modalities and intensities[90].

The Court of Justice's jurisprudence has also helped clarify the principle's application contours, specifying that collective derogations must respect agency workers' "overall protection" through genuinely compensatory advantages.

Based on this analysis, some recommendations can be outlined for the future evolution of European agency work law, which faces multiple interconnected challenges[91].

Significant critical issues persist, especially regarding the regulation of assignment temporariness. The absence of clear quantitative parameters in the Directive has generated interpretative uncertainties only partially resolved by European jurisprudence. The "reasonable temporariness" concept developed in cases C-681/2018 and C-232/2020 introduces an evaluation criterion that is, arguably, excessively "case-by-case". The temporari-

[89] Frosecchi, *La temporaneità della somministrazione di lavoro secondo la Corte di Giustizia: possibili risvolti sulla legittimità della somministrazione a tempo indeterminato*, in *RGL*, 2021, 1, 2, pp. 17 ff.

[90] Houwerzijl, *The working conditions of cross-border temporary agency workers on paper and in reality*, in *ELLJ*, 2024, 15, 1, pp. 50-67.

[91] Countouris, *La direttiva sul lavoro interinale: un'altra promessa infranta?*, in *ILJ,* 2009, 38, 3, p. 329.

ness principle's contours, lacking uniform quantitative limits, have granted Member States wide discretion over assignment duration limits and collective derogations. This has produced a "regulatory mosaic" where countries like Germany, France, and Belgium apply diverging restrictions, while others promote hybrid models or free markets, reducing legal certainty and encouraging competitive distortions[92]. Even where rigid duration criteria exist, possibilities for assignment reiteration have left interpretative gaps undermining legal predictability.

There is thus an urgent need for clarifying intervention and a possible EU legislative revision to define more clearly the objective upper limits for successive assignments; clarify the Directive's scope on open-ended agency relationships; and specify more precisely minimum "overall protection" requirements for collective derogations, including in connection with the roles and activities of bilateral bodies.

Similarly, the staff leasing issue, currently under examination by the Court of Justice, will require clarifying guidance on the limits of Community harmonisation.

Excluding open-ended agency work from Directive 2008/104/EC's scope could generate a significant regulatory gap in protection. Including it would require a rethinking of the fundamental principles underlying the European agency work approach. The very concept of "temporariness" pervading the Directive would need reinterpreting to encompass employment forms that, while maintaining triangular relationships, lack predetermined temporal limits[93].

A Directive revision explicitly including staff leasing yet defining strict, transparent requirements and criteria to assess assignment temporariness is therefore desirable, maintaining European flexibility while avoiding excessive rigidity that would undermine the institution's efficacy.

Finally, developing the role of European social partners in setting common agency work standards is recommended, valuing the social dialogue experience shaping the institution's evolution. European collective bargaining could serve as an effective tool to fill legislative regulation gaps and promote innovative flexible work management practices, including enhancing active labour policies, training models, and redeployment instruments

[92] Rosin, *cit.*, pp. 141-168.
[93] Frosecchi, *cit.*, pp. 17 ff.

supported by bilateral funds and governance shared among agencies, users, and public institutions.

Temporary agency work, born as a response to European labour market flexibility needs, has demonstrated a capacity to adapt to economic and social changes while maintaining its role as a bridge between business needs and worker protection.

Its future development will depend on European law's capacity to strike new balances harmonising innovation and protection, flexibility and security, within an increasingly complex and globalised labour market.

Abstract

The essay, starting from a comparative analysis of the regulation of labour provision within European labour law systems, aims to evaluate the implementation status of Directive 2008/104/EC and examine the evolutionary process that has seen the overcoming of restrictive approaches in favour of promotional models designed to reconcile organisational flexibility and employment protection. The investigation focuses on the most relevant national models, highlighting convergences and divergences in terms of temporal limits, the role of collective bargaining and safeguards against abuse, emphasising the interpretative outcomes of the Court of Justice of the European Union with particular regard to the "reasonable temporariness" of assignments, the principle of "equal treatment" and the applicability of the directive to the Italian case of staff leasing. The work concludes with a prospective assessment of challenges to be faced for a balanced European model of labour provision, advocating an integrated approach that values social dialogue and institutional cooperation to ensure flexibility and protection in increasingly globalised labour markets.

Keywords

Temporary agency work, Directive 2008/104/EC, Equal treatment, Reasonable temporariness, Staff leasing.

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Collective Labour Agreements for Persons Performing Paid Work on a Basis Other Than an Employment Relationship under the Polish Act on Collective Labour Agreements

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1. *Introductory Remarks*

The possibility of extending collective labour agreements to persons performing work on a basis other than an employment relationship has existed in Polish labour law for many years. Such a possibility was provided for in Article 239 § 2 of the Polish Labour Code as early as 1994. However, these persons could be covered by collective labour agreements only where the parties to the agreement expressly so provided, and only alongside employees, who constituted the principal category covered by collective labour agreements. Consequently, under the previous legal framework it was not possible to conclude a collective labour agreement exclusively for persons performing work on a basis other than an employment relationship. Furthermore, due to the highly restricted scope of trade union freedom enjoyed by persons performing work on a basis other than an employment

relationship, such persons were deprived of their own representation. The legal framework applicable at the time raised doubts as to the legal nature of provisions of collective agreements addressed to persons performing work on a basis other than an employment relationship. One view expressed in the legal literature was that such provisions should be construed as contracts for the benefit of third parties[1].

A breakthrough in this respect was brought about by the judgment of the Constitutional Tribunal of 25 June 2015 (K 1/13), which held that depriving persons performing paid work on a basis other than an employment relationship of the right to establish and join trade unions was incompatible with Article 32 in conjunction with Article 59(1) of the Constitution of the Republic of Poland. A direct consequence of the Constitutional Tribunal's judgment was the amendment of the Act on Trade Unions[2], as a result of which the right to join trade unions was granted to persons performing paid work for an employer. A further consequence of granting the persons referred to in Article 11^1(1) of the Act on Trade Unions the status of persons performing paid work on a basis other than an employment relationship was the extension of their rights in the field of collective bargaining. This was confirmed by Article 21(1) of the Act on Trade Unions, which expressly ordered the application of the provisions of Chapter XI of the Labour Code[3] to persons performing paid work on a basis other than an employment relationship. Consequently, it became possible to conclude collective labour agreements exclusively for persons performing work on a basis other than an employment relationship and through trade unions specialising in representing this category of workers. However, the regulation did not contain provisions specifically governing collective labour agreements for persons performing work on a basis other than an employment relationship; the legislature merely required the appropriate application of Chapter XI of the Labour Code. This gave rise to numerous interpretative problems, particularly with regard to the mechanism of application.

[1] Raczkowski, *Oddziaływanie układu zbiorowego pracy na osoby niebędące pracownikami*, in *PIZS*, 2018, no 2.

[2] Act of 5 July 2018 amending the Act on Trade Unions and certain other acts (Journal of Laws 2018, item 1608).

[3] At that time, Chapter XI of the Labour Code contained a comprehensive regulation of collective labour agreements.

It was therefore argued that the legislature should resolve this issue expressly and unequivocally[4].

The process of shaping the regulation concerning the conclusion of collective labour agreements for persons engaged on a basis other than an employment relationship was completed by the adoption and entry into force of the Act of 5 November 2025 on Collective Labour Agreements[5]. The Act comprehensively regulates collective labour agreements, including agreements applicable to persons performing work on a basis other than an employment relationship. Some provisions of the Act are common to all persons covered by collective labour agreements. Certain issues, however, have been regulated specifically in relation to persons performing work on a basis other than an employment relationship.

The purpose of this article is to analyse the key issues concerning collective labour agreements for persons performing work on a basis other than an employment relationship: their personal scope, mechanism of application, the principle of favourability, and their legal nature. The selection of the issues analysed results from the fact that, in these areas, significant differences emerge in comparison with collective labour agreements covering employees, thereby giving rise to new legal problems that have not yet been examined in Polish labour law scholarship.

2. *The Concept of Persons Performing Paid Work on a Basis Other Than an Employment Relationship*

The Act on Collective Labour Agreements does not contain its own definition of persons performing paid work on a basis other than an employment relationship, but instead refers to Article $1^1(1)$ of the Act on Trade Unions, which defines "persons performing paid work". Under this provision, persons performing paid work are understood as employees or persons performing remunerated work on a basis other than an employment relationship, provided that they do not employ other persons to perform such

[4] Pisarczyk, *Reforma zbiorowego prawa pracy. Próba kodyfikacji a nowelizacja przepisów zbiorowego prawa pracy*, Wolters Kluwer Polska, 2019, p. 424.

[5] Ustawa z dnia 5 listopada 2025 r. o układach zbiorowych pracy i porozumieniach zbiorowych Dz.U. 2025, poz. 1661. https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20250001661.

work, regardless of the legal basis of employment, and provided that they possess rights and interests connected with the performance of work that may be represented and defended by a trade union. Accordingly, the possibility of concluding collective labour agreements for persons performing work on a basis other than an employment relationship has been strictly correlated, in personal terms, with their right to join trade unions.

The general formula of "persons performing paid work" encompasses numerous categories of persons performing such work on a basis other than an employment relationship within the Polish labour market: self-employed persons, platform workers, persons working under contracts of mandate and contracts for specific work, homeworkers, persons performing work under managerial contracts, and members of production cooperatives. Moreover, due to the general character of the formula adopted, collective agreements may also be concluded for any future forms of non-standard work that may emerge, provided that they satisfy the criteria laid down in Article $1^1(1)$ of the Act on Trade Unions[6].

The legislator introduced two additional conditions that determine whether persons performing paid work on a basis other than an employment relationship may join trade unions and, consequently, whether collective labour agreements may be concluded for them. The first, relatively obvious condition is that they must not employ other persons to perform such work. Employing other persons places an individual within the category of an employing entity. Indirectly, this requirement also indicates that collective agreements may cover only persons who personally perform paid work for an employing entity[7]. The second condition, more ambiguous in character, is that such persons must possess rights and interests capable of being represented and defended by a trade union. However, the mere fact of performing paid work for another entity indicates the existence of such interests, at least with regard to working conditions and remuneration. At the same time, the legislator did not introduce any income-related criterion, although such a criterion appears to have been expected by the Constitutional Tribunal[8]. Consequently, persons performing paid work on a basis

[6] Latos-Miłkowska, *The right to unionise in Poland after the amendment of the Law on Trade Unions*, in *ELLJ*, 2023, no. 1.

[7] Czarnecki, Grzebyk, Reda-Ciszewska, Surdykowska, *Ustawa o związkach zawodowych. Komentarz praktyczny z orzecznictwem*, C. H. Beck, 2022, p. 14.

[8] See the reasoning of the Constitutional Tribunal judgment of 25 June 2015 (K 1/13).

other than an employment relationship may join trade unions and may be covered by collective labour agreements irrespective of the proportion of their income derived from a given legal relationship.

The broad concept of persons performing paid work established under the Act on Collective Labour Agreements gives rise to a potential risk of infringement of competition law, both under Article 101 TFEU and Article 6(1)(1) of the Polish Act on Competition and Consumer Protection[9]. There can be no doubt that, in light of Article 2 of the Act on Collective Agreements, read in conjunction with Article 1^1(1) of the Trade Unions Act, collective agreements may cover both economically dependent self-employed persons and self-employed persons who are genuine undertakings and do not employ any other persons.

Under Article 101 TFEU, this issue has been addressed by the CJEU, most notably in *FNV Kunsten*[10]. In its case law, the CJEU has emphasised that collective agreements involving undertakings may be exempt from the prohibition of restrictive agreements where they pursue a legitimate social objective[11].

In September 2022, the European Commission published its Communication entitled *Guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons* (2022/C 374/02). The Commission proposes that collective agreements aimed at improving working conditions and concluded between solo self-employed persons and their counterparty on whom they are economically dependent, or with whom they perform the same or similar tasks as workers, should fall outside the scope of Article 101 TFEU. For the purposes of the Guidelines, the Commission considers a solo self-employed person to be economically dependent where at least 50% of that person's total annual work-related income is derived from a single counterparty.

A similar position has been adopted by the Polish Office of Competition and Consumer Protection (UOKiK) with regard to Article 6(1)(1) of the Act on Competition and Consumer Protection, which prohibits

[9] Ustawa z dnia 16 lutego 2007 r. o ochronie konkurencji i konsumentów, Dz.U. 2025, issue 1714.

[10] FNV Kunsten Informatie en Media v Staat der Nederlanden, Case C-413/13, ECLI:EU:C:2014:2411.

[11] Giedrewicz-Niewińska, Kurzynoga, *Zakres podmiotowy prawa do rokowań zbiorowych w Konstytucji RP a prawo międzynarodowe i unijne,* in *PIZS,* 2023, no. 3.

agreements consisting, inter alia, in the direct or indirect fixing of prices or other terms and conditions of purchase or sale. Referring to the Commission's Guidelines, UOKiK likewise considers that a collective agreement concluded on behalf of economically dependent self-employed persons, or persons performing the same or similar tasks as workers, does not infringe competition law, and has declared its intention to apply the principles set out in the Commission's Guidelines[12].

The Polish Act on Collective Agreements does not, however, distinguish between economically dependent self-employed persons and self-employed persons who qualify as genuine undertakings. Instead, it grants all self-employed persons who do not employ other persons the capacity to conclude collective agreements. Consequently, the Polish regulatory framework may, at least hypothetically, permit the conclusion of a collective agreement that infringes Article 101 TFEU and Article 6 of the Act on Competition and Consumer Protection[13].

3. *The Personal Scope of Application of Collective Labour Agreements*

Pursuant to Articles 4 and 5 of the Act on Collective Labour Agreements, both enterprise-level and supra-enterprise collective labour agreements are concluded for all persons performing paid work for employers covered by the agreement, unless the agreement provides otherwise.

It follows from the above that all provisions of a collective labour agreement will apply to persons performing paid work on a basis other than an employment relationship, and not merely those provisions expressly addressed to this category of persons, unless the collective agreement itself excludes the application of a particular provision to them. This constitutes a fundamental difference between the previous and the current legal framework. Under the former provisions, the agreement covered all employees employed by employers bound by the agreement, whereas persons employed on a basis other than an employment relationship were covered only where the parties expressly so provided. Consequently, there had to

[12] Urząd Ochrony Konkurencji i Konsumentów, *Zmowy i nadużycia na rynku pracy a sprawy pracownicze*, 2024, p. 23.

[13] Giedrewicz-Niewińska, Kurzynoga, *cit.*

be an explicit basis within the collective labour agreement for applying its individual provisions to persons performing work on a basis other than an employment relationship. Under the current provisions, by contrast, the agreement covers, "on an equal footing", all persons performing paid work for an employer, irrespective of the legal basis of employment, unless the parties to the agreement decide otherwise.

The provisions of a collective labour agreement apply to all persons performing paid work on a basis other than an employment relationship for an employer covered by the agreement within the meaning of Article $1^1(1)$ of the Act on Trade Unions, regardless of their trade union membership. This demonstrates the extended personal effectiveness of collective labour agreements with respect to persons performing work on a basis other than an employment relationship, which in turn constitutes one of the hallmarks of their normative character[14]. In particular, this means that collective labour agreements concluded for persons performing work on a basis other than an employment relationship do not possess a purely contractual nature, insofar as their application is not dependent upon membership in the trade union constituting a party to the agreement and extends also to persons who are not members of that trade union.

4. *The Impact of Collective Labour Agreements on the Content of Acts Constituting the Basis for Performing Work on a Basis Other Than an Employment Relationship*

One of the most important issues arising in connection with the new regulation concerns the manner in which the provisions of collective labour agreements affect the content of legal relationships constituting the basis for performing paid work on a basis other than an employment relationship.

With regard to the provisions of collective labour agreements regulating the rights and obligations of the parties to an employment relationship, this follows expressly from Article 9 § 1 of the Labour Code, which classifies collective labour agreements as sources of labour law and thereby indicates

[14] Florek, *Ustawa i umowa w prawie pracy*, Wolters Kluwer Business, 2010, pp. 284 and 286; Pisarczyk, *Autonomous Sources of Labour Law in the Light of Constitutional Numerus Clausus. Problems with Qualifying Autonomous Acts under Polish Law*, in *ILLEJ*, 2024, no. 17, p. 248.

their power to directly shape the content of employment relationships[15]. As L. Florek observes, "the statute confers legal force upon the collective agreement by recognising it as a source of law occupying a specific place within the hierarchy of legal acts. Consequently, the rights and obligations of employees and employers laid down in the agreement directly shape the content of the employment relationship" (Article 18 § 1 in conjunction with Article 9 § 1 of the Labour Code)[16]. Article 9 of the Labour Code determined the direct applicability of collective labour agreements and, to a certain extent, rendered this issue independent from the ongoing scholarly debate concerning the legal nature of collective labour agreements in the light of the Constitution of the Republic of Poland[17].

No analogous regulation exists with regard to collective labour agreements governing the rights and obligations of persons performing paid work on a basis other than an employment relationship. Consequently, it is necessary to determine, by way of interpretation, how collective labour agreements affect the content of legal relationships constituting the basis for performing such work.

The basis for the direct application of collective labour agreement provisions may be found in Article 3 of the Act on Collective Labour Agreements, according to which a collective labour agreement determines the conditions to which the content of employment relationships or other legal relationships constituting the basis for performing paid work should conform. However, the question arises whether, in the absence of a regulation analogous to Article 9 § 1 of the Labour Code, this provision constitutes a sufficient basis for recognising that collective labour agreements directly shape the content of legal relationships constituting the basis for performing work on a basis other than an employment relationship.

An argument supporting such a conclusion may also be derived from the mechanism regulating the impact of the entry into force of a collective

[15] Pursuant to Article 9 of the Labour Code, whenever the Labour Code refers to labour law, this shall be understood as meaning the provisions of the Labour Code and provisions of other statutes and implementing acts determining the rights and obligations of employees and employers, as well as the provisions of collective labour agreements and other collective arrangements based on statute, regulations and statutes determining the rights and obligations of the parties to an employment relationship.

[16] Florek, *cit.*, p. 146.

[17] Pisarczyk, *Autonomous Sources of Labour Law*, cit.

labour agreement (or its amendment) on the content of legal relationships under which paid work is performed by persons covered by the agreement. This issue is regulated uniformly for all persons covered by the agreement in Article 16(4) of the Act on Collective Labour Agreements, pursuant to which provisions of a collective labour agreement that are more favourable to the persons covered by it replace, by operation of law and as from the date of its entry into force, the existing terms of the employment contract or other act constituting the basis for establishing an employment relationship, or the existing terms of the act constituting the basis for performing paid work.

This provision establishes the automatic application, by operation of law, of provisions of a collective labour agreement that are more favourable to persons performing paid work than the existing terms of the act constituting the basis for performing paid work. Such provisions therefore directly affect the content of acts constituting the basis for performing paid work, which constitutes one of the indicators of the normative character of collective labour agreements[18]. This mechanism of application is, however, linked to a specific legal event, namely the entry into force of the collective labour agreement (or its amendment). It therefore applies to acts constituting the basis for performing paid work on a basis other than an employment relationship that are in force on the date the collective labour agreement (or its amendment) enters into force. It does not regulate situations in which the legal relationship constituting the basis for performing paid work is established after the collective agreement has entered into force.

The mechanism for introducing less favourable provisions into the act constituting the basis for performing work other than within an employment relationship remains unclear. This issue is governed by Article 16(6) of the Act on Collective Labour Agreements, according to which provisions of a collective labour agreement covering persons performing paid work other than employees, which are less favourable to those persons than the previous provisions of the collective labour agreement, are introduced in the manner adopted in the agreement constituting the basis for performing paid work. In the absence of provisions regulating the relevant procedure in the agreement, or in the absence of agreement between the parties, the

[18] Florek, *cit.*, p. 286; Pisarczyk, *Autonomiczne źródła prawa pracy*, Wolters Kluwer Polska, 2022, p. 226.

provisions of the collective labour agreement do not produce legal effects with respect to those persons.

It should be noted that the very necessity of contractually introducing changes less favourable than those resulting from the previous collective agreement indicates that the previous agreement directly affected the content of the legal relationship, thereby confirming the thesis that collective labour agreement provisions directly shape the content of legal relationships constituting the basis for performing work other than within an employment relationship.

It remains unclear, however, how less favourable amendments to collective agreements are to be introduced where the previous terms of the act constituting the basis for employment had not previously been shaped by a collective labour agreement. Neither Article 16(6) nor any other provision of the Act regulates this issue. It appears, however, that despite the absence of express regulation, the mechanism should be similar. Such a conclusion is supported by the principle of contractual freedom expressed in Article 353^1 of the Civil Code.

The direct impact of collective labour agreements on the content of legal relationships constituting the basis for performing paid work on a basis other than an employment relationship is also indicated by Article 22(9) of the Act on Collective Labour Agreements. Under this provision, working conditions resulting from a collective labour agreement in respect of which a court has declared the agreement wholly or partially non-binding continue to apply, in the case of employees, until the expiry of the notice period applicable to those conditions, and in the case of persons performing paid work other than employees, until those conditions are amended in the act constituting the basis for performing paid work. This provision clearly demonstrates that the provisions of a collective labour agreement – even a defective one – become incorporated into the content of legal relationships constituting the basis for the performance of work, both in employment and non-employment relationships.

In light of the foregoing, despite the absence of an explicit normative basis for recognising that collective labour agreement provisions shape, by operation of law, the content of acts constituting the basis for performing work on a basis other than an employment relationship, such a conclusion should nevertheless be accepted. It would be difficult to accept a situation in which collective labour agreement provisions affect only those contracts

constituting the basis for performing work on a basis other than an employment relationship that are in force on the date the agreement enters into force, while producing no such effect in relation to contracts concluded thereafter. The legal nature of collective labour agreement provisions should not depend on a temporal factor, namely the moment at which the contract was concluded. Such a conclusion would also be difficult to reconcile with the constitutional principle of equal treatment and would deprive Article 3 of the Act on Collective Labour Agreements of any practical significance.

5. *The Problem of Applying the Principle of Favourability*

An important issue raising doubts under the new regulation concerns the relationship between collective labour agreements and contracts constituting the basis for performing work on a basis other than an employment relationship.

The Act on Collective Labour Agreements contains no express provision clarifying the relationship between collective labour agreement provisions and contracts constituting the basis for performing work outside an employment relationship. In relation to the relationship between collective labour agreements and the terms of employment relationships, this issue is governed by Article 18 of the Labour Code, according to which the provisions of employment contracts may not be less favourable to employees than labour law provisions, and any contractual provisions less favourable than labour law provisions are null and void by operation of law and are automatically replaced by the appropriate labour law provisions. It has also long been accepted in legal scholarship that the term "labour law provisions" includes the provisions of collective labour agreements covering employees, as follows from Article 9 of the Labour Code, which defines the sources of labour law[19].

Article 18 of the Labour Code expressly concerns employment relationships and labour law provisions; consequently, there is no basis for applying it to contracts constituting the basis for performing paid work

[19] Florek, *cit.*, p. 286; Miętek, *Swoboda umów i jej ograniczenia przy kształtowaniu treści stosunku pracy*, C. H. Beck, 2019, p. 126; Góral, *O kodeksowym katalogu zasad indywidualnego prawa pracy*, Wolters Kluwer Polska, 2011, p. 205.

on a basis other than an employment relationship. Nor does the Act on Collective Labour Agreements contain any reference providing for the corresponding application of Article 18 of the Labour Code to contracts constituting the basis for performing paid work on a basis other than an employment relationship. There is therefore no explicit legal basis for asserting that the provisions of contracts under which paid work is performed on a basis other than an employment relationship may not contain provisions less favourable to persons performing paid work than those provided for in the collective labour agreement[20]. Consequently, there is no legal basis conferring a semi-imperative character upon collective labour agreement provisions regulating the rights and obligations of persons performing work on a basis other than an employment relationship.

Given the civil-law nature of acts constituting the basis for performing work outside an employment relationship, it is necessary to analyse the possibility of applying Article 58 of the Civil Code in cases of inconsistency between the provisions of such contracts and the collective labour agreement. Pursuant to this provision, a legal act contrary to statute or intended to circumvent the law is null and void, unless the relevant provision provides for a different effect, in particular that the invalid provisions of the legal act are replaced by the relevant statutory provisions.

The question nevertheless arises whether a collective labour agreement falls within the concept of "statute" within the meaning of Article 58 of the Civil Code. Legal scholarship indicates that the notion of "statute" under Article 58 of the Civil Code encompasses the sources of law referred to in Article 87 of the Constitution of the Republic of Poland, namely the Constitution itself insofar as it contains directly applicable norms, statutes, ratified international agreements, and, within the limits of statutory authorisation, regulations and acts of local law[21]. Article 58 of the Civil Code could therefore apply if collective labour agreements were recognised as sources of law in the constitutional sense. However, according to the prevailing scholarly view – with which the present author agrees – collective labour agreements do not constitute sources of law within the meaning of Article 87 of the Constitution of the Republic of Poland[22]. Consequently, Article 58 of

[20] Hajn, *Układ zbiorowy pracy jako instrument ustalania treści umów cywilnoprawnych o wykonywanie pracy*, in *SPPiS*, 2026, no. 2.

[21] Fras, Habdas (eds.), *Kodeks cywilny. Komentarz*, vol. I, Wolters Kluwer Polska, 2018.

[22] Pisarczyk, *Autonomiczne źródła prawa*, cit., p. 229; Chmaj, *Status układów zbiorowych*

the Civil Code cannot be used to resolve conflicts between the content of a legal act constituting the basis for performing work outside an employment relationship and the provisions of a collective labour agreement.

De lege lata, therefore, there is no provision prohibiting the content of legal relationships constituting the basis for performing work outside an employment relationship from being shaped in a manner less favourable than the provisions of collective labour agreements. It should nevertheless be noted that acceptance of such a conclusion may significantly weaken the practical importance of collective labour agreements with regard to persons performing work on a basis other than an employment relationship and may largely deprive such agreements of their function as instruments for improving the standards of employment of these persons, who, precisely because they are engaged outside an employment relationship, generally occupy a less favourable position than employees.

6. *The Relationship between Collective Labour Agreements for Non-Employees and Generally Applicable Provisions of Law*

Achieving the research objective of this article also requires an analysis of the relationship between collective labour agreements, insofar as they concern persons performing paid work on a basis other than an employment relationship, and generally binding legal provisions. With regard to employees, this issue is resolved by Article 9 § 2 of the Labour Code, according to which the provisions of collective labour agreements and other collective arrangements, as well as regulations and statutes, may not be less favourable than generally applicable legal provisions.

The regulation governing the relationship between collective labour agreement provisions and generally binding law is contained in Article 16(7) of the Act on Collective Labour Agreements, according to which provisions of collective labour agreements that are less favourable to the persons covered by them than the provisions of the Labour Code and the provisions of

pracy według systemowej wykładni Konstytucji RP, in *PIZS*, 2025, no. 7.; Krzywoń, *Konstytucyjna ochrona pracy i praw pracowniczych*, Wolters Kluwer Polska, 2017; Piekarczyk, *Układy zbiorowe pracy. Od charakteru prawnego do wykładni*, Difin, 2021, p. 69.

other statutes and implementing acts determining the rights and obligations of employees and employers are null and void by operation of law.

An analysis of this provision leads, however, to the conclusion that it does not determine the relationship between collective labour agreements and generally applicable provisions governing non-employment forms of work. The provision requires the terms of collective labour agreements to be assessed only in relation to sources of labour law expressly indicated in Article 16(7), namely the Labour Code and other statutes and implementing acts determining the rights and obligations of employees. The reference point is therefore the sources of labour law within the meaning of Article 9 of the Labour Code. Consequently, statutes and implementing acts regulating the legal basis of non-employment work fall outside the scope of this provision.

Prima facie, this leads to the conclusion that, with regard to non-employees, there is no hierarchy of sources based on the principle of favourability, and consequently that collective labour agreements may alter the position of such persons *vis-à-vis* generally applicable acts also *in peius*. However, it would be difficult to accept the conclusion that collective labour agreements for non-employees not only need not improve the position of this category of persons, but may even worsen it, for example by depriving contractors of the guarantee of a minimum hourly rate.

In this situation, it appears necessary to refer to the general hierarchy of sources of law and to recognise that the provisions of collective labour agreements may not conflict with mandatory provisions of higher-ranking law. As A. Krzywoń observes, "unlike legal acts issued by public authorities, collective labour agreements should not interfere with rights and freedoms connected with the performance of work or reduce the level of protection resulting from generally applicable law"[23]. Similarly, S. Piekarczyk argues that the principle of favourability in the relationship between collective labour agreements and generally applicable law is in fact a constitutional principle[24].

[23] Krzywoń, *cit.*, p. 483.
[24] Piekarczyk, *cit.*, p. 161.

7. *The Legal Nature of Collective Labour Agreements for Persons Performing Paid Work on a Basis Other Than an Employment Relationship*

In contemporary Polish labour law scholarship, the normative character of collective labour agreements is generally no longer questioned, although individual authors differ somewhat as to the sources of the normative character of collective labour agreements. This body of literature, however, predates the entry into force of the Act on Collective Labour Agreements and focuses primarily on collective labour agreements concerning employees.

The question therefore arises to what extent these findings remain valid with regard to collective labour agreements covering persons performing paid work on a basis other than an employment relationship.

Legal scholarship indicates[25] that the normative character of collective labour agreements is demonstrated primarily by the following features:

1. their general and abstract character;
2. their extended personal scope;
3. the fact that the relationship between the provisions of contracts and collective labour agreements is based on the principle of favourability;
4. the enforceability of rights arising from collective labour agreements.
5. When analysing these features in relation to collective labour agreements for persons performing paid work on a basis other than an employment relationship, it should be noted that most of these features are also present with regard to collective labour agreements covering such persons. Collective labour agreements, also in relation to persons performing work on a basis other than an employment relationship, contain provisions of a general and abstract character, as follows directly from Article 3 of the Act on Collective Labour Agreements. Furthermore, pursuant to Articles 4 and 5 of the Act, collective labour agreements are concluded for all persons performing paid work for an employer, regardless of their trade union membership. This demonstrates the extended personal scope of collective labour agreements also with respect to persons performing paid work on a basis other than an employment relationship.

The direct application of collective labour agreements to persons performing work on a basis other than an employment relationship is expressly

[25] Florek, *cit.*, pp. 286-287; Piekarczyk, *cit.*, pp. 60-62; see also the judgement of Constitutional Tribunal of 18 November 2002 (K 37/01).

provided for in Article 16(4) with regard to agreements entering into force. In addition, Article 3(1) of the Act on Collective Labour Agreements, which provides that collective labour agreements determine the content of legal relationships under which work is performed, as well as Article 22(9), support such a conclusion. In light of the foregoing, it should be recognised that collective labour agreements directly affect the content of legal acts constituting the basis for performing work outside an employment relationship.

There is, however, no regulation precluding derogation from collective labour agreements, to the detriment of the person performing work, in the act constituting the basis for performing work on a basis other than an employment relationship, nor is there any reference to Article 18 of the Labour Code. This raises doubts as to the applicability of the principle of favourability. Consequently, there is no legal basis for recognising that, with regard to non-employees, collective labour agreement provisions possess a semi-imperative character.

Taking into account all the foregoing observations, it should also be recognised that collective labour agreement provisions which directly affect the content of legal relationships constituting the basis for employment possess an enforceable character, provided that such a character follows from their content and provided that their application has not been excluded by the will of the parties to the legal relationship constituting the basis for performing paid work.

8. *Conclusions*

The entry into force of the Act on Collective Labour Agreements has, to a certain extent, completed the process of establishing the possibility of concluding collective labour agreements for persons performing paid work on a basis other than an employment relationship.

In many respects, the situation of such persons has been shaped in a manner similar to that of employees: collective labour agreements cover all persons performing paid work on a basis other than an employment relationship regardless of their trade union membership, and collective labour agreements directly affect the content of legal relationships constituting the basis for performing work by these persons, which indicates their normative character. The provisions of collective labour agreements shaping the rights

of persons performing paid work on a basis other than an employment relationship are, in principle, enforceable.

The fundamental and highly significant difference between employees and persons performing paid work on a basis other than an employment relationship lies in the absence of a relationship based on the principle of favourability between collective labour agreements and the contracts constituting the basis for performing work outside an employment relationship. In the case of employees, this issue is regulated by Article 18 of the Labour Code, which provides that employment contracts and other acts constituting the basis for establishing employment relationships may not be less favourable to employees than the provisions of collective labour agreements. This provision confers a semi-imperative character upon collective labour agreement provisions.

No analogous regulation exists with regard to persons performing paid work on a basis other than an employment relationship. This leads to the conclusion that the parties to such legal relationships may shape their content in a manner less favourable than the collective labour agreement. Consequently, the provisions of collective labour agreements applicable to such persons possess a relatively binding character[26].

The adoption of such a solution may, however, significantly weaken the practical significance of collective labour agreements with regard to this category of persons and substantially limit the protective and promotional functions of collective labour agreements in relation to them. In this respect, collective labour agreements would become similar in character to default provisions typical of civil law.

[26] Hajn, *cit.*

Abstract

The Act of 5 November 2025 on Collective Labour Agreements and Other Collective Agreements introduced, for the first time in the Polish legal system, regulations specifically concerning collective labour agreements concluded for persons performing paid work on a basis other than an employment relationship. The Act regulates, inter alia, the mechanism of application and the scope of application of collective labour agreements to non-employees. Nevertheless, the new provisions do not resolve all interpretative doubts relating to these issues. This article analyses the principal problems concerning collective labour agreements concluded for persons performing paid work on a basis other than an employment relationship, including their personal and material scope, the mechanism of application, the relationship between such agreements and generally binding provisions of law, as well as the relationship between the agreement and the legal acts constituting the basis for performing work. On the basis of this analysis, the author attempts to determine the legal nature of collective labour agreements applicable to these persons.

Keywords

Collective labour agreements, Persons performing work on a basis other than an employment relationship, Principle of favourability, Personal scope, Legal nature.

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Building Change Together: Co-Production in the Social Enterprise Ecosystem

Contents: 1. Introduction and Scope. 2. Literature Review: Social Enterprises as Vehicles for Social Change. 3. Theoretical Considerations. 4. Methodology. 5. Findings and Discussion. 5.1. Transitioning. 5.1.1. The Transition as a Response to Structural Constraints. 5.1.2. Community Knowledge and Resources in the Transition Process. 5.1.3. Transitioning and Institutional Recognition. 5.1.4. Transition as a Collective Learning Process. 5.2. Racial Justice, Social Justice and Equity. 5.3 Legitimacy and Symbolic Capital. 5.4 Sustainability. 6. Conclusion.

1. *Introduction and Scope*

This paper focuses on the process of co-production as both a practice and a social justice approach to policymaking within the context of community-led organisational transformation. It discusses how community-based participatory research (CBPR) methods challenge traditional top-down discourses by recognising the legitimacy of lived experiences and community and stakeholder expertise alongside professional expertise. This approach is particularly relevant when working with Black and racially minoritised community groups, whose knowledge and experiences have been historically excluded from dominant knowledge production systems[1].

[1] Ghorashi, *Decolonizing the integration discourse through embedded narratives*, in *ERS*, 2024, 48, 11, pp. 2174-2193; Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*, Oxford University Press, 2007; Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*, Unwin Hyman, 1990.

From this perspective, co-creating policies within inclusive and democratic knowledge ecosystems[2] represents both a methodological approach and an ethical principle for challenging deep-rooted hierarchies of knowledge.

This paper is based on a case study research project conducted in 2023-2025 which observed the transformation of a branch of a Black and racially minoritised community group from a community-based organisation into a social enterprise. This transformation affected only one branch of the community group's wider operations. The research had two main objectives: first, to understand the organisational change process that took place during this transformation; and second, to examine how this transformation shaped the form and function of the newly created Black and racially minoritised-led social enterprise.

Research findings were then used to inform a further CBPR process focused on the co-production of the *Empowering Inclusion* toolkit. This toolkit was designed to serve both as a conceptual framework for understanding the transformation experience and as a practical guide of good practice for other Black and racially minoritised-led organisations seeking to undergo similar transformations. By examining the participatory co-production of the toolkit, the study contributes to debates on epistemic justice, community-led social enterprise development and participatory policymaking.

The main research question guiding this second phase of the CBPR was: How can co-production processes support the development of inclusive knowledge ecosystems that support equitable organisational transformation in community settings?

Co-production was considered as an opportunity for democratic dialogue, where communities had the opportunity to actively participate in shaping the knowledge, tools, and structures that influence their futures. The paper, therefore, explains how co-production processes can support the development of inclusive knowledge ecosystems that support equitable organisational transformation in community settings. As Jaffe argues, "social inequities are made possible by and compounded by knowledge inequity"[3]. The case study participatory research involved two levels of co-production: first, an indirect form through internal organisational consultations related

[2] Kara, *Identity and power in co-produced activist research*, in *QualRes*, 2017, 17, 3, pp. 289-301.

[3] Jaffe, *Knowledge equity is social justice: Engaging a practice theory perspective of knowledge for rural transformation*, in *RuS*, 2017, 82, 3, pp. 408-409.

to the group's transition into a social enterprise; and second, a direct engagement involving community leaders and stakeholders in the co-creation and presentation of a practical toolkit. Although the internal transformation offers important context, direct engagement with community leaders and stakeholders formed the core activity for understanding how participatory processes enable more inclusive and equitable forms of organisational change led by those most affected[4].

Therefore, by examining the co-production of the practical toolkit with community leaders and stakeholders, the paper reflects on how participatory processes can enable collective agency and sustainable, equitable forms of organisational change and contribute to discussions of equality and inclusivity in policymaking.

2. *Literature Review: Social Enterprises as Vehicles for Social Change*

Social enterprises constitute what Sepulveda describes as a "new phenomenon" and a "hidden revolution" within the UK economy[5]. Closely connected to local communities, they are often positioned as innovative institutional forms able to respond to social exclusion, economic marginalisation and community disempowerment[6]. By combining market-based activity with social objectives, social enterprises are understood to represent an alternative organisational model which seeks to reconcile economic sustainability with social justice aims[7]. In this sense, they can be understood as spaces in which economic activity is aligned with social purpose.

According to Social Enterprise UK (SEUK), there are approximately 100,000 social enterprises employing around two million people and con-

[4] Wilson, *Community-based participatory action research*, in Liamputtong (ed.), *Handbook of Research Methods in Health Social Sciences*, Springer, 2019, pp. 285-298.

[5] Sepulveda, *Social Enterprise - A New Phenomenon in the Field of Economic and Social Welfare?*, in *SPA*, 2015, 49, 7, pp. 842-861.

[6] Park, Bae, *Legitimation patterns of social enterprises as hybrid organizations*, in *AMP*, 2020, 12025; Seelos, Mair, Battilana, Dacin, *The embeddedness of social entrepreneurship: understanding variation across local communities*, in Marquis, Lounsbury, Greenwood (eds.), *Communities and Organizations*, Emerald Group, 2011, pp. 333-363.

[7] Defourny, Nyssens, *Fundamentals for an International Typology of Social Enterprise Models*, in *Voluntas*, 2017, 28, 6, pp. 2469-2497.

tributing £60 billion to the UK's GDP[8]. SEUK further highlights that social enterprises are typically "more diverse" and "more representative" than traditional SMEs. Recent data indicate that 40% of social enterprises are led by women, while 13% are led by individuals from Black, Asian and Minority Ethnic (BAME) backgrounds, and 35% have BAME directors. Notably, 42% of BAME-led social enterprises are under three years old, reflecting the growth and dynamism of this part of the sector[9]. Such figures contribute to the perception of social enterprises as inclusive and democratising organisational forms.

However, although the representation of social enterprises in the UK economy and society is significant, it does not in itself resolve the existing societal systemic inequalities. Social enterprises operate within wider institutional environments shaped by funding regimes, regulatory frameworks and market pressures and these conditions influence how organisations define successful outputs, demonstrate impact and secure sustainability. As Vickers *et al.* suggest, social enterprises, as hybrid organisations, operate at the intersection of state/public logic, market logic, and civil society logic and have consequently to navigate the tensions between financial sustainability, public sector accountability and community-oriented social value[10].

These normative frameworks may not always align. The expectation to generate income and produce measurable outcomes could institutionalise performance-driven bureaucratic practices that challenge community-based values and relational forms of working.

The contribution of social enterprises to post-pandemic recovery has also been emphasised by Lord Victor Adebowale[11], who argued that meaningful recovery must address structural inequalities and protect opportunities for Black and racially minoritised communities. The concentration of social enterprises in deprived areas and the comparatively higher proportion of Black and minoritised ethnic leadership positions within the sector

[8] Social Enterprise UK, *The Hidden Revolution*, Social Enterprise UK, 2018.

[9] Social Enterprise UK, *Capitalism in Crisis? Transforming our Economy for People and Planet. State of Social Enterprise Survey 2019*, Social Enterprise UK, 2019.

[10] Vickers, Lyon, Sepulveda, McMullin, *Public service innovation and multiple institutional logics: The case of hybrid social enterprise providers of health and wellbeing*, in *ResPol*, 2017, 46, 10, pp. 1755-1768.

[11] Adebowale, *Our economic response to Covid-19 risks further entrenching inequality*, in *HuffPost UK*, 4 June 2020 (accessed 25 September 2026).

highlight its potential role in addressing labour market disparities[12]. At the same time, organisations operating in economically marginalised contexts often face financial precarity and short-term funding periods. In such circumstances, the motivation to pursue long-term structural change may be overshadowed by immediate survival concerns.

The meaning of social enterprise has itself been debated. Teasdale conceptualises the term as a fluid and contested construct, shaped by competing discourses that have evolved alongside shifting policy agendas[13]. Rather than denoting a fixed organisational form, the social enterprise model has been strategically mobilised by different actors seeking institutional recognition within changing political contexts. This highlights that social enterprises are not only economic entities but are situated within wider political and symbolic contexts in which legitimacy is continually being negotiated. Drawing on Meghji's analysis of racialised inequalities in access to capital and institutional recognition[14], it becomes clear that entrepreneurial initiatives are not often being recognised or supported on an equal footing. In this respect, Black and racially minoritised-led social enterprises may constitute important spaces of agency and activism, while simultaneously navigating through structural barriers embedded within the wider structures in society.

The participatory and community-centred ethos often associated with social enterprises is strongly linked – even embedded – with the principles of CBPR, which emphasises the value of collaboration, co-design, co-learning, and a shared process in decision making between researchers and communities[15]. Both approaches challenge top-down models of social change by increasing the visibility of local knowledge, lived experience, empowerment, and mutual accountability. CBPR provides a useful framework for understanding how social enterprises generate social innovation and collective capacity for addressing inequality[16]. It is equally important to note that such participation does not automatically eliminate hierarchies. The

[12] *Ibid*.

[13] Teasdale, *What's in a name? Making sense of social enterprise discourses*, in *PPA*, 2012, 27, 2, pp. 99-119.

[14] Meghji, *Black Middle-Class Britannia: Identities, Repertoires, Cultural Consumption*, Manchester University Press, 2019.

[15] Wallerstein, Duran, Oetzel, Minkler (eds.), *Community-Based Participatory Research for Health: Advancing Social and Health Equity*, 3rd ed., Jossey-Bass, 2017.

[16] Wilson, *cit*.

conditions under which knowledge is recognised, legitimised and translated into organisational strategy are still shaped by institutional norms.

Unlike other for-profit organisations, social enterprises promote a different economic model – one that combines market-based features with social justice goals[17] – with the central objective of promoting inclusive employment and empowering marginalised groups[18]. In this research, we adopt SEUK's definition of social enterprises as "businesses with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community"[19]. This definition reflects the aspirations of new and emerging community social enterprises to scale up the trading dimensions of their social missions as a pathway to long-term sustainability[20] and positions them as emerging actors within a dynamic and evolving social solidarity economy[21].

Therefore, although social enterprises are generally regarded as vehicles for social change, their transformative potential requires further investigation as they operate within systems that distribute economic, cultural and symbolic resources unevenly. Understanding their role in addressing inequality requires not only examining representation and purpose but also understanding the institutional and epistemic conditions under which organisational transformation occurs.

Existing research on CBPR and co-production has highlighted the importance of community participation, lived experience and local knowledge in the production of knowledge[22]. At the same time, participation does not always address how different forms of knowledge are recognised and valued within existing hierarchies. As discussed earlier, community knowledge continues to operate within institutional environments that can determine whose knowledge becomes visible, whose experience is considered credible and what forms of expertise are given legitimacy[23]. These questions have received less attention in relation to community-based organisations

[17] Defourny, Nyssens, *cit*.

[18] Teasdale, *cit*.

[19] Social Enterprise UK, *Capitalism in Crisis*, cit.

[20] Vickers, Lyon, Sepulveda, McMullin, *cit*.

[21] Ridley-Duff, Bull, *Understanding Social Enterprise: Theory and Practice*, 3rd ed., Sage, 2019.

[22] Huffman, *Participatory/Action Research/CBPR*, in Matthes, Davis, Potter (eds.), *The International Encyclopedia of Communication Research Methods*, Wiley-Blackwell, 2017.

[23] Aa.Vv., *The politics of co-production: Participation, power, and transformation*, in *COES*, 2020, 42, pp. 15-21.

moving towards social enterprise models[24]. Organisational transformation includes changes in the operations and structures but also access to resources and networks with external institutions. It can also affect how community knowledge and lived experience are considered during the process of transition. For Black and racially minoritised-led organisations, this is especially important because organisational change takes place within a context of existing inequalities and barriers to accessing resources, opportunities and institutional recognition. The findings contribute to existing discussions on Black and racially minoritised community-led social enterprise development by highlighting how organisational transition is shaped by questions of community knowledge, power and recognition.

3. *Theoretical Considerations*

The concept of epistemic injustice – or epistemic justice – is central to this research. Scholars have increasingly recognised that enduring social and racial hierarchies influence which voices are heard and which insights are overlooked throughout processes of knowledge production, interpretation and validation. Miranda Fricker's seminal work[25] shows that when knowledge is shaped by existing social inequalities, it gives rise to a distinct form of injustice – epistemic injustice – which undermines both individual credibility and collective understanding. In other words, epistemic injustice provides a way of understanding how inequalities operate within processes of knowledge production, shaping which experiences and perspectives gain legitimacy and which are marginalised or disregarded. Fricker distinguishes between two forms of epistemic injustice. Testimonial injustice occurs when certain groups are treated as less credible knowers, so that their accounts and contributions are given reduced weight or dismissed altogether. This can lead to the dismissal of certain lived experiences within academic and, ultimately, policy discourses[26]. Hermeneutical injustice arises from

[24] Spanuth, Urbano, *Exploring social enterprise legitimacy within ecosystems from an institutional approach: A systematic literature review and research agenda*, in *IJMR*, 2024, 26, pp. 211-231; Munoz, Steiner, Farmer, *Processes of community-led social enterprise development: Learning from the rural context*, in *CDJ*, 2015, 50, 3, pp. 478-493.

[25] Fricker, *cit.*

[26] *Ibid.*

systemic and structural barriers[27] that prevent the voices of marginalised groups from being adequately captured in research, often due to a lack of relevant theoretical frameworks or discourses capable of reflecting their experiences and social realities[28].

Epistemic injustices are damaging to both individuals and the wider community on several grounds, as they undermine the credibility of marginalised actors as knowers and reproduce broader patterns of social inequality within knowledge production systems. In this sense, epistemic injustice constitutes a form of social injustice because individuals or groups are undermined specifically in their capacity as knowers due to existing power relations and prejudicial assumptions[29]. Addressing such injustices therefore requires not only greater awareness of bias but also institutional practices that support more inclusive and participatory processes of knowledge production[30].

These ideas resonate with Pierre Bourdieu's notion of symbolic capital, which builds upon other forms of capital, such as social and cultural capital. Symbolic capital refers to the recognition, status, legitimacy and "social importance" that individuals or organisations accumulate within a given social field[31]. Those who possess such resources are therefore more likely to have their knowledge recognised and legitimised, while those who do not tend to remain undervalued or marginalised within institutional settings. Individuals with recognised credentials, established professional networks, and familiarity with dominant linguistic and cultural repertoires are more readily perceived as credible actors. In organisational contexts, this influences whose interpretations shape strategic decisions, whose proposals attract funding, and whose expertise becomes accepted as legitimate practice. Symbolic capital thus operates not only through formal hierarchies and

[27] Anderson, *Epistemic justice as a virtue of social institutions*, in *SocEp*, 2012, 26, 2, pp. 163-173.

[28] Anderson, *cit.*; Dotson, *A Cautionary Tale: On Limiting Epistemic Oppression*, in *Frontiers*, 2012, 33, 1, pp. 24-47.

[29] Cappellini, Hutton, *The Politics of Epistemic Marginality: Testimonies in Opposition*, in Maclaran, Stevens, Kravets (eds.), *The Routledge Companion to Marketing and Feminism*, Routledge, 2022; Aa.Vv., *Omission and Commission as Marketplace Trauma*, in *JPPM*, 2016, 35, 2, pp. 280-291; Fricker, *cit.*

[30] Dotson, *Conceptualizing Epistemic Oppression*, in *SocEp*, 2014, 28, 2, pp. 115-138; Anderson, *cit.*

[31] Bourdieu, *Pascalian Meditations*, Stanford University Press, 2000, p. 241.

authority structures but also through the everyday distribution of credibility and recognition within organisational interactions[32].

This concept has been interpreted in different ways, including in Bourdieu's own work[33]. In some interpretations, symbolic capital is closely associated with other forms of capital such as economic, social and cultural, in the sense that recognition and prestige tend to derive from the possession of these resources. In other discussions, the concept is treated more independently, suggesting that symbolic capital may also emerge through processes of recognition that grant legitimacy and authority within a particular field[34].

This paper draws on this latter interpretation and conceptualises symbolic capital as a form of recognition that grants credibility and authority to particular actors, narratives and forms of knowledge within a field. From this perspective, symbolic capital provides a useful lens for examining how certain narratives, practices and forms of knowledge become recognised and legitimised within social enterprise research. The themes explored in this paper were identified through a co-design and co-creation process undertaken as part of the research, which helped surface the issues and perspectives considered most salient by participants.

Responding to epistemic injustice therefore involves creating spaces where different and alternative voices are not only included but also recognised as legitimate contributors to knowledge production[35]. Within the wider context of equality, diversity and inclusion, epistemic justice reminds us that achieving these goals is not only about who participates but also about the conditions that enable equal participation. This includes establishing structures and processes that actively support participation, reduce barriers to engagement, and create environments in which different forms of knowledge can be expressed, heard and taken seriously[36].

CBPR should therefore be designed around the principle that community members and stakeholders act as active partners rather than passive

[32] Bourdieu, *Social Space and Symbolic Power*, in *ST*, 1989, 7, 1, pp. 14-25.

[33] Driessens, *Celebrity capital: Redefining celebrity using field theory*, in *TaS*, 2013, 42, 5, pp. 543-560.

[34] *Ibid*.

[35] Fricker, *cit*.

[36] Chouinard, Milley, *Uncovering the mysteries of inclusion: Empirical and methodological possibilities in participatory evaluation in an international context*, in *EPP*, 2018, 67, pp. 70-78.

subjects[37]. Through collaboration, participation, and reflection, CBPR enables democratic knowledge production processes that are more responsive to local needs and that strengthen sustainable systems of knowledge[38]. Extending this argument further, epistemic justice can be viewed as one of the core principles underpinning inclusive ecosystems – embodying the cultural and ethical values that guide social enterprises. Realising this in practice requires challenging the established hierarchies of what Bourdieu called capitals[39] – the very mechanisms that offer opportunities to some while systematically excluding others.

Based on these theoretical concepts, the following diagram has been developed as an interpretive framework for this research.

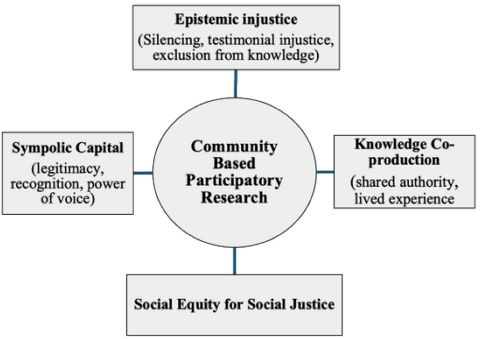


Figure 1. *Community-based Participatory Research for Social Equity: a theoretical framework*

As shown in Figure 1, the framework positions CBPR as the central methodological approach through which knowledge is co-designed and

[37] Wallerstein, Muhammad, Sanchez-Youngman, *Power Dynamics in Community-Based Participatory Research: A Multiple-Case Study Analysis of Partnering Contexts, Histories, and Practices*, in *HEB*, 2019, 46, 1 suppl., pp. 19S-32S.

[38] Burkhart, Schneider, *Whose knowledge counts for transformative change? - Operationalizing epistemic justice for transdisciplinary knowledge co-production*, in *ESP*, 2026, 176, 104322.

[39] Bourdieu, *The forms of capital*, in Richardson (ed.), *Handbook of Theory and Research for the Sociology of Education*, Greenwood Press, 1986, pp. 241-258.

co-produced between researchers and community actors. Two analytical dimensions inform this process. First, the concept of epistemic injustice highlights the structural and systemic exclusion of marginalised groups from knowledge production and recognition. Second, symbolic capital refers to how legitimacy, authority, and recognition influence whose knowledge is considered credible and valued within research and policy discourses. When considered together, the concepts of epistemic injustice and symbolic capital provide complementary perspectives for understanding how knowledge hierarchies emerge and persist within research and organisational contexts. By placing CBPR at the intersection of these dynamics, the framework shows how participatory approaches can help redistribute symbolic capital and address epistemic injustice in the production of knowledge[40].

The framework is dynamic, recognising that the relationships between CBPR, epistemic injustice, and symbolic capital evolve over time. Through participatory engagement, these interactions may challenge existing knowledge hierarchies and reshape whose knowledge is heard, recognised, and valued within research and policy making contexts[41]. In doing so, the framework highlights how participatory knowledge production can contribute to the ongoing re-conceptualisation of social equity and its relationship to questions of social justice.

In this research, co-production provides a way of examining how epistemic justice and symbolic capital operate within participatory processes. Epistemic justice draws attention to whose knowledge is recognised and included and symbolic capital helps to explain how particular forms of knowledge gain recognition and legitimacy within organisational and institutional settings. Co-production connects these processes by creating opportunities for community knowledge and lived experience to contribute to the interpretation of organisational change and to the development of shared understandings.

[40] Glass, Newman, *Ethical and epistemic dilemmas in knowledge production: Addressing their intersection in collaborative, community-based research*, in *TRE*, 2015, 13, 1, pp. 23-37.

[41] Janes, *Democratic encounters? Epistemic privilege, power, and community-based participatory action research*, in *ActRes*, 2016, 14, 1, pp. 72-87.

4. *Methodology*

Building on this framework, the study adopted a CBPR design to examine how epistemic justice and symbolic capital unfold within the organisational transition of a community-led initiative. Community members were engaged as research partners throughout the design, interpretation and refinement of the study, rather than being treated simply as research participants. This section therefore outlines the participatory research design and the collaborative processes through which data collection, analysis and interpretation were undertaken in dialogue with community stakeholders, highlighting how participatory consultation and co-creation shaped both the analytical themes and the final research outputs[42].

The study adopted a qualitative case study design to examine the transition of a section of a community group's activities into a social enterprise model. In particular, the research focused on how an initiative led by Black and racially minoritised communities evolved from a community-based activity into a more structured social enterprise, and how this development influenced organisational practices, community legitimacy and approaches to sustainability.

The study draws on a case study of Community Inclusion Initiative (CII) (pseudonym), a grassroots organisation working with diverse migrant, refugee and multi-ethnic communities in Oxford, UK. As well as examining the organisation as a whole, the research focuses on the development of one of its initiatives that began as a community-led activity and gradually evolved into a social enterprise. This transition was based on the organisation's soup kitchen initiative, through which revenues generated by the newly created social enterprise activities are reinvested into the service itself, strengthening its financial sustainability and supporting its long-term continuity and commitment to the community. The case study approach enabled an in-depth examination of organisational change processes within a specific community context, allowing the research to capture both institutional dynamics and the lived experiences of those involved in the initiative[43].

[42] Minkler, Baden, *Impacts of CBPR on academic researchers, research quality and methodology, and power relations*, in Minkler, Wallerstein (eds.), *Community-Based Participatory Research for Health: From Process to Outcomes*, 2nd ed., Jossey-Bass, 2008, pp. 243-262.

[43] Annamalah, Abdullah, Anthonysamy, Ahmed, *Case study research in qualitative inquiry: a structured guide to design, data collection and analysis*, in *QRJ*, 2026, ahead-of-print.

Within the CBPR framework, the study adopted a co-creation approach to collaborative knowledge production between researchers and community actors[44]. The aim was to ensure that the research reflected principles of epistemic justice, inclusion and shared authority[45]. Community members contributed not only to the research process but also to the interpretation and refinement of the findings. This approach was particularly relevant given the study's focus on organisations led by Black and racially minoritised communities, where traditional research approaches[46] may risk overlooking community knowledge and lived experience.

Data collection consisted primarily of semi-structured interviews with participants from the case study organisation and key informants from the wider voluntary and social enterprise sector. Participants were recruited using purposive sampling. For CII, participants were selected to reflect different forms of involvement in the organisation, including members of the leadership team, volunteers and beneficiaries. This was intended to capture perspectives from across different levels of the organisation. Participants from the wider Voluntary, Community and Social Enterprise (VCSE) sector were selected on the basis of their knowledge and experience in the field. Attention was also given to achieving an appropriate balance in terms of gender and ethnic background across the participant sample. The one-hour interviews were conducted by the researchers between 2024 and 2025, both online and in person. They were recorded and professionally transcribed. Ethical approval was obtained from Anglia Ruskin University. All participants received information about the research and provided informed consent prior to participation. Participation was voluntary, with participants informed of their right to withdraw, and appropriate processes were followed to protect confidentiality and anonymity.

Semi-structured interviews enabled participants to reflect on their lived experiences and work practices while allowing the researchers to explore emerging themes in greater depth[47]. In total, ten interviews were conducted

[44] Carrera, Levidow, *Introduction: participatory knowledge co-production*, in *SaC*, 2025, 34, 1, pp. 1-12.

[45] Rolin, *Resisting epistemic exploitation: From institutional remedies to community-based research*, in *SHPS*, 2025, 111, pp. 63-71.

[46] Aa.Vv., *From voice to action: toward participatory action research in anti-racism education in Canada*, in *IJQSE*, 2025, pp. 1-24.

[47] Aa.Vv., *Sensitive, Challenging, and Difficult Topics: Experiences and Practical Considerations for Qualitative Researchers*, in *IJQM*, 2022, 21.

with members of the CII management team, volunteers and beneficiaries, alongside six interviews with representatives from local authorities and organisations within the VCSE sector. The interviews explored organisational development, community engagement, economic sustainability challenges and the role of social enterprises in addressing structural inequalities.

The qualitative data were analysed thematically to identify recurring patterns across participants' narratives. Preliminary themes relating to organisational transition, community legitimacy and sustainability were identified through initial coding before being refined through the participatory consultation process described below.

Consistent with the CBPR approach, these preliminary themes were not treated as fixed analytical outcomes but were further developed through an iterative process of consultation and collective interpretation with research participants[48]. As illustrated in Figure 2, the preliminary findings were discussed during two collaborative webinars involving organisational members and wider community stakeholders. This participatory process ensured that the analytical themes reflected both the empirical data and participants' experiential knowledge, ultimately informing the development of the *Empowering Inclusion Toolkit*[49].

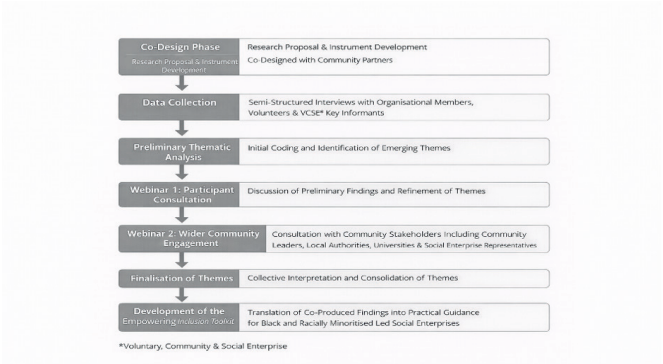


Figure 2. *Community-Based Participatory Research - Methodological Process*

[48] von Unger, *Whose interpretations matter? Participatory research approaches*, in *Handbook of Interpretive Research Methods in the Social Sciences*, Edward Elgar, 2025, ch. 22.

[49] Aa.Vv., *Empowering Inclusion: Toolkit for Black and Racially Minoritised Led Social Enterprises*, Safe and Inclusive Communities, Anglia Ruskin University, 2024.

In more detail, Figure 2 illustrates the stages of the CBPR process adopted in this study. The research began with a co-design phase during which the research proposal, methodological approach and research instruments were developed collaboratively with community partners[50]. This ensured that the research questions, interview guides and overall study design reflected both community priorities and the academic objectives of the study. The research team retained responsibility for the overall research process. Decision-making authority was shared with community partners at specific stages of the research. In particular, the interpretation and refinement of the themes involved joint decision-making, with the final themes agreed through the participatory process. Volunteers, beneficiaries and employees who participated in the research received a nominal voucher in recognition of their contribution. No significant disagreements arose during the participatory discussions; instead, participants built on each other's contributions, adding further perspectives that helped to refine the findings. The next stage involved data collection through semi-structured interviews with organisational members, volunteers, beneficiaries and key informants from the VCSE sector and local authorities.

Preliminary thematic analysis followed, during which the research team used NVivo to code the qualitative material and identify emerging patterns relating to organisational transition, community legitimacy and sustainability[51]. The initial codes were reviewed and grouped into preliminary themes. In accordance with the CBPR framework, these themes were treated as starting points for participatory interpretation rather than definitive analytical outcomes[52].

The subsequent stages involved structured consultation and co-creation with community stakeholders[53]. The first webinar brought together six members of the CII organisation and research participants to discuss and refine the preliminary findings. The second webinar extended this process to fourteen stakeholders, including community leaders, local authorities,

[50] Brown, Stalker, *Assess Connect Transform In Our Neighbourhood: A framework for engaging community partners in community-based participatory research designs*, in *ActRes*, 2021, 19, 2, pp. 372-392.

[51] Braun, Clarke, *Using thematic analysis in psychology*, in *QRP*, 2006, 3, 2, pp. 77-101.

[52] Cornwall, Jewkes, *What is participatory research?*, in *SSM*, 1995, 41, 12, pp. 1667-1676.

[53] Brandsen, Steen, Verschuere (eds.), *Co-production and Co-creation: Engaging Citizens in Public Services*, Routledge, 2018.

university representatives and actors from the social enterprise sector, allowing the themes to be further validated and consolidated through collective interpretation. Both webinars lasted over an hour each and were facilitated by the research team. The discussions were recorded and professionally transcribed for analysis. The initial analysis identified the main themes and the participatory discussions helped to confirm and shape their final form. Co-production was therefore present at different stages of the research process, from the initial co-design of the research to the collective interpretation and refinement of the findings.

Following these consultations, the themes were synthesised by integrating the primary qualitative analysis with insights generated during the participatory webinars. The final stage involved translating these co-produced findings into the *Empowering Inclusion Toolkit*[54], providing practical guidance for Black and racially minoritised-led social enterprises and community organisations aspiring to transition towards social enterprise models. The toolkit is organised around the four themes developed through the research and participatory discussions: transitioning; racial and social justice, equity, diversity and inclusion; legitimacy; and sustainability. It combines findings from the case study with practical guidance on issues including community engagement, partnerships, inclusive leadership, organisational sustainability and the development of community skills and resources. Overall, the CBPR methodology enabled the analytical framework to develop iteratively through engagement between researchers and community stakeholders, ensuring that both the thematic analysis and the practical outputs remained grounded in community knowledge and lived experience[55].

Researcher reflexivity was also considered through the participatory process. The research team undertook the initial analysis and identified the main topics emerging from the interview material. These initial interpretations were then discussed with CII members during the first webinar, providing an opportunity for the research team to consider its interpretation of the findings alongside the experiences and perspectives of those directly involved in the organisation.

[54] Aa.Vv., *Empowering Inclusion: Toolkit*, cit.

[55] Voorberg, Bekkers, Tummers, *A systematic review of co-creation and co-production*, in *PMR*, 2015, 17, 9, pp. 1333-1357.

5. *Findings and Discussion*

The four themes focus on different aspects of the organisational transformation, and they also help to better understand how community knowledge was recognised and interpreted through the participatory research process. The themes reflect the organisational issues that emerged during the transition and the knowledge and experiences that participants considered important. In this way, the findings connect the organisational transformation to the wider research question of how co-production can support more inclusive knowledge ecosystems within community settings.

The analytical themes discussed here emerged through the collaborative research process described in the methodology. Initial coding of the interview material generated preliminary observations relating to organisational change, community engagement and sustainability, which were subsequently refined through consultation with research participants and wider stakeholders (Figure 2). Guided by the principles of CBPR, the interpretation of the empirical material extended beyond researcher-led analysis through collective reflection with those directly involved in the organisational context[56]. As a result, the analytical framework developed through an iterative process that combined interview data with participants' organisational experience and sector knowledge[57].

Through this collaborative process, the preliminary observations were refined into four interrelated themes that participants identified as central to understanding the transition of community initiatives into social enterprise models led by Black and racially minoritised communities. These themes subsequently informed the development of the project toolkit and provide the structure for the empirical analysis presented below. Rather than being predetermined by the researchers, they reflect the issues that participants themselves identified as most significant for understanding the organisational and social dynamics of the transition process.

The four themes relate to organisational transitioning; racial justice/social justice and equity; legitimacy; and sustainability. Together they capture interconnected dimensions of organisational transformation ob-

[56] Wallerstein, Duran, Oetzel, Minkler (eds.), *cit*.

[57] Carney, Dundon, Ní Léime, *Participatory action research with and within community activist groups: Capturing the collective experience of Ireland's Community and Voluntary Pillar in social partnership*, in *ActRes*, 2012, 10, 3, pp. 313-330.

served in the case study. The first theme focuses on the organisational processes involved in transitioning from a community-based initiative to a social enterprise structure, including the motivations for change and the practical challenges encountered. The second examines the role of racial and social justice, community leadership and equity, diversity and inclusion in shaping the identity and mission of the emerging social enterprise, highlighting the importance of community knowledge and collective agency within contexts of structural inequality. The third explores legitimacy, examining how community-based organisations establish recognition and credibility both within the communities they serve and across the wider institutional environment. The fourth considers sustainability, encompassing the financial, social, environmental and organisational factors influencing the long-term viability of community-led social enterprise initiatives.

Although presented separately for analytical clarity, these themes are closely interconnected. Participants emphasised that questions of leadership, legitimacy, sustainability and organisational structure are experienced simultaneously, reflecting the complex organisational environments within which community-led initiatives operate. These themes suggest that the transition towards social enterprise models cannot alone be understood as an organisational process but must also be situated within the existing structural conditions that shape access to resources, institutional recognition and economic opportunity. In this respect, the findings contribute to wider debates on how organisational and institutional arrangements can reproduce inequalities affecting marginalised communities, particularly in relation to leadership recognition, access to funding and participation in local economic development initiatives[58].

5.1. *Transitioning*

The theme of transitioning emerged as the most immediate and commonly discussed issue during the participatory discussions. Participants frequently emphasised that the shift from a community-based initiative to a social enterprise model represented more than a simple organisational re-

[58] Aa.Vv., *Making the Invisible Visible: Identifying and Articulating Culture in Practice-Based Evidence*, in *AJCP*, 2018, 62, 1–2, pp. 121–134.

structuring. The process was understood as a gradual one, through which an informal community activity evolved into a more structured organisational form capable of generating resources to sustain its social mission. During the two webinar discussions, participants reflected on how this transition required balancing the original community values of the initiative with the practical demands associated with operating within a more formal organisational and economic environment.

5.1.1. *The Transition as a Response to Structural Constraints*

A key issue raised during the interviews and the consultations that followed concerned the financial sustainability of the organisation's activities. Participants explained that the decision to develop a social enterprise initiative emerged largely in response to the limited availability of stable public funding for community services. In particular, the organisation's food redistribution programme, which had initially operated as a volunteer-led initiative, faced increasing operational costs that could not be covered through short-term grants alone. The development of the community kitchen was therefore understood as a strategy for generating income that could sustain the organisation's wider activities.

As one participant explained:

"That is the main reason [CII] kitchen was established. Because when we do well in [CII] kitchen, then we have more finances to put on our enterprise – what we do every Wednesday. Because if the [CII] kitchen goes well… then we know we're going to do well because… finances are a big problem." (CII volunteer interview).

The quote suggests that the transition towards a social enterprise model was shaped by financial pressures affecting community organisations operating in contexts characterised by limited and often short-term funding opportunities. Participants mentioned that the transition towards social enterprise models cannot be understood only in organisational terms but must be situated within systems that shape access to resources, institutional recognition and economic opportunity. For many community organisations operating in economically marginalised contexts, the development of trading activities represents one of the few viable pathways for sustaining social programmes that would otherwise remain dependent on unstable funding arrangements.

5.1.2. *Community Knowledge and Resources in the Transition Process*

Another important aspect of the transition discussed during the consultations concerned the role of community knowledge and resources in shaping the emerging social enterprise model. Participants described how the organisation drew upon the skills, cultural practices and professional experience present within its diverse community networks.

One example discussed during the interviews involved the creation of a community kitchen initiative, where members of the organisation's diaspora communities contributed their culinary knowledge to develop a menu reflecting different cultural traditions. These activities allowed the organisation to generate income and maintain strong connections with the communities it served.

As one of the research participants explained, the initiative also created new forms of interaction between different communities involved in the organisation's activities:

"I do believe because it started with the food bank. A lot of communities got used to each other, now the kitchens for those communities has come, each community is given the chance they will do their own food that the other communities come and eat. Which will benefit them economically… each community will gain something." (CII leadership team interview).

Further, this statement refers to how the initiative was understood not only as an income-generating activity but also as a mechanism through which different community groups could interact, exchange cultural practices and benefit economically from shared organisational initiatives.

Interviewees noted that this approach reflected an organisational approach in which community assets were treated as sources of organisational strength rather than as deficits requiring external intervention. During the participatory discussions, several contributors emphasised that the success of the initiative depended not only on financial planning but also on the ability of the organisation to recognise and mobilise the diverse forms of knowledge and expertise present within its community networks. This observation reflects a central principle of the CBPR approach, which recognises that communities hold valuable forms of context specific knowledge that are often overlooked in conventional research and organisational decision-making. By creating opportunities for interaction and collective reflection, participatory processes enable these forms of knowledge to become visible and actionable

within organisational practice[59]. In this sense, the participatory discussions did not simply validate the research findings but also revealed the importance of recognising community-based expertise as a key resource in the development and sustainability of social enterprise initiatives.

5.1.3. *Transitioning and Institutional Recognition*

The transition towards a social enterprise structure also raised questions about how community organisations establish legitimacy within institutional environments. Participants explained that moving towards a more formal organisational model required developing new relationships with external actors, including local authorities, universities and other organisations within the voluntary and social enterprise sector. These relationships were often perceived as necessary for gaining recognition and support within policy and funding environments that tend to prioritise formally structured organisations.

One example discussed during the interviews focused on CII's relationship with the local council. Community knowledge had identified problems with the distribution of food that did not reflect the cultural and religious needs of some communities. These concerns were raised with the council and contributed to changes in its approach to food redistribution. This example showed how knowledge developed through close relationships with local communities could also inform the practices of external institutions.

At the same time, participants reflected on the importance of ensuring that these institutional relationships did not undermine the community-oriented values that had originally shaped the organisation's activities. The discussions therefore revealed an ongoing negotiation between maintaining grassroots accountability and adapting to institutional expectations associated with operating as a social enterprise.

5.1.4. *Transition as a Collective Learning Process*

Another important aspect of the participatory discussions highlighted that the transition towards a social enterprise model should be understood

[59] *Ibid.*

as an ongoing learning process rather than a clearly defined organisational endpoint. Participants described how new organisational practices emerged gradually through experimentation, reflection and adaptation. The CBPR process itself provided an opportunity for organisational members and external stakeholders to reflect collectively on these experiences and to articulate the lessons that could inform similar initiatives in other contexts. In this sense, the transition towards a social enterprise model represented not only a structural organisational change but also a process through which community actors developed new ways of interpreting their own organisational practices and possibilities for future development.

5.2. *Racial Justice, Social Justice and Equity*

The second theme emerging from the participatory discussions is about the role of racial and social justice within the general context of equity shaping the identity and mission of the emerging social enterprise. Participants frequently emphasised that the organisation's activities were based on the lived experiences of communities that have historically faced barriers in accessing economic opportunities, organisational recognition and leadership roles within mainstream institutional settings. For some interviewees, such inequalities are not only expressed through economic disadvantage but also through everyday interactions shaped by prejudice and social hierarchies. As one interviewee observed, discriminatory attitudes can become normalised in routine encounters with institutions and service providers, where certain groups are ignored or addressed differently.

"And that shows up in the colour prejudice situation and in the ageing situation or the poverty, any of these situations, it shows up in thinking it's alright to talk to people in a certain way or ignore people in a certain way." (CII, Volunteer Interviewee).

The quote shows how experiences of marginalisation are often embedded in everyday interactions, reinforcing the importance of community-led initiatives that prioritise respectful engagement and recognition of community members. Within this context, the development of the social enterprise initiative was not understood only as an organisational strategy for financial sustainability, but also as an effort to create spaces where community knowledge, cultural practices and forms of participation could be recognised and valued.

During the interviews and subsequent consultations, participants reflected on how community-led initiatives can contribute to addressing structural inequalities affecting racially minoritised groups. Most webinar contributors highlighted that many individuals involved in the organisation had experienced limited access to employment opportunities, professional networks and institutional support. The social enterprise initiative was therefore often described as creating opportunities for participation in economic and organisational activities that may otherwise remain inaccessible. In this sense, the organisation's activities were often framed not only as service provision but also as a mechanism for advancing greater equity within local community contexts[60].

Participants also emphasised the importance of community leadership in shaping the organisation's priorities and activities. In contrast to more hierarchical organisational structures, decision-making processes within the initiative were often described as emerging through collective discussions and shared experiences among community members. These discussions highlighted the importance of the knowledge and experiences of community members, volunteers and others involved in the organisation's activities. Their knowledge helped to identify community needs and develop initiatives that responded to them.

This was reflected in the use of community representatives who maintained close relationships with different ethnic communities and helped to identify needs that may otherwise remain less visible. Participants explained that people could feel more comfortable discussing their difficulties with representatives they already knew and trusted, allowing these experiences to inform how the organisation responded to community needs.

The participatory nature of the research process reinforced this emphasis on community knowledge. The consultation discussions provided an opportunity for organisational members and wider community stakeholders to reflect on how their experiences and perspectives informed the development of the organisation's activities. Through these exchanges, participants emphasised that the recognition of community knowledge was closely connected to questions of equity, particularly in contexts where the experiences of racially minoritised groups are often overlooked or undervalued within institutional decision-making processes.

[60] Israel, Schulz, Parker, Becker, *Critical Issues in Developing and Following CBPR Principles*, in Minkler, Wallerstein (eds.), *Community-Based Participatory Research*, cit., pp. 47-62.

These reflections resonate with the theoretical concerns discussed earlier in the paper regarding epistemic justice and the recognition of marginalised forms of knowledge. The participatory discussions created a space in which community members could articulate how their experiences shaped organisational practices and priorities and contributed to the interpretation of the research findings themselves. In this respect, the CBPR process enabled forms of knowledge that are often marginalised within conventional research settings to play a more visible role in shaping both the analysis and the practical toolkit developed through the project.

5.3. *Legitimacy and Symbolic Capital*

The third theme emerging from the participatory discussions was based on questions of legitimacy and recognition within the organisational and institutional environments in which community-led social enterprises operate. Participants frequently emphasised that developing a social enterprise structure required not only organisational adaptation but also the ability to establish credibility and recognition among external actors, including local authorities, funding bodies and organisations within the voluntary and social enterprise sector. In this sense, the transition towards a social enterprise model was closely connected to the ways in which community-led initiatives are perceived and valued within wider institutional contexts.

During the interviews and consultations, several participants reflected on the challenges faced by community organisations when seeking recognition for their activities and expertise. The CII organisation had already developed strong relationships within the communities it served. However, gaining institutional recognition was often described as a more complex process. Participants noted that organisations led by racially minoritised communities sometimes encounter difficulties in having their knowledge, experiences and organisational approaches recognised as legitimate forms of expertise within formal decision-making environments.

These challenges were visible in relation to funding. One participant explained that CII was often competing for funding with organisations that had paid staff, greater capacity to prepare funding applications and established relationships with funding bodies. For CII, limited time and resources made accessing these opportunities more difficult, and gaining

the trust of funding organisations was described as a process that could take time.

These reflections highlight the relevance of symbolic capital in understanding how organisational legitimacy is constructed and recognised. As discussed in the theoretical framework, symbolic capital refers to the forms of recognition, credibility and authority that allow certain actors and forms of knowledge to be acknowledged as legitimate within a given field[61]. Within the context of community-led social enterprises, legitimacy is therefore shaped not only by organisational performance or service delivery but also by the degree to which the organisation's practices and forms of knowledge are recognised by external institutional actors.

Participants often emphasised that establishing such recognition required building relationships with organisations operating within the local institutional environment. Partnerships with local authorities, universities and other voluntary sector organisations were described as important mechanisms through which community initiatives could strengthen their visibility and credibility. At the same time, participants also noted that these relationships required careful negotiation to ensure that the organisation's community-oriented values and priorities were maintained.

As one interviewee explained, collaborative initiatives depend heavily on sustained relationship building and trust:

"It needs a lot of relationship building. It needs a lot of time; it needs a lot of trust to be built, and you can very easily lose that trust through processes like what we were describing before." (Key Informant interviewee).

This observation highlights the relational nature of legitimacy within community initiatives. Trust is not automatically gained through formal authority or institutional status but develops gradually through continued engagement and responsiveness to community needs[62].

The participatory discussions also highlighted that legitimacy operates at multiple levels[63]. On the one hand, community organisations derive legitimacy from the trust and recognition they receive within the communities they serve. This form of legitimacy is grounded in long-standing relation-

[61] Bourdieu, *Pascalian Meditations*, cit.; Bourdieu, *The forms of*, cit.

[62] Mizrachi, Drori, Anspach, *Repertoires of Trust: The Practice of Trust in a Multinational Organization amid Political Conflict*, in *ASR*, 2007, 72, 1, pp. 143-165.

[63] Haack, Schilke, Zucker, *Legitimacy Revisited: Disentangling Propriety, Validity, and Consensus*, in *JMS*, 2021, 58, pp. 749-781.

ships, shared experiences and the organisation's ability to respond to local needs. On the other hand, institutional legitimacy often depends on formal structures, governance practices and the ability to align organisational activities with policy and funding frameworks.

Through the participatory consultations conducted as part of this research, participants reflected on how these different forms of legitimacy interact in practice. The discussions highlighted that community organisations have to navigate between maintaining grassroots accountability and adapting to institutional expectations associated with operating as a social enterprise. In this respect, the transition towards a social enterprise model was understood not only as an organisational change but also as a process through which the organisation sought to strengthen its symbolic capital within the wider institutional environment[64].

The CBPR process itself contributed to making these dynamics more visible. By involving organisational members and sector stakeholders in the interpretation of the research findings, the participatory discussions created a space in which participants could reflect collectively on how legitimacy and recognition are constructed within their organisational experiences. This process allowed participants to articulate the challenges associated with gaining institutional recognition and maintaining the community-oriented principles that had originally shaped the organisation's activities.

5.4. *Sustainability*

The fourth theme emerging from the participatory discussions concerns the question of sustainability and the conditions required to maintain community-led social enterprise initiatives over time. Interviewees emphasised that sustainability should not be understood only in financial terms but rather as an organisational and social process involving the ability of community organisations to maintain their activities, relationships and mission within often challenging institutional environments.

During the interviews and the later webinar consultations, participants described the financial sustainability of community initiatives as a persistent concern. Participants noted that community organisations frequently oper-

[64] Yang, Wu, *In search of the right fusion recipe: the role of legitimacy in building a social enterprise model*, in *BEER*, 2016, 25, pp. 327-343.

ate within funding environments characterised by short-term project grants and limited long-term institutional support. In this context, the development of social enterprise activities was often perceived as a practical strategy for generating income that could support the organisation's core community services. The creation of the community kitchen initiative discussed earlier was therefore frequently framed as a mechanism through which the organisation could reduce its dependence on external funding while maintaining its social mission.

Volunteer interviews showed how this could work in practice. Income generated through the community kitchen could contribute to the food redistribution activities, including the purchase of food for distribution within the community. This created a direct connection between the social enterprise activity and the continuation of CII's existing community work.

At the same time, participants emphasised that financial sustainability alone was not sufficient to ensure the long-term viability of community-led initiatives. Several contributors highlighted the importance of maintaining strong relationships within the communities served by the organisation. Trust, shared experiences and collective participation were described as essential elements enabling the organisation to mobilise volunteers, build partnerships and sustain its activities over time. As one participant explained:

"Sustainability includes not only money but people." (Volunteer Interviewee).

This comment highlights how sustainability within community initiatives is understood as a collective process as interviewees emphasised the importance of community participation, volunteering and shared responsibility as fundamental to sustaining these activities over time. These dimensions were described by the research participants as forms of social capital that supported the organisation's ability to respond to emerging challenges and opportunities.

In addition to the above, the discussions also highlighted the importance of organisational learning that was gained during the transition of CII towards a social enterprise model. Participants reflected on how new practices, partnerships and operational strategies emerged gradually through experimentation and collaboration. In this respect, sustainability was described as a dynamic process rather than a fixed organisational outcome. Maintaining organisational activities required continuous adaptation to changing financial conditions, policy environments and community needs.

These reflections enriched the discussion on how sustainability within community-led social enterprises is closely connected to the structural conditions that pose a barrier to accessing resources, institutional recognition and economic opportunities. It was argued by many research participants that community organisations must navigate organisational environments in which funding systems, policy frameworks and institutional expectations can present significant challenges for smaller community-led initiatives.

The participatory research process provided an opportunity for organisational members and external stakeholders to reflect collectively on these issues and to identify strategies that could strengthen the long-term viability of community-led initiatives. In this respect, the CBPR approach contributed not only to analysing organisational experiences but also to supporting a shared understanding of the practical conditions required to sustain community-based social enterprise activities.

The four themes are helpful to better understand how the transition towards community-led social enterprise models involves navigating multiple organisational and institutional dynamics. Participants emphasised that organisational development cannot be separated from the wider structural and systemic conditions as these have an impact on how both people and organisations access resources, gain recognition and secure economic opportunity. These findings reveal how community-led initiatives respond to multiple challenges by mobilising community knowledge, collective leadership and local networks.

At the same time, the participatory research process enabled these experiences to be interpreted collaboratively, ensuring that the analytical framework developed through the study reflected the perspectives of those directly involved in the organisational transformation. In this respect, the process and findings of this research show how CBPR can contribute not only to understanding organisational change but also to recognising forms of knowledge that are often overlooked within conventional research and policy discussions.

6. *Conclusion*

This paper has examined how co-production can provide a practical and ethical response to inequalities that shape organisational and community

life. By situating the research within the framework of epistemic justice, the study highlighted how hierarchies of knowledge – much like those found in labour markets and organisational systems – can reproduce patterns of exclusion and marginalisation. The CBPR process led to the co-creation of the *Empowering Inclusion Toolkit*[65] and highlighted how collaborative approaches grounded in inclusivity can begin to challenge these hierarchies, enabling communities historically excluded from decision-making to reclaim agency and contribute to shaping their organisational futures.

This study has some limitations. The research focuses on a single community organisation and reflects the organisational and local context in which the transition towards a social enterprise took place. The findings are therefore not intended to be representative of all Black and racially minoritised-led community organisations or social enterprises. Further research involving different organisations and geographical contexts could examine how similar processes of organisational transformation and co-production develop in other settings.

The findings further note how inequalities are reproduced not only through economic and institutional structures but also through processes that determine whose knowledge is recognised as legitimate within organisational and policy environments. The study therefore contributes to more general discussions on epistemic justice by showing how participatory research processes can create spaces where community knowledge informs both organisational practice and research interpretation. In this case, this was achieved through the involvement of community members and stakeholders in the co-design of the research and the collective interpretation and refinement of the findings, which subsequently informed the development of the toolkit. The analysis also highlights the relevance of symbolic capital in understanding how legitimacy and recognition are distributed within institutional settings, often privileging actors whose knowledge aligns with dominant organisational norms. By embedding participatory elements within the research design, the CBPR approach adopted in this study enabled alternative forms of knowledge to play a more visible role in shaping both the analytical framework and the practical toolkit produced through the project.

Ultimately, the findings from this case suggest that inclusive and community-led social enterprises can provide opportunities for epistemic justice

[65] Aa.Vv., *Empowering Inclusion: Toolkit*, cit.

through the recognition and inclusion of community knowledge. Through processes of co-creation and participatory knowledge production, such initiatives can also create opportunities to challenge existing hierarchies of recognition and contribute to more equitable forms of organisational development and community participation.

Abstract

The paper examines how co-production can support inclusive knowledge ecosystems and equitable organisational transformation in community settings. Drawing on a case study of a Black and racially minoritised-led community initiative transitioning towards a social enterprise model, the research adopted a Community-Based Participatory Research (CBPR) approach based on semi-structured interviews with community organisation members and consultations with stakeholders. Using the concepts of epistemic justice and symbolic capital, the paper explores how community knowledge and lived experience can inform organisational change and contribute to shared understandings. The findings suggest that co-production can strengthen the recognition of community knowledge and support more inclusive organisational practices.

Keywords

Co-production, Community-based participatory research, Epistemic justice, Social enterprise, Symbolic capital.

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La Propuesta Legislativa del Ministerio de Trabajo y Economía Social de España sobre la Participación de las Personas Trabajadoras en la Empresa: un Análisis desde el Incremento de la "Voz" de las Personas Trabajadoras*

Sumario: 1. Planteamiento inicial. 2. Bases constitucionales y encuadre político-jurídico y económico de la iniciativa. 3. La doble dimensión de la iniciativa: participación y titularidad. 4. Reordenación normativa de la intervención de las personas trabajadoras en las decisiones empresariales. 4.1. Derechos esenciales de información, consulta e intervención. 4.2. Reforma de la unidad de constitución de los órganos legales de representación colectiva laboral. 4.3. Refuerzo de la intervención laboral en contratas, subcontratas y cadenas de valor. 4.4. Ampliación de la intervención laboral en los grupos de empresas. 4.5. Nuevas delimitaciones conceptuales de los derechos de información, consulta y participación. 4.6. Fortalecimiento de la voz laboral en los procedimientos consultivos. 4.7. Mayor participación laboral ante la inteligencia artificial y la sostenibilidad medioambiental. 4.7.1. Los desafíos de la utilización de la inteligencia artificial y la capacidad atribuida a la representación legal de los trabajadores en la Propuesta. 4.7.2. Los medios para la voz: la asistencia de expertos en materia de IA y sostenibilidad medioambiental. 4.8. Intervención laboral en la transformación del modelo productivo 4.9. Participación en empresas sin representación legal y requisitos electorales orientados a facilitar la voz laboral. 5. Conclusiones.

1. *Planteamiento inicial*

La propuesta de ley para la promoción de la participación de las per-

* Este trabajo se ha realizado en el marco del Grupo de investigación consolidado del Gobierno Vasco "Desafíos jurídicos y normativos de la gobernanza global, tecnológica y empresarial en la promoción y protección de los derechos humanos" (IT 1934-26), Investigadora Principal: Edurne Terradillos Ormaetxea. Así como en el marco del Proyecto de Investigación del Ministerio de Ciencia e Innovación de España, "Digitalización, Políticas Públicas de Empleo Inclusivas y Discriminación Algorítmica" (IP`: NORES/CARDONA) PID2024-158032OB-I00.

sonas trabajadoras en las empresas españolas que se analiza en este trabajo se inserta en una línea de reformas que pretende actualizar, intensificar y sistematizar las formas de democracia económica reconocidas en el ordenamiento español. Tras más de un año de trabajo, la Comisión internacional de expertos y expertas de alto nivel sobre la democracia en el trabajo entregó su informe al Ministerio de Trabajo y Economía Social de España en febrero de 2026[1], informe titulado "Dos promesas a quienes trabajan: voz y propiedad". El Informe daba cumplimiento al encargo de elevar una propuesta que diera cumplimiento al mandato constitucional (art. 129.2) dirigido a los poderes públicos a fin de promover eficazmente las diversas formas de participación en la empresa.

El texto examinado parte de una premisa nítida: la empresa no puede seguir siendo concebida exclusivamente como un espacio de dirección unilateral, sino como un ámbito de participación de quienes contribuyen de manera estable a la producción, a la organización del trabajo y a la generación de valor. En esta clave, la propuesta normativa enlaza participación, calidad democrática, sostenibilidad del modelo productivo y responsabilidad social.

La reforma se construye sobre un eje dual. Por un lado, persigue reforzar la participación en la toma de decisiones mediante derechos de información, consulta, negociación e incluso validación o veto en ámbitos específicos (participación en la voz). Por otro, se apoya en la idea de que las personas trabajadoras deben tener acceso a formas de participación en los resultados y en la propiedad de la empresa (participación en la propiedad). Aunque este trabajo abunde en la dimensión de la voz de las personas trabajadoras, la exposición de motivos conecta ambas vertientes y las presenta como elementos complementarios de una misma política legislativa.

El presente estudio parte del fundamento constitucional y europeo de la Propuesta, se reconstruyen sus definiciones y técnicas normativas esenciales, se analiza el bloque principal de modificaciones al Estatuto de los Trabajadores y, finalmente, se ofrece una valoración sistemática de su alcance.

[1] Puede descargarse desde https://www.mites.gob.es/EconomiaSocial/es/noticias/detalle-noticia/Presentacion-del-Informe-sobre-la-Democracia-en-el-Trabajo.html. Último acceso: octubre 2026.

2. *Bases constitucionales y encuadre político-jurídico y económico de la iniciativa*

La exposición de motivos de la Propuesta de ley sitúa el punto de partida en el artículo 129.2 de la Constitución Española, que ordena a los poderes públicos promover eficazmente las diversas formas de participación en la empresa, fomentar mediante una legislación adecuada las sociedades cooperativas y establecer los medios que faciliten el acceso de las personas trabajadoras a la propiedad de los medios de producción.

El documento de quinientas páginas, presentado por la Comisión de expertos y que contiene el articulado de la Propuesta legislativa, recuerda que los dos primeros mandatos ya estaban presentes en la Constitución de 1931, mientras que el tercero se incorporó durante la tramitación de la vigente Constitución[2]. Esa incorporación se interpreta a la luz de la crisis industrial y de la necesidad de preservar el empleo mediante fórmulas que hicieran posible la adquisición de empresas por parte de las personas trabajadoras. En ese contexto se explican el surgimiento y la relevancia de las sociedades anónimas laborales, así como el reconocimiento legislativo y el fomento público de las sociedades laborales y de las cooperativas.

Sin embargo, pese a la relevancia programática del precepto[3], su desarrollo histórico ha sido desigual[4] y su eficacia jurídico-constitucional ha dependido en gran medida de la mediación legislativa y de la interpretación jurisprudencial[5]. La doctrina laboralista ha insistido, desde fechas tempranas, en que se trata de una cláusula abierta, deliberadamente flexible y necesita-

[2] El estudio de De La Villa Gil, *La participación de los trabajadores en la empresa*, Instituto de Estudios Económicos, Madrid, 1980, permite conocer los debates jurídicos contemporáneos a la aprobación de la Constitución de 1978.

[3] La obra de Uriarte Torrealday, *El artículo 129.2 de la Constitución. La participación de los trabajadores en la gestión de la empresa*, Instituto Vasco de Administración Pública, Oñati, 2005, es fundamental para insistir en que la participación de los trabajadores tiene un fundamento constitucional propio y para determinar hasta qué punto puede limitar las facultades tradicionales de la persona empresaria.

[4] Rojo Torrecilla Y Camas Roda, *Comentario del artículo 129.2 de la Constitución española de 1978 y su desarrollo (con especial atención a la participación en la empresa)*, en Sempere Navarro (dir.), *El modelo social en la Constitución española de 1978*, Ministerio de Trabajo y Asuntos Sociales, Madrid, 2003, pp. 1467-1503, estudio que desarrolla la desequilibrada evolución del marco jurídico español en relación con esta temática.

[5] Nogueira Guastavino, *Participación de los trabajadores en la empresa (artículo 129 CE)*, en García Murcia (dir.), *La Constitución del Trabajo*, 2020, pp. 840 y ss, observa incluso que buena parte del desarrollo de las cooperativas y de la economía social ha venido impulsado por las

da de concreción normativa, lo que ha condicionado tanto su operatividad práctica como su capacidad transformadora del modelo de empresa.

En la doctrina clásica, Rodríguez-Sañudo[6] subrayó en su momento que la expresión "participación de los trabajadores en la empresa" no es unívoca, sino que admite contenidos muy diversos, desde fórmulas de información y consulta hasta modalidades más intensas de intervención en la gestión o en la propiedad, como, por ejemplo, las sociedades cooperativas[7]. Esa indeterminación inicial explica que buena parte de la literatura posterior haya considerado que el constituyente reconoció un principio rector de fuerte contenido social, pero no modeló de manera cerrada un derecho subjetivo perfecto e inmediatamente exigible[8], lo cual es comprensible dada la sistemática localización del citado precepto. En la misma línea, la doctrina más reciente[9] continúa señalando que el artículo 129.2 CE dejó un margen muy amplio al legislador para seleccionar los instrumentos concretos de participación, lo que ha favorecido un desarrollo más centrado en la representación unitaria[10], la información y la consulta que en auténticas fórmulas de cogestión o democracia económica.

Desde una perspectiva sistemática, varios trabajos doctrinales han defendido que el artículo 129.2 CE no puede leerse de forma aislada, sino

obligaciones derivadas del Derecho de la Unión Europea, más que por una iniciativa autónoma del legislador español dirigida a ejecutar eficazmente el artículo 129.2 CE.

[6] Rodríguez-Sañudo Gutiérrez, *La participación de los trabajadores en la empresa*, in *RPS,* 1979, n. 121, pp. 419 y ss. Así también Palomeque López, *La participación de los trabajadores en la empresa: una noción polisémica*, in *DLab*, 2018, pp. 445-456.

[7] A este respecto, vid. Santiago Redondo, *Artículo 129.2: La participación en la empresa y el fomento del cooperativismo*, en *Comentarios a la Constitución española,* Wolters Kluwer, 2018. Así también, Díaz Rodríguez, *El mandato constitucional del fomento cooperativo y su desarrollo legislativo en la normativa autonómica*, CIRIEC, 2019.

[8] González Ortega, *La participación de los trabajadores en la empresa como expresión de democracia social*, in *CDP*, 2005, núm. 25, p. 112, defendió que "la participación vendría a aceptar que, junto a la propiedad o titularidad de la empresa, el trabajo asalariado es también un título que fundamenta sobradamente la intervención en la organización y en la puesta en práctica de las decisiones productivas".

[9] Palomeque López, *La participación de los trabajadores en la empresa: una revisión institucional*, en *Gobierno de la empresa y participación de los trabajadores: viejas y nuevas formas institucionales* (XVII Congreso Nacional de Derecho del Trabajo y de la Seguridad Social), 2007, pp. 33-65.

[10] Sobre la conexión entre los arts. 4.1.g), 61 ET y el fundamento constitucional en el art. 129.2 CE, véanse, entre otros, Sáez Lara, *La representación colectiva de los trabajadores en la empresa*, in *RMTAS*, núm. 58, 2005, pp. 315-342, y García Murcia, *Estructura de la representación de los trabajadores en la empresa*, in *RTSS*, 2020, *CEF* nº 444, p. 197.

en conexión con los artículos 9.2, 10.1 y 35 CE, así como con la idea de Estado social proclamada en el artículo 1.1 CE[11]. De forma convergente, los estudios sobre información, consulta y participación han destacado que el verdadero problema no reside tanto en la inexistencia de fundamento constitucional como en la limitada intensidad con la que el ordenamiento positivo ha desplegado ese mandato, privilegiando formas representativas de baja densidad decisoria[12].

La jurisprudencia del Tribunal Constitucional ha sido decisiva a la hora de perfilar el alcance del precepto. Por reparar en la última sentencia que ha tratado sobre esta cuestión, la STC 148/2025, en ella se afirma expresamente que la representación legal de los trabajadores se configura como una manifestación del derecho de participación en la empresa reconocido en dicho precepto. A partir de esa premisa, el Tribunal conecta la actuación de la representación legal con la garantía de indemnidad del artículo 24.1 CE, reforzando la protección frente a represalias empresariales cuando la reclamación del trabajador se canaliza a través de sus representantes. La importancia de esta resolución reside en que no altera la tesis clásica de la configuración legal, pero sí intensifica la relevancia constitucional de la representación unitaria como cauce institucional de participación y defensa de derechos en la empresa, atribuyéndole un poder de "control" sobre las decisiones empresariales, que no de participación en un sentido fuerte.

En suma, la doctrina y la jurisprudencia españolas coinciden en que el artículo 129.2 CE constituye una de las bases constitucionales del Derecho colectivo del trabajo español, aunque su efectividad dependa decisivamente

[11] Para esa interpretación sistemática del precepto, véanse, por todos, Vida Soria, Prado De Reyes, *Artículo 129. Principios constitucionales sobre la participación social: aplicación y desarrollo*, en Alzaga Villaamil (dir.), *Comentarios a la Constitución de 1978*, tomo X, EDERSA, Madrid, 1998, pp. 86-119. Algún autor fue más allá y vinculó el art. 129.2 CE con el art. 37,1 CE, relativo a la negociación colectiva; y con el art. 28.1 CE, que reconoce la libertad sindical, de modo que el autor abogaría por la integración de la participación en el ámbito protegido por la libertad sindical, conexión que permitiría reforzar la tutela constitucional de la participación de los trabajadores en la empresa, véase Pérez Amorós, *Garantías del derecho de participación de los trabajadores en la empresa. A propósito de la necesaria revalorización del artículo 129.2 de la Constitución*, in *RL*, 1988, núm. 13.

[12] Mostrando que la participación de los trabajadores en España se articula mediante la representación colectiva, la información, la consulta, el derecho de audiencia y el derecho de reunión, antes que mediante un verdadero poder de codirección empresarial, Galiana Moreno, Belén García, *La participación y representación de los trabajadores en la empresa en el modelo normativo español*, in *RMTAS*, 2011, n. 43, p. 16 y ss.

del desarrollo legal. No se reconoce, en los términos de la jurisprudencia constitucional dominante, un derecho fundamental autosuficiente a la participación, pero sí se impone a los poderes públicos un mandato normativo claro: construir mecanismos reales de intervención de las personas trabajadoras en la vida de la empresa[13]. La experiencia española muestra, sin embargo, que ese mandato se ha materializado sobre todo en formas de representación de los trabajadores que se traducen en derechos de información y consulta, mientras que las dimensiones más intensas de participación en la dirección o en la propiedad continúan siendo marginales. Precisamente por ello, el artículo 129.2 CE sigue siendo hoy no solo una cláusula interpretativa de gran valor, sino también un precepto abierto a una eventual relectura expansiva en clave de democracia económica y constitucionalismo social[14].

En la línea apuntada, el texto de la Propuesta presenta una concepción amplia de la participación, desvinculada de la mera titularidad societaria, y asociada, en cambio, a la condición de persona que trabaja en la organización empresarial y que, dados sus intereses eventualmente contrapuestos a la titularidad de los medios de producción, pretende influir en las decisiones que le afecten.

Se ha comprobado igualmente que la participación directa en la gestión del lugar de trabajo enriquece el sentido de propósito y la autoestima de quienes trabajan, lo que impulsa la productividad de las organizaciones empresariales[15]. No somos ajenos a que la literatura científica aporta estudios que muestran que los resultados derivados de la participación laboral pueden variar sustancialmente según el tamaño de la empresa, la selección de la muestra y los métodos econométricos empleados[16]. Pero asimismo en

[13] González Ortega, *cit.*, p. 112.

[14] Volviendo a González Ortega, *cit.*, p. 113, el precepto constitucional considerado tampoco recoge cómo desarrollarse posteriormente "sin cerrar el camino a ninguna de ellas y sin que la referencia a la diversidad de formas suponga necesariamente que el legislador puede elegir una sola de ellas, con lo que podría considerar cumplido el deber constitucional de promoción"; es más "el artículo 129 no reclama un mínimo de participación que deba ser establecido, ni exige que se materialice en ninguna forma concreta en razón de su referencia a las «diversas formas de participación". Para profundizar en la fundamentación democrática de la participación en la empresa, más allá de los concretos derechos representativos reconocidos en el Estatuto de los Trabajadores, cfr., Rivero Lamas, *La democracia en la empresa,* Comares, Granada, 2010.

[15] Véase, por todos, Doucouliagos, *Worker Participation and Productivity in Labor-Managed and Participatory Capitalist Firms: A Meta-Analysis*, in *ILLR*, 1995, vol. 49, núm. 1, pp. 58-77.

[16] Por todos, Addison, Schank, Schnabel, Wagner, *German Works Councils in the Production Process*, in *Schmollers Jb*, 2006, vol. 126, núm. 2, pp. 251-283.

la literatura indicada se demuestra la certera ausencia de efectos negativos entre la existencia, por ejemplo, de fórmulas de participación como los comités de empresa y la innovación[17]. En definitiva, la participación podría producir resultados distintos dependiendo de las capacidades organizativas y del contexto de cada establecimiento[18], y, desde luego, es fundamental la presencia de estructuras sólidas de negociación colectiva (como los convenios colectivos sectoriales) para que se instale esa relación entre los comités de empresa y la mejora de la productividad[19].

3. *La doble dimensión de la iniciativa: participación y titularidad*

Una de las ideas más características del Informe MITES 2026 es la formulación de dos promesas a quienes trabajan: voz y propiedad. La primera remite a la participación en las decisiones de la empresa; la segunda, al acceso a mecanismos de participación en los resultados y en el capital. La propuesta considera que ambas dimensiones se refuerzan mutuamente y que la política legislativa debe articularlas de manera coherente.

El capítulo primero de la iniciativa legal, relativa a las disposiciones generales, define el objeto y ámbito de aplicación de la ley y enumera las formas de participación de las personas trabajadoras en la empresa para la que prestan servicios. Aunque el desarrollo detallado se concentra en el capítulo segundo, resulta claro que la norma pretende ordenar conceptualmente la participación y ofrecer definiciones normativas de sus categorías básicas.

Desde ese enfoque, la noción de "participación" y su significado no se agotan en la recepción pasiva de información ni en una consulta formalmente ritualizada, y que apenas determine la decisión final que adoptará

[17] Véanse Addison, Schnabel, Wagner, *Works Councils in Germany: Their Effects on Establishment Performance*, in *OEP*, 2001, vol. 53, núm. 4, pp. 659-694. Pueden consultarse autores que manifiestan más dudas respecto de la vinculación entre participación efectiva, motivación y productividad, como Kruse, Blasi, *Employee Ownership, Employee Attitudes, and Firm Performance*, *NBER Working Paper* núm. 5277, National Bureau of Economic Research, Cambridge (Massachusetts), 1995.

[18] Wagner, Addison, Schnabel, Schank, *Works Councils, Labor Productivity and Plant Heterogeneity: Evidence from Quantile Regressions*, in *JNS,* 2006, vol. 226, núm. 5, pp. 505-518.

[19] Hübler, *Works Councils and Collective Bargaining in Germany: The Impact on Productivity and Wages*, in *SJPE*, 2003, vol. 50, núm. 4, pp. 471-491.

la empresa[20]. El documento avanza hacia una noción densa de implicación de los trabajadores en la configuración de la empresa y de su modelo productivo. La empresa se presenta, en consecuencia, como una institución con relevancia social cuyo gobierno debe incorporar la perspectiva de quienes asumen los riesgos cotidianos del trabajo y experimentan directamente las consecuencias organizativas, tecnológicas y ambientales de las decisiones empresariales.

En este punto, la Propuesta adquiere un marcado tono de reforma estructural. No se limita a corregir disfunciones puntuales del régimen vigente, sino que persigue reequilibrar las relaciones internas de poder en la empresa mediante reglas de información, consulta, negociación e intervención reforzada. El acento se desplaza desde la mera comunicación empresarial hacia procedimientos de diálogo capaces de afectar materialmente la decisión empresarial. Con ello, se gana también en "entrenamiento negociador", mostrando el itinerario hacia la consecución de una cultura basada en el diálogo que promueva y asegure éste en detrimento de una procedimentalización "light" del proceso decisorio empresarial; incluso que evite el recurso a medidas laborales más drásticas, como la huelga.

4. *Reordenación normativa de la intervención de las personas trabajadoras en las decisiones empresariales*

El núcleo de la parte del informe que se analiza se encuentra en el Capítulo II, dedicado a la participación de las personas trabajadoras en la

[20] La participación laboral a través de la voz de los trabajadores que se va a analizar en este trabajo y que se recoge en el Informe citado de 2026, presentado al Ministerio de Trabajo y Economía Social español, pp. 100-101, se puede dividir en tres categorías generales de toma de decisiones: en primer lugar, la participación en las decisiones cotidianas relacionadas con el puesto de trabajo, relativas a las tareas y al entorno laboral; en segundo lugar, la participación en las decisiones relacionadas con la gestión, como las cuestiones organizativas (programación, división de tareas, etc.), las consideraciones de salud y seguridad, y finalmente, las decisiones estratégicas relativas al tipo de servicio o producto que desarrolla o produce una empresa o a su base de clientes objetivo, por ejemplo. La última categoría comprende las decisiones relativas a la dirección de la empresa, más conocida como gobierno corporativo, y se refiere a los objetivos y la misión, como la estrategia comercial o la distribución de beneficios (en dividendos, salarios más altos, nuevos puestos de trabajo, oportunidades de formación, inversiones ecológicas, I+D, etc.).

toma de decisiones de la empresa y a los órganos de representación. A continuación, se sistematizan sus principales contenidos.

4.1. *Derechos esenciales de información, consulta y participación*

El artículo 4 de la Propuesta formula una declaración general: constituyen derechos básicos de todos los trabajadores los de información, consulta y "participación" en la empresa[21]. La relevancia del precepto reside en elevar los contenidos integrados en esos derechos a la categoría de derechos básicos, desplazándolos desde una lógica meramente procedimental hacia una posición central en el estatuto jurídico de la persona trabajadora[22].

El mismo artículo precisa que, sin perjuicio de otras formas de participación, los trabajadores tienen derecho a participar en las decisiones de la empresa a través de los órganos de representación previstos en la legislación laboral y, particularmente, a través de los delegados de personal, los comités de empresa, los delegados sindicales y las secciones sindicales. A ello añade una vía específica de participación en las decisiones estratégicas: los consejeros laborales elegidos para representar a los trabajadores en los órganos de

[21] Sobre los distintos y variados significados de "participación", véanse, por todos, Valdés Dal-Ré, *Democracia industrial en Europa: balance de un debate*, en *Estudios de Derecho del Trabajo en memoria del profesor Gaspar Bayón Chacón*, Tecnos, Madrid, 1980, pp. 487-522 y Palomeque López, *La participación de los trabajadores en la empresa: una noción polisémica*, cit., pp. 445-456.

[22] La investigación empírica sobre, por ejemplo, los Comités de Empresa Europeos, a los que se atribuye competencias limitadas a la información y consulta sobre determinadas materias [véase la Directiva (UE) 2025/2450, sobre los comités de empresa europeos, aunque, en propiedad, el estudio esté basado en versiones anteriores de esta directiva cuya primera manifestación normativa data de 1994], pone de manifiesto las limitaciones de los mecanismos de participación laboral basados predominantemente en los derechos de información y consulta. En este sentido, De Spiegelaere, Jagodziński, *Can anybody hear us? An overview of the 2018 survey of EWC and SEWC representatives*, European Trade Union Institute (ETUI), 2019, a partir de una encuesta realizada a 1.635 representantes de trabajadores de 365 comités europeos, constatan que únicamente el 22 % de los encuestados considera que la información y la consulta se producen antes de la adopción definitiva de las decisiones empresariales. Asimismo, apenas el 39 % aprecia una disposición de la dirección empresarial a buscar soluciones consensuadas. Esta investigación pone igualmente de relieve que la eficacia de estos órganos depende de factores organizativos e institucionales, como la coordinación sindical, la frecuencia de las reuniones y, especialmente, la disposición de la dirección empresarial a negociar. De ello se desprende que el reconocimiento "formal" de derechos de participación no garantiza su efectividad material, lo que plantea la necesidad de diferenciar entre la existencia de mecanismos institucionales de representación y la capacidad real de los trabajadores para intervenir en los procesos de decisión empresarial.

administración o de vigilancia de las empresas y en las comisiones especializadas correspondientes (capítulo III de la Propuesta).

4.2. *Reforma de la unidad de constitución de los órganos legales de representación colectiva laboral*

El artículo 5 de la Propuesta introduce, en primer lugar, un artículo 61 bis en el Estatuto de los Trabajadores. Ese nuevo precepto establece que los órganos de representación de los trabajadores en la empresa o en el centro de trabajo son los que señalan los artículos siguientes – de modo que no hay modificaciones respecto de las instancias de representación ya existentes – y fija una regla general de unidad electoral: el centro de trabajo será la unidad electoral por defecto. En la misma línea, se añade un segundo párrafo al artículo 62.1 ET para permitir que el convenio colectivo sectorial regule la figura del delegado de personal conjunto que actúa sobre varios centros de trabajo inferiores a seis trabajadores. Se trata de una respuesta a los problemas de representación en microcentros o unidades productivas de tamaño muy reducido, donde la aplicación rígida de las reglas ordinarias suele traducirse en una ausencia efectiva de representación.

Al tiempo que la Propuesta reduce la unidad electoral, flexibiliza el sistema al permitir que los convenios colectivos sectoriales de ámbito estatal, atendiendo a las características del sector, puedan fijar otra unidad electoral distinta del centro de trabajo, como la empresa o la división territorial de la provincia. De este modo se abre la puerta a soluciones más ajustadas a estructuras empresariales fragmentadas, dispersas o intensamente descentralizadas.

4.3. *Refuerzo de la intervención laboral en contratas, subcontratas y cadenas de valor*

La regulación española de la subcontratación de obras y servicios ha estado tradicionalmente dominada por dos grandes preocupaciones: de un lado, la delimitación entre contrata lícita y cesión ilegal; de otro, la garantía de las obligaciones salariales y de Seguridad Social mediante los mecanismos del artículo 42 del ET. Sin embargo, la doctrina laboralista viene señalando desde hace tiempo que la descentralización productiva también plantea un problema específicamente colectivo, relativo a la representación colectiva de las personas trabajadoras que prestan servicios en contratas y subcontratas,

especialmente cuando desarrollan su actividad en el centro de trabajo de la empresa principal o en marcos productivos intensamente fragmentados; como las empresas multiservicios[23].

Uno de los elementos más innovadores del texto (o de la Propuesta) es la incorporación de un párrafo 2 bis al artículo 63 del Estatuto de los Trabajadores. Según la Propuesta, la representación legal de las personas trabajadoras de las empresas contratistas y subcontratistas y de la cadena de valor de la empresa principal tendrá derecho a asistir, con voz, pero sin voto, a las reuniones del comité de empresa de la empresa principal.

Con ello se reconoce que las decisiones relevantes sobre trabajo, organización o producción suelen desbordar hoy la empresa formalmente empleadora y proyectarse a través de redes de externalización y cadenas de valor. La medida no elimina la pluralidad de empleadores, pero crea un cauce institucional para que la representación legal de las plantillas periféricas intervenga en el espacio donde frecuentemente se adoptan las decisiones que condicionan su actividad.

4.4. *Ampliación de la intervención laboral en los grupos de empresas*

La doctrina laboralista española viene señalando desde hace décadas que el grupo de empresa introduce una tensión estructural en el sistema de representación colectiva, porque el modelo legal español sigue descansando, de forma predominante, sobre las unidades clásicas de centro de trabajo y de la empresa, mientras que en los grupos el poder real de dirección, coordinación o decisión puede – y suele – situarse en un plano supraempresarial[24].

Vista la situación de la laguna representativa existente en nuestro ordenamiento jurídico en el nivel "grupo de empresas", la Propuesta incorpora un nuevo artículo 63 bis, dedicado al comité de grupo de empresas

[23] Baylos Grau, *Gobernanza laboral, crisis y cambio tecnológico en la acción colectiva*, in *DocLab*, 2019, n. 117, p. 109. Más recientemente, Ferrando García, *Apuntes para la actualización del estatuto de los trabajadores en materia de elecciones a órganos de representación unitaria*, en Aa.Vv., *Los Briefs de la Asociación Española de Derecho del Trabajo y de la Seguridad Social. Las claves de 2024*, Cinca, 2024, p. 123 y ss.

[24] Cruz Villalón, *La representación de los trabajadores en los grupos de empresas*, en Valdés Dal-Ré, Molero Marañón (Dirs.), *La representación de los trabajadores en las nuevas organizaciones de empresa*, Fundación Francisco Largo Caballero, Madrid, 2010, pp. 55-70; Terradillos Ormaetxea, *La representación colectiva de los trabajadores en los grupos de empresas: modernas fórmulas de regulación,* Consejo Económico y Social, 2000.

en el sentido del artículo 42.1 del Código de Comercio. En dichos grupos deberá constituirse un comité de grupo cuya composición seguirá las normas previstas para la constitución de la comisión negociadora del convenio colectivo de grupo. En otras palabras, en la composición de este órgano, se prioriza la participación de las organizaciones sindicales, en la lógica de crear un contrapoder laboral a la dimensión que supone la empresa que ejerce el control o la dirección central de un grupo de empresas.

El comité de grupo tendrá derecho a ser informado y consultado sobre las cuestiones que afecten al conjunto del grupo o, al menos, a dos empresas del mismo. A tal fin, se reconoce el derecho a mantener al menos dos reuniones anuales con la dirección central, convocadas con una antelación mínima de un mes y acompañadas de un informe sobre la evolución y las perspectivas de las actividades del grupo.

El texto enumera con detalle las materias que deberán analizarse, partiendo de la lógica de la definición del grupo contenida en el art. 42.1 Código de comercio, y en las herramientas que adopta la empresa que ejerce el control para dominar las decisiones estratégicas de las empresas controladas: estructura, situación económica y financiera, evolución probable de las actividades, producción y ventas, situación y evolución probable del empleo, inversiones, cambios relevantes que afecten a la organización, introducción de nuevos métodos de trabajo o de producción, traslados de producción, fusiones, reducción del tamaño o cierre de empresas, centros de trabajo o partes importantes de estos, y despidos colectivos.

La consulta deberá desarrollarse de modo que permita iniciar un período de negociaciones con vistas a alcanzar un acuerdo con la dirección central, como, por otra parte, se exige en la actualidad (véase arts. 40, 41, 47 ó 51 ET), y ha sido aplaudido y, en menor medida, criticado por la doctrina[25]. Junto a este cauce ordinario, la Propuesta contempla supuestos excepcionales o decisiones de especial impacto sobre los intereses de los trabajadores, especialmente traslados de empresas, cierres y despidos colectivos. En tales casos, el comité de grupo deberá ser informado con la debida antelación y podrá reunirse, a petición propia, con la dirección central o con el nivel de dirección competente para adoptar decisiones.

[25] En mi caso, Terradillos Ormaetxea, *Mecanismos formalizados e informales para la gestión del cambio: convenios de empresa, acuerdos de empresa, otros pactos*, in *DocLab*, 2017, nº 109, vol. I, p. 161.

El régimen se completa con reglas sobre presidencia de reuniones, firma de actas, información a las direcciones de las empresas del grupo, funcionamiento equivalente al del comité de empresa, asistencia por expertos y sufragio empresarial de los gastos de organización, viaje, manutención, alojamiento y asesoramiento. Finalmente, los miembros del comité deberán informar a los representantes de las empresas y centros de trabajo o, en su defecto, al conjunto de los trabajadores, sobre el contenido y los resultados del procedimiento de información y consulta.

4.5. *Nuevas delimitaciones conceptuales de los derechos de información, consulta y participación*

El artículo 64 del Estatuto de los Trabajadores cambia incluso de rúbrica: pasa a denominarse "Derechos de información, consulta y participación", en cumplimiento de la rúbrica del propio mandato constitucional en el que hunde sus raíces. La nueva redacción del apartado 1 dispone que el comité de empresa tenga derecho a ser informado y consultado por el empresario sobre todas aquellas cuestiones que puedan afectar a los trabajadores, así como sobre la situación de la empresa, su diseño organizativo y las consecuencias sobre el empleo.

Pero la Propuesta va más allá y afirma expresamente que el comité tendrá derecho a participar en las decisiones de la empresa en los términos previstos en ese artículo. A continuación, ofrece definiciones normativas precisas. La información se concibe como una vía de transmisión de datos por la persona empresaria para que el comité conozca y examine una cuestión determinada. La consulta se define como la apertura de un proceso de diálogo y negociación entre la dirección de la empresa y el comité, con la finalidad de llegar a un acuerdo. La participación, por su parte, conlleva establecer mecanismos de implicación de los trabajadores en la configuración de la empresa y de su modelo productivo.

El precepto añade dos reglas metodológicas de gran importancia: estos derechos se ejercerán frente al interlocutor empresarial idóneo y en el nivel apropiado de decisión, y ambas partes deberán actuar conforme a las exigencias de la buena fe, teniendo en cuenta tanto los intereses de la empresa como los de los trabajadores. En términos dogmáticos, ello supone desplazar la lógica del formalismo informativo hacia un esquema de interacción sustantiva orientado a la eficacia del diálogo social interno.

4.6. *Fortalecimiento de la voz laboral en los procedimientos consultivos*

En el terreno de las reestructuraciones empresariales, el derecho de consulta adquiere una intensidad especial. Aquí la doctrina insiste en que el llamado período de consultas no debe concebirse como una simple fase previa a una decisión ya tomada, sino como un espacio de negociación real sobre alternativas, medidas de acompañamiento y atenuación de los efectos sociales de la medida[26]. La consulta en el contexto del despido colectivo se refuerza en la ley y adopta una visión sustantiva: la negociación, o la apertura de un período de consultas, debe proyectarse sobre medidas reales para evitar o reducir los despidos y para amortiguar sus consecuencias, lo que exige buena fe, información relevante y verdadera discusión sobre soluciones posibles. En este contexto la consulta alcanza su máxima expresión práctica, donde se convierte en un instrumento de gestión negociada del cambio y de tutela colectiva frente a decisiones empresariales de fuerte impacto social; sin perjuicio de que la decisión última siga residiendo en la sede empresarial (con el favor judicial, en su caso).

A la vista de lo anterior, el tercer párrafo del artículo 64.5 ET es objeto de una profunda reformulación. El comité de empresa tendrá derecho a la apertura de un período razonable de consultas, con capacidad de propuesta y con suficiente antelación a la eventual ejecución de las decisiones empresariales, sobre un catálogo amplio de materias.

Ese catálogo incluye las reestructuraciones de plantilla y los ceses totales o parciales, definitivos o temporales; las decisiones sobre reconfiguración del modelo productivo, singularmente la introducción de nuevas tecnologías, la alteración de cadenas de externalización productiva y la transición energética; las reducciones de jornada; el traslado total o parcial de las instalaciones; los procesos de fusión, absorción o modificación del estatus jurídico de la empresa con incidencia en el empleo; la implantación y revisión de sistemas de organización y control del trabajo, estudios de tiempos, establecimiento de sistemas de primas e incentivos y valoración de puestos, especialmente cuando se utilicen mecanismos de gestión algorítmica del

[26] Terradillos Ormaetxea, *Las medidas de acompañamiento social y los planes de recolocación externa en los despidos colectivos tras la reforma de 2012*, in *RDSoc*, 2013, núm. 64, pp. 61-86, y (la misma autora), *Las medidas de acompañamiento social en los procesos de reestructuraciones de empresas*, en *Reestructuraciones empresariales: ponencias del XXXI Congreso Anual de la Asociación Española de Derecho del Trabajo y de la Seguridad Social*. A Coruña, 27 y 28 de mayo de 2021, 2021, pp. 305-34.

personal y sistemas de inteligencia artificial; los planes de formación profesional; y la introducción de sistemas de participación financiera de los trabajadores.

En casos de deslocalización en empresas o grupos de dimensión comunitaria o en empresas constituidas como sociedades anónimas o cooperativas europeas, el período de consultas debe permitir a los representantes legales conocer el informe del comité de empresa europeo o del órgano ad hoc, en su caso, sobre la decisión de cese.

La novedad se materializa cuando el período de consultas finaliza sin acuerdo. En ese momento, la Propuesta exige acudir a una instancia de mediación obligatoria ante los sistemas autónomos de solución de conflictos colectivos del territorio o ante los procedimientos previstos en el convenio colectivo sectorial aplicable. Mientras tanto, quedaría en suspenso la ejecución de la decisión adoptada por el empresario. Lo anterior se perfecciona a través de la respuesta que el Derecho ofrece ante el incumplimiento empresarial de la apertura de este período de consultas, negativa que dará lugar a la nulidad de la decisión o medida empresarial, y que se tramitará por el procedimiento de conflictos colectivos de la jurisdicción social.

4.7. *Mayor participación laboral ante la inteligencia artificial y la sostenibilidad medioambiental*

4.7.1. *Los desafíos de la utilización de la inteligencia artificial y la capacidad atribuida a la representación legal de los trabajadores en la Propuesta*

La incorporación de sistemas de inteligencia artificial y de gestión algorítmica al ámbito laboral ha reabierto, en términos nuevos, una cuestión clásica del Derecho del Trabajo: la necesidad de someter el poder de dirección empresarial a garantías de transparencia, control y participación colectiva. Cuando la empresa utiliza algoritmos para asignar tareas, fijar turnos, evaluar el rendimiento, condicionar retribuciones, seleccionar personal o apoyar decisiones sobre mantenimiento del empleo, el derecho de información de la representación legal de los trabajadores deja de operar únicamente como una técnica de conocimiento de decisiones ya adoptadas y pasa a proyectarse sobre la propia lógica decisional del poder empresarial digital[27].

[27] Sobre el papel de la representación colectiva frente a decisiones empresariales auto-

En España, este desplazamiento se ha positivizado de forma expresa en el art. 64.4.d) del Estatuto de los Trabajadores, introducido por la Ley 12/2021, al reconocer el derecho del comité de empresa (y, por extensión, los delegados de personal, art. 62.2 ET) a ser informado de "los parámetros, reglas e instrucciones" en los que se basan los algoritmos o sistemas de inteligencia artificial que inciden en la toma de decisiones susceptibles de afectar a las condiciones de trabajo, al acceso y mantenimiento del empleo, incluida la elaboración de perfiles[28]. La relevancia de esta reforma ha sido subrayada por la doctrina, que ha visto en ella uno de los primeros reconocimientos normativos, en el ámbito europeo, de un auténtico derecho colectivo de información algorítmica[29].

La doctrina laboralista española coincide, en lo esencial, en que esta previsión no puede interpretarse en términos puramente simbólicos o minimalistas. En esta línea, Gordo González ha defendido que la automatización de decisiones empresariales intensifica el riesgo de opacidad y, con ello, la necesidad de reforzar el derecho de información de la representación de las personas trabajadoras como presupuesto del control sindical y de la tutela de otros derechos colectivos[30]. La aportación de este autor resulta especialmente relevante porque sitúa la cuestión en el plano estructural del Derecho del Trabajo: no se trata solamente de acceder a datos técnicos sobre un software, sino de hacer visible un nuevo modo de ejercicio del poder de dirección[31].

Por su parte, Pérez Amorós ha analizado de forma específica el contenido del llamado derecho de información algorítmica de los representantes de los trabajadores, destacando que la referencia legal a "parámetros, reglas e instrucciones" obliga a una interpretación material del precepto[32]. En esta

matizadas, vid. Gordo González, *Algoritmos y derecho de información de la representación de las personas trabajadoras*, in *TL*, 2021, núm. 157, pp. 161-182.

[28] El tenor literal del art. 64.4.d) ET reconoce el derecho del comité de empresa a ser informado de los "parámetros, reglas e instrucciones" de los algoritmos o sistemas de IA que afecten a condiciones de trabajo, acceso y mantenimiento del empleo, incluida la elaboración de perfiles.

[29] Vid. Losada Carreño, *Inteligencia artificial e información algorítmica en el ámbito laboral: especial referencia al artículo 64.4.d) del Estatuto de los Trabajadores*, in *RGDTSS*, 2022, núm. 61.

[30] Gordo González, *cit.*, pp. 161-182.

[31] *Ibíd*.

[32] Se sigue a Pérez Amorós, *Derecho de información algorítmica de los representantes de los trabajadores en la empresa*, in *RLDE*, 2024, vol. 12, núm. 4.

concepción, la empresa no satisface su deber con meras afirmaciones abstractas o fórmulas estandarizadas, sino que debe proporcionar una información bastante para permitir a la representación conocer la incidencia real del sistema sobre las condiciones de trabajo y ejercer, a partir de ahí, sus funciones de vigilancia, consulta y negociación. El interés de esta posición reside en que conecta la transparencia algorítmica con la distribución del poder dentro de la empresa: quien diseña, controla y oculta la lógica del sistema controla también buena parte del proceso de toma de decisiones laborales.

La evolución del Derecho de la Unión confirma esa tendencia. La Directiva (UE) 2024/2831, relativa a la mejora de las condiciones laborales en el trabajo en plataformas, exige que los representantes de los trabajadores reciban información sobre los sistemas automatizados de seguimiento y decisión antes de su utilización, antes de cambios sustanciales y cuando la soliciten, además de prever su participación en el examen de sus repercusiones. Aunque se proyecta sobre el trabajo en plataformas, esta regulación refleja una orientación normativa más amplia: el tránsito desde un modelo de mera información hacia otro más próximo a la gobernanza colectiva de la gestión algorítmica[33]. En paralelo, el Reglamento (UE) 2024/1689, sobre inteligencia artificial, considera de alto riesgo determinados usos de IA en empleo y gestión laboral, reforzando la idea de que estas tecnologías afectan intensamente a derechos fundamentales y condiciones de trabajo[34]. Actualmente, la UE trabaja el Quality Jobs Act (Ley Europea de Empleos de Calidad), una iniciativa de la Comisión Europea destinada a mejorar las condiciones de trabajo, reforzar los derechos de las personas trabajadoras y adaptar la legislación laboral europea a las transformaciones tecnológicas, digitales y organizativas[35], por lo que la Propuesta que se analiza en este trabajo, respecto de este apartado, podría representar una hoja de ruta para aquella iniciativa.

En la Propuesta que se analiza, el nuevo apartado 5 bis del artículo 64 ET atribuye al comité de empresa un derecho de validación o de veto en

[33] Sobre ese desplazamiento hacia una participación más intensa de la representación, vid. Directiva (UE) 2024/2831, arts. 9 a 12.

[34] El Reglamento (UE) 2024/1689, de 13 de junio de 2024, por el que se establecen normas armonizadas en materia de inteligencia artificial (Reglamento de IA), considera de alto riesgo determinados usos de IA en empleo, gestión de personas trabajadoras y acceso al autoempleo (artículo 6.2, en relación con el anexo III, apartado 4).

[35] Disponible en EUR-Lex - Ares(2026)8338583 - EN - EUR-Lex, última consulta: octubre 2026.

materia de introducción y desarrollo de sistemas de inteligencia artificial en el ámbito laboral cuando estos afecten a procedimientos de reclutamiento y selección, a la gestión del personal – incluyendo dirección, vigilancia, productividad y evaluación – , a la relación con los clientes, a la prestación de servicios, a la producción y a cualquier otro ámbito vinculado con la relación laboral.

Se trata, probablemente, de uno de los aspectos más intensos y novedosos de toda la Propuesta. No estamos solo ante un deber reforzado de información algorítmica, sino ante una auténtica potestad de intervención codeterminativa, formulada además en términos de ratificación o veto. La norma pretende evitar que la digitalización y la automatización se impongan como decisiones unilaterales sin contraste social suficiente, y qué mejor que los representantes de los trabajadores para actuar de "pared de contención".

4.7.2. *Los medios para la voz: la asistencia de expertos en materia de IA y sostenibilidad medioambiental*

Para el ejercicio eficaz de esta función, el comité podrá solicitar apoyo de personas expertas en las materias objeto de consulta. La dirección de la empresa estará obligada a sufragar la remuneración de dos personas expertas por un número de horas razonable: una especialista en despliegue de sistemas de inteligencia artificial y otra experta en las consecuencias de la acción empresarial sobre los límites planetarios. Esta segunda referencia amplía expresamente el análisis del impacto tecnológico hacia la sostenibilidad ambiental.

La asistencia de expertos al comité de empresa europeo constituye, en la construcción normativa y doctrinal de esta institución, una garantía funcional de primer orden para la efectividad del derecho de información y consulta transnacional. En el Derecho español, la Ley 10/1997, que desarrolla la Directiva relativa a los comités de empresa europeos, reconoce expresamente, de un lado, que la comisión negociadora puede pedir que le asistan expertos de su elección, incluso representantes de organizaciones de trabajadores competentes a nivel comunitario, y, de otro, que el propio comité de empresa europeo y el comité restringido pueden estar asistidos por expertos de su elección siempre que ello sea necesario para el correcto desempeño de sus funciones; además, la dirección central del grupo de empresas o empresas de dimensión comunitaria, centros de imputación de

la ley, debe sufragar los gastos derivados de un experto designado por la comisión negociadora, por el comité de empresa europeo o por el comité restringido, y esos expertos quedan sometidos al deber de confidencialidad.

A ello se añade una segunda idea, también presente en la doctrina laboralista: el experto del comité de empresa europeo cumple una función de conexión sindical y transnacional. La propia Ley 10/1997 permite que, entre los expertos de la comisión negociadora, figuren representantes de organizaciones de trabajadores competentes y reconocidos a nivel comunitario. La doctrina ha visto en ello un mecanismo que refuerza la dimensión europea de la representación, evita el aislamiento del órgano en el interior de la empresa y permite incorporar al proceso negociador conocimientos comparados, experiencia acumulada y apoyo estratégico de estructuras sindicales supranacionales. Esta dimensión es especialmente relevante en empresas y grupos que operan en varios Estados miembros y cuyas decisiones no pueden comprenderse adecuadamente desde una perspectiva puramente nacional. La doctrina no ha dejado de advertir, sin embargo, que el reconocimiento del derecho a expertos no elimina todos los problemas[36]. Uno de los más relevantes ha sido tradicionalmente el de la cobertura financiera y, más en general, el de la suficiencia de los recursos asignados al comité[37].

Este diagnóstico encuentra además eco en la evolución más reciente del Derecho de la Unión. La citada Directiva (UE) 2025/2450, sobre los comités de empresa europeos, parte de que la evaluación de la Comisión había detectado deficiencias en la eficacia del proceso de consulta, el acceso a la justicia y la aplicación efectiva de los derechos; en materia de expertos, el nuevo texto insiste en que los acuerdos sobre comités de empresa europeos deben abordar específicamente el posible asesoramiento por expertos, la cobertura de sus honorarios y su eventual participación en las reuniones. Y así, el texto revisado impone obligaciones más explícitas a la dirección central sobre la cobertura de los gastos de funcionamiento del CEE, de modo que este pueda acceder a expertos; además, que no se trata solo de uno, sino de varios posibles, elegidos por los propios representantes de los trabajadores, incluidos los sindicales. Al mismo tiempo, la Directiva indica

[36] Para más profundidad, cfr. Gómez Gordillo, *El comité de empresa europeo. Un estudio jurídico*, Consejo Económico y Social (CES), Madrid, 2003.

[37] Gómez Gordillo, *La reforma de la Ley sobre derechos de información y consulta en las empresas y grupos de dimensión comunitaria: ¿un impulso para los comités de empresa europeos?*, *TL*, 2011, núm. 111, pp. 85-120.

que las antiguas disposiciones sobre el número de expertos a financiar por la dirección central resultaban redundantes y debían suprimirse, desplazando el foco hacia la suficiencia de medios para un desempeño adecuado de las funciones del órgano. Ello confirma que el debate ya no gira tanto en torno a la mera admisibilidad del experto como a las condiciones reales de su utilización efectiva.

En suma, la persona experta operaría como un instrumento de reequilibrio de la asimetría informativa que caracteriza las relaciones entre la dirección de una empresa o de un grupo y la representación de los trabajadores. Desde esta perspectiva, la Propuesta incorpora un nuevo apartado 5 bis al art. 64.5 ET, que queda redactado como sigue: «El comité de empresa tiene el derecho de validación o de veto en materia de introducción y desarrollo de sistemas de inteligencia artificial en el ámbito laboral, cuando estos conciernen a los procedimientos de reclutamiento y selección, la gestión del personal (incluyendo dirección, vigilancia, productividad y evaluación), la relación con los clientes, la prestación de servicios, la producción, y cualquier otro ámbito que esté vinculado a la relación laboral.

A fin de realizar su trabajo, el comité de empresa tendrá derecho a solicitar el apoyo de personas expertas en las materias objeto de consulta.

La dirección de la empresa tendrá la obligación de sufragar la remuneración de dos personas expertas por un número de horas razonable, para asistir de forma eficaz al comité en sus debates: una persona experta en las materias relativas al despliegue de sistemas de inteligencia artificial y una persona experta en las materias relativas a las consecuencias de la acción de la empresa sobre los límites planetarios.

4.8. *Intervención laboral en la transformación del modelo productivo*

Como sostenemos en el Informe sobre la Democracia en el Trabajo[38], la transición hacia un futuro sostenible y justo requiere cambiar las reglas según las cuales operan los gobiernos, las empresas y las comunidades. Esto incluye abogar por cambios sistémicos en las políticas, como políticas ecológicas claras y mecanismos de mercado, para apoyar modelos de negocio sostenibles. También requiere adaptarse a los marcos de límites sociales y planetarios que permitirán a las generaciones futuras sobrevivir y prosperar a través

[38] En concreto, véase la p. 284.

de un nuevo conjunto de diseños empresariales que sean regenerativos y distributivos por naturaleza. Los trabajadores son exponencialmente más propensos a trabajar y vivir en las comunidades afectadas por las decisiones de las empresas y estas son responsables de la mayoría de las violaciones del derecho medioambiental. La democratización de las empresas, mediante la ampliación de la aplicación del mandato del artículo 129.2 de proporcionar a los trabajadores acceso a la voz y la propiedad, es, por lo tanto, una forma de involucrar a aquellos cuyos entornos se ven más afectados por las decisiones de las empresas en las propias empresas, y es, por lo tanto, una forma estratégica de desbloquear la ambición y el impulso que las empresas necesitan para replantearse sus prioridades e incluir contribuciones inteligentes al bien ecológico y social. Se espera que dar a los inversores laborales —junto con otras partes interesadas, como la naturaleza o las comunidades— una voz significativa y una participación en la toma de decisiones corporativas acelere la alineación de las empresas con el bienestar a largo plazo tanto de las personas como del planeta. Subrayamos, en el Informe, el enorme potencial de este cambio con ejemplos concretos de empresas que han adoptado con éxito la gobernanza de múltiples partes interesadas, estructuras que dan prioridad a la misión y modelos de propiedad de los empleados para garantizar que sus compromisos sociales y medioambientales queden fijados y protegidos de las finanzas extractivas y las adquisiciones hostiles[39].

El vigente art. 64.7 c) ET prevé el derecho de la representación legal de los trabajadores de colaborar con la dirección empresarial para establecer medidas de sostenibilidad medioambiental en la empresa, si así se acuerda en el convenio colectivo.

Una encuesta realizada a 8000 empleados de 10 países de diversos sectores reveló que "el 83 % de los empleados afirma estar dispuesto a apoyar la acción climática en el contexto de su trabajo", pero, al carecer de empoderamiento organizativo (lo que denominamos "voz" en el Informe citado), no se atreven a tomar iniciativas, ya que esas responsabilidades suelen exceder el ámbito clásico de sus funciones profesionales[40].

La nueva redacción del artículo 64.7.c) ET refuerza el actual derecho de consulta en materia medioambiental. Tras un enunciado general donde

[39] En concreto, véanse las pp. 293 y ss.

[40] Véase Kite Insights, *Every Job is a Climate Job: Why Corporate Transformation Needs Climate Literacy*, Londres, 2022. Disponible en: https://kiteinsights.com/hubfs/Every-Job-Is-A-Climate-Job-Kite-Insights.pdf. Último acceso, octubre 2026.

se dispone que la representación de los trabajadores participará con la dirección de la empresa en la toma de decisiones sobre la reconfiguración de su organización y de su modelo productivo en aras a alcanzar una mayor eficiencia, así como la sostenibilidad ambiental y la responsabilidad social, el precepto añade que el derecho de participación deberá hacerse efectivo a través de los procedimientos que ambas partes acuerden mediante negociación colectiva, garantizando en todo caso la información previa al comité sobre las decisiones empresariales que afecten a las finalidades mencionadas. La Propuesta deposita aquí una confianza considerable en la negociación colectiva como instrumento para diseñar fórmulas de participación adaptadas a sectores, empresas y realidades organizativas diversas; fórmulas que deberán superar los confines de la consulta actualmente prevista.

4.9. *Participación en empresas sin representación legal y requisitos electorales orientados a facilitar la voz laboral*

El primero, que de los datos aportados por la propia Exposición de Motivos (apdo. III) de la Ley 3/2012, se concluye que "Las empresas de cincuenta o menos trabajadores constituyen, según datos del Directorio Central de Empresas del Instituto Nacional de Estadística, el 99,23% de las empresas españolas". Asimismo, la Estadística de la Seguridad Social revela que el 78% de las empresas españolas tiene menos de seis trabajadores[41]. Estos datos nos mueven a deducir que la ausencia de representación legal en las empresas españolas no es una mera anécdota y que la actuación de estas comisiones "ad hoc" está siendo relevante.

En segundo lugar, es el empresario quien debe comunicar al conjunto de los trabajadores la iniciación del procedimiento obligatorio, así como es aquél quien debe informar a los trabajadores que a ellos les corresponde decidir quién o quiénes les van a representar durante las consultas[42].

Por eso, en la Propuesta que analizamos se prevé que en las empresas donde no existan órganos de representación para la realización de los períodos de consulta, el nuevo apartado 7 bis del artículo 64 ET prevé la creación de una comisión negociadora integrada, por la parte social, por

[41] Disponible en: http://www.seg-social.es/Internet_1/Estadistica/Est/Empresas_Cotizantes/index.htm. Último acceso, octubre 2026.

[42] Véase, Cruz Villalón, *La flexibilidad interna en la reforma laboral de 2010*, in *RL*, 2010, Tomo II, pp. 176 y ss.

una representación de los sindicatos más representativos y de los sindicatos representativos del sector con legitimación para formar parte de la comisión negociadora del convenio colectivo aplicable, en proporción a su audiencia electoral. La comisión sindical quedará válidamente integrada, en todo caso, por la organización u organizaciones que respondan a la convocatoria empresarial en el plazo de diez días. La apuesta por la representación profesional de los trabajadores, por un contrapoder como es el sindicato vuelve a ponerse de manifiesto, propuesta de modificación legal que se alinea con el planteamiento de los convenios y recomendaciones de la OIT sobre negociación colectiva[43].

Por otra parte, la Propuesta añade un párrafo 4 al artículo 69 ET para exigir que las candidaturas a delegados de personal o a miembros del comité de empresa contengan, como mínimo, el sesenta por ciento de los puestos a cubrir. Cuando concurra una única candidatura, esta deberá contener tantos candidatos como miembros a elegir. La medida trata de reforzar la seriedad y operatividad de los procesos electorales.

Finalmente, se incorpora un párrafo final al artículo 85.1 ET para establecer que, a través de la negociación colectiva, se articularán los medios necesarios para la participación de los organismos de representación junto con la dirección empresarial en la reconfiguración de su organización y de su modelo productivo en aras a una mayor eficiencia, así como a la sostenibilidad ambiental y a la responsabilidad social.

5. *Conclusiones*

La propuesta analizada no es una reforma incremental menor, sino un proyecto de reordenación profunda del derecho de participación en la empresa en España. Su tesis central se apoya en que la democracia económica debe avanzar desde la periferia del sistema laboral actual hacia el centro de la estructura empresarial. Para ello, transforma la participación de las personas trabajadoras, en la acepción apuntada al inicio de este trabajo, en un derecho materialmente exigible y no meramente simbólico ni procedimental.

[43] Terradillos Ormaetxea, *La evolución de las estructuras de participación de los trabajadores en España a consecuencia de la crisis: sobre su consonancia (o disonancia) con la normativa internacional*, in *RLDE, 2016,* vol. 4, n.1, pp. 9 y ss.

Si una norma de este tipo llegara a aprobarse, aprobación que podría ser impulsada a través del diálogo social entre las organizaciones empresariales y sindicales, lo cual es una misión sumamente ardua en España[44], su impacto sería profundo. Para las empresas, supondría revisar procedimientos internos de toma de decisiones, circuitos de información y calendarios de implantación de cambios. La gestión ordinaria exigiría una planificación más anticipada, especialmente en materias sensibles como reorganizaciones, automatización, externalización o transición tecnológica.

Para las personas trabajadoras, el cambio apreciable sería doble. Por un lado, aumentaría su capacidad de influencia sobre decisiones que afectan a su empleo, sus condiciones de trabajo y el futuro de la empresa. Por otro lado, se abrirían posibilidades de participación patrimonial que podrían reforzar la vinculación entre trabajo, resultados y continuidad del proyecto empresarial[45]. En el mejor de los escenarios, esto contribuiría a una cultura empresarial menos jerárquica y más cooperativa.

En cuanto a la negociación colectiva, el impacto del Informe MITES 2026 sería decisivo. La propuesta remite a los convenios sectoriales y de empresa, muchas de las cuestiones que propugna, para que sean articuladas en su seno, como las modificaciones en la unidad electoral, los mecanismos de participación y los cauces de intervención en la reorganización productiva. Con todo, somos conscientes de que el éxito del modelo que se recoge este Informe dependerá en buena medida de la fortaleza del diálogo social y de la capacidad de los interlocutores colectivos para traducir principios legales en reglas operativas viables.

En sectores altamente digitalizados o fragmentados, la reforma podría ser especialmente transformadora. Allí donde hoy predominan sistemas altamente orientados a la gestión algorítmica, la subcontratación en cadena o la toma de decisiones centralizada en grupos empresariales, el nuevo marco integrado en la Propuesta analizada introduciría contrapesos inéditos

[44] No hay más que citar el comunicado conjunto de CEOE y CEPYME de 10 de marzo de 2026, en el que ambas organizaciones empresariales expresaron su oposición a las propuestas del Ministerio de Trabajo y Economía Social para democratizar la empresa, consultable en Comunicado CEOE-CEPYME sobre la mesa de democratización de las empresas | CEOE. Ultimo acceso: octubre 2026.

[45] Para el estudio de la intensificación de la "propiedad" de los trabajadores en la empresa española, cfr., Ferrando García, *Hacia la participación de los trabajadores en la gobernanza empresarial: análisis de las propuestas de reforma para la democratización de la empresa en España*, in *RDSoc*, 2026, núm. 113, pp. 43-74.

y obligaría a compartir información y poder en niveles hasta ahora poco regulados.

En conjunto, el documento analizado refleja una visión de la empresa como institución social en la que la aportación de trabajo debe tener traducción en derechos de intervención decisoria, no solo en concepto de remuneración: la moneda de cambio del trabajo no sería únicamente el salario. Desde una perspectiva sistemática, la Propuesta analizada desplaza el centro de gravedad del Derecho colectivo del trabajo en España, desde un modelo predominantemente informativo, hacia otro basado en grados variables de participación efectiva, en cumplimiento del mandato constitucional tantas veces citado. La novedad no reside solo en el aumento cuantitativo de materias sometidas a consulta, sino, sobre todo, en la redefinición cualitativa de la consulta misma como diálogo y negociación orientados a un acuerdo.

Nos parece especialmente significativa la pretensión de adaptar las instituciones representativas a las transformaciones contemporáneas de la empresa[46]. La referencia a contratas, subcontratas y cadenas de valor reconoce la descentralización productiva. La creación del comité de grupo aborda la dirección unificada de los grupos empresariales y la actual asimetría entre la constitución de los órganos representativos y la adopción de las decisiones empresariales. La intervención sobre inteligencia artificial y gestión algorítmica responde a la digitalización del trabajo y al reforzamiento del poder de dirección, léase vigilancia y control sobre las personas trabajadoras. Y la vinculación entre modelo productivo, sostenibilidad ambiental y responsabilidad social trata de incorporar parámetros de transición justa a la gobernanza empresarial.

Al mismo tiempo, creemos que el texto suscita cuestiones relevantes de técnica jurídica y de política legislativa. La atribución de validación o veto al comité de empresa en materia de inteligencia artificial, la suspensión de la ejecución de decisiones empresariales hasta la conclusión de la mediación obligatoria o la nulidad por ausencia de apertura del período de consultas

[46] En este sentido de considerar la participación no como una categoría cerrada, sino como un conjunto de formas que deben revisarse ante los desafíos nuevos, Landa Zapirain, *Las formas de participación de los trabajadores en la empresa: nuevos desafíos*, in *Gobierno de la empresa y participación de los trabajadores: viejas y nuevas formas institucionales*/XVII Congreso Nacional de Derecho del Trabajo y de la Seguridad Social, Salamanca, 18 y 19 de mayo de 2006, 2007, pp. 649-707.

suponen una intensidad de intervención legislativa elevada que exigirían una articulación muy precisa con la libertad de empresa (art. 38.1 CE), con la distribución de competencias en el gobierno societario, y con el sistema general de fuentes del Derecho del Trabajo (art. 3 ET).

Con todo, estimamos que la coherencia interna de la Propuesta es plausible. El documento no concibe la participación como un apéndice decorativo, sino como un principio vertebrador que debe alumbrar la información, la consulta, la negociación colectiva, la composición de los órganos representativos y la adopción de decisiones estratégicas. En ese sentido, el texto ofrece una agenda de reforma ambiciosa y claramente orientada a ensanchar la democracia en el interior de la empresa española[47].

En conclusión, la modernización del Derecho del Trabajo no pasa solo por proteger a la persona trabajadora frente a decisiones empresariales ya adoptadas, sino por garantizar su presencia en los procedimientos en los que esas decisiones se forman. Éste es, en definitiva, el hilo conductor de toda la Propuesta, y esperemos que no se vea empañado por el reciente proyecto de reglamento, presentado por la Comisión Europea el 18 de marzo de 2026, destinado a instaurar una "EU inc." como posible forma jurídica para las empresas emergentes y las empresas en expansión internacional[48].

[47] En contraposición, véase la reforma operada en Italia. Crítico respecto de ella, cfr., Ales, *Tutte le strade portano alla partecipazione? Un analisi della l. n. 76 del 2025 nel prisma dei suoi attori*, in *LDE*, 2025, n. 2, p. 2 y ss.

[48] Para más información, Baylos Grau, *Start-up en la Unión Europea y participación de los trabajadores*, 15 de abril de 2026. Disponible en: https://baylos.blogspot.com/2026/04/start-up-en-la-union-europea-y.html.

Resumen

El trabajo analiza una propuesta legislativa reciente que plantea varios cambios en materia de las relaciones colectivas del Derecho del trabajo español. La premisa del artículo descansa en que las personas trabajadoras no solo aportan fuerza de trabajo a cambio de una remuneración, sino que pueden contribuir de modo continuado a la organización, los resultados y la creación de valor empresarial.

El verdadero eje jurídico de la propuesta es el artículo 129.2 de la Constitución Española, sobre todo cuando predica que los poderes públicos promoverán "eficazmente" las diversas formas de participación en la empresa. Desde esta perspectiva deben leerse las reformas que se examinan a continuación sobre diversas modificaciones planteadas en materia de representación colectiva, derecho de consulta reforzado, representación colectiva en los grupos de empresas, control colectivo sobre algoritmos y participación "social" en la sostenibilidad de la empresa y del planeta.

Palabras clave

Participación de las personas trabajadoras, Democracia en la empresa, Representación colectiva, Control colectivo de algoritmos, Modelos complejos de empresas.

Sławomir Adamczyk

Designing for Inclusion? Technologically Enhanced Bodies and Lines of (In)equality in Labour Law

Contents: 1. Introduction: Shifting the Point of Reference. 2. What Is Augmentation in the Workplace? Conceptual Frameworks and Ontology of the Worker's Body. 3. Donna Haraway: Augmentation as a Change in the Point of Reference. 4. Equality in Conditions of a Moving Ability Benchmark. 5. Nita Farahany: Autonomy, Consent, and the Cost of Refusing Augmentation. 6. From Artifacts to Benchmarks: Where Does the Line of Dispute Really Lie? 7. Literary Heuristics: What Does Science Fiction Show? 8. Trade Unions and Worker Augmentation. 9. Summary and Tentative Recommendations: Between Inclusion and New Lines of Division.

1. *Introduction: Shifting the Point of Reference*

Advancements in the implementation of new technologies directly targeting workers' bodies shift the debate on workplace equality beyond classic categories such as gender, age, or disability. The ILO and EU institutions indicate that these technologies can both reduce physical barriers and generate new forms of inequality, such as between "enhanced" and "natural" workers[1]. This raises the question of the need to reinterpret legal categories, such as indirect discrimination or the protection of biometric data[2].

[1] EP, *Human enhancement and AI: Implications for the future of work and equality. Study for the Committee on Employment and Social Affairs,* Policy Department for Economic, Scientific and Quality of Life Policies, 2022; ILO, *AI and digitalisation are transforming safety and health at work*, International Labour Office, 2025.

[2] In labour law scholarship see in particular Maio, *Diritto del lavoro e potenziamento umano. I dilemmi del lavoratore aumentato*, in *DLRI*, 2020, 3, p. 513 ff.; Delfino, *Lavoro e realtà*

Analyzing technological enhancement of the body at work requires starting with a question not about the devices themselves but about what "ability to work" begins to mean in their presence. Increasingly, we encounter situations where a worker's body functions not only as a biological organism but also as a system interacting with assistive tools such as exoskeletons, biomechanical sensors, control interfaces, or workload monitoring systems. In this paper I collectively refer to these as the "technologically assisted body". Introducing this category does not imply a dystopian vision of the future but allows us to capture a subtle conceptual shift: the boundary between the "natural" capacity of an organism and the capacity co-created by technology becomes blurred. Consequently, this destabilizes the previous understanding of "normal ability" as something obvious, common, and measurable according to a single, biological point of reference.

This shift is not yet happening in the form of mass practices. The degree of popularization of assistive technologies is still limited, fragmented, and sectorally diverse. That is why I propose a theoretical rather than empirical analysis in this paper. Many solutions remain in the testing, pilot, or niche application phase, making it difficult to formulate conclusions based on stable practice patterns. At the same time, what is rare today already influences the language in which we describe work, efficiency, and employer responsibility. Risks related to equality, autonomy, or technological pressure first appear in the realm of norms and expectations, and only later materialize in specific procedures, regulations, or workplace conflicts. Theoretical analysis thus allows us to capture this "earlier" moment when the point of reference changes before unambiguous empirical data emerge.

In the further part of the paper, I use two interpretative frameworks that help describe this shift. The first is inspired by Donna Haraway's thinking, known for her reflections on the relationship between humans, bodies, and technology. In her view, the body is not opposed to technology but forms a biological-technical hybrid, always embedded in a network of tools, environments, and practices. Referring to this way of thinking allows us to

aumentata: i limiti del potenziamento umano, in Biasi (ed.), *Diritto del lavoro e intelligenza artificiale*, Giuffrè, 2024, p. 597 ff.; the contributions collected in Delfino, De vivo, Zaccaria (eds.), *Innovazione tecnologica e sostenibilità. Verso un approccio integrato delle scienze sociali e giuridiche*, Quaderno della Rivista Diritti Lavori Mercati, n. 19, Editoriale Scientifica, 2026; and earlier Adamczyk, Surdykowska, *Cyborgs in the Workplace? Some Preliminary Considerations*, in *EJICLS*, 2022, 10(3)/11(1), pp. 158-173.

treat augmentation not as a sudden breakthrough but as a revelation of a process that has been ongoing in the world of work for a long time – the co-construction of efficiency through technology. The second framework is provided by the perspective related to research on physical and cognitive integrity, developed by Nita Farahany, among others, who deals with the ethical and legal consequences of neurotechnology and interference in the cognitive sphere. In this approach, the key question becomes the cost of refusing to use assistive technology: whether the worker's decision is truly voluntary when the reference point for "normal" efficiency shifts towards assisted bodies. This perspective allows us to capture the tension between protecting subjectivity and the growing role of technological efficiency standards. Both frameworks serve an orienting function in the paper, they do not replace legal analysis but help us see that augmentation changes not only the tools of work but also the conditions in which we define equality, ability, and autonomy. It is precisely in this shifted point of reference that questions arise that labour law will have to address in the coming years. At the same time, the theoretical analysis is not detached from positive law. Where relevant, I refer to the existing EU framework, in particular the OSH Framework Directive 89/391/EEC, the Employment Equality Directive 2000/78/EC and the General Data Protection Regulation, in order to show both which safeguards are already available and where the protection offered by current law ends.

This paper will not refer in any way to terms often invoked in discussions about human augmentation, such as transhumanism and posthumanism. These are ideological and philosophical movements that speculate about futuristic visions and hypothetical human possibilities, often considering technologies that do not currently exist[3]. While transhumanism considers (the consequences of) redesigning the human body in various ways to exceed its functional capabilities, posthumanism predicts such significant changes in humans that they cease to represent the human species. Unlike the pragmatic nature of the augmentation phenomenon in the workplace, transhumanism and posthumanism are speculative approaches and belong to the realm of philosophy. However, the concept of "cyborgization" will appear because, in the author's opinion, it accurately reflects the potential

[3] Vita-More, *Designing human 2.0 (transhuman) - regenerative existence*, in *Artifact*, 2008, 2 (3-4), pp. 145-152, https://doi.org/10.1080/17493460802028 5.

and likely direction of changes in the human/technology relationship in the context of the workplace. In relation to external relations in the human/economy sphere, influencing the development of augmentation, the plane for further considerations will be turbocapitalism understood as unchecked market activity that drives innovation in the workplace environment[4]. In this paper, turbocapitalism is treated not as a separate theoretical framework, but as the economic context in which technological possibilities may be translated into progressively higher expectations of worker performance.

2. *What Is Augmentation in the Workplace? Conceptual Frameworks and Ontology of the Worker's Body*

Augmentation in the workplace does not simply mean a "new generation of personal protective equipment" but a change in the way we think about the worker's body itself. The body ceases to be the sole carrier of biological efficiency and becomes a nodal point in the system: human-device-work organization. A good example is exoskeletons, defined by EU-OSHA as devices worn on the body that mechanically support the musculoskeletal system and can reduce loads on the back or shoulders, but at the same time generate new risks for workers' safety and health[5]. For this reason, a conceptual framework is needed that allows us to think of technology not as an addition to the "natural" body, but as a factor co-defining the ability to work, and consequently the scope of labour law protection.

For the purposes of further analysis, I propose distinguishing three groups of technologies related to work augmentation. It is not about a catalog of gadgets but about indicating types of devices that realistically change the way the work organization "sees" and evaluates the body.

Wearable Technologies

This category primarily includes exoskeletons and other biomechanical support systems, such as lumbar support vests or "backpacks" that trans-

[4] Luttwak, *Capitalism: Winers and Losers in the Global Economy*, HarperCollins, 1999.

[5] Peters, Wischniewski, *The impact of using exoskeletons on occupational safety and health*, Discussion paper, European Agency for Safety and Health at Work (EU-OSHA), 2019.

fer some of the load to the hips or legs. EU-OSHA describes exoskeletons as external mechanical structures (active or passive) that modify the forces acting on the body, reducing local loads but potentially transferring them to other places[6]. Ergonomic literature emphasizes that they can significantly reduce muscle activity and the risk of injury, but at the same time create new load patterns and thus new secondary risks, such as pain in other joints, abrasions, overheating, or limited range of motion[7]. It is also important that exoskeletons are not ordinary tools or classic personal protective equipment. In many cases, they must be closely fitted to the body, exert pressure on the skin, and transfer forces through specific body segments. This means that some workers are unable to use them (e.g. due to size, build, or existing conditions), while others may experience discomfort or secondary injuries. From the perspective of labour law, this means that the exoskeleton co-defines the physical capacity of the worker and simultaneously becomes a potential source of new disputes over health and safety, responsibility, and equal treatment.

Implantable and Subcutaneous Technologies (Insideables/Implants)

The second type involves solutions that "enter" under the worker's skin: identification chips allowing doors to be opened or systems to be logged into, medical sensors monitoring pulse or other physiological parameters, and subcutaneous interfaces coupled with work tools. Unlike classic personal protective equipment, the boundary between the body and the device becomes difficult to determine here. An implant can simultaneously be a "tool" of the employer and an element of the worker's bodily integrity. Questions arise: Can the lack of consent for an implant be a basis for refusing employment or changing positions? Who is the controller of the data acquired by the implant? Can implantable devices be considered "necessary" for performing work under health and safety regulations, and if so, when? In this case, augmentation does not so much "increase" muscle strength as it turns bodily functions into a source of data that can be used to assess performance, availability, or "health risk" of the worker.

[6] Peters, Wischniewski, *cit*.

[7] Pote, Asbeck, Asbeck, *The ethics of mandatory exoskeleton use in commercial and industrial settings*, in *IEEE-TTS*, 2023, 4(4), pp. 302-313, https://doi.org/10.1109/TTS.2023.3264807.

Brain-Computer Interfaces and Biometric Systems

The third group includes technologies that enter the realm of neuro-cognitive reactions. On one hand, these are BCI (brain-computer interface) systems, often based on EEG signal measurement, and on the other, advanced biometric systems that collect real-time information on pulse, stress levels, and movement patterns. They can be used to monitor worker fatigue and "alertness", predict accident risks, or control machines or robots using brain signals. When algorithms begin to translate physiological states into "fitness for work" indicators, technology ceases to be a neutral tool and becomes a norm-creating mechanism. The device and its associated analytical system co-determine what it means to be "sufficiently rested", "sufficiently concentrated" or "suitable for continued work".

All three categories share the fact that they "enter" very close to the worker's body, to the extent that it is difficult to maintain classic distinctions: "work tool – body – personal protective equipment – workplace infrastructure". For example, EU-OSHA notes that exoskeletons can be classified as machines, personal protective equipment, or medical devices, and their legal status depends on their function and context of use[8].

It is significant that in the case of technologies used for worker augmentation, the proximity to the body and the need to adapt to the dimensions of a given person give rise to additional problems: privacy issues (disclosure of body dimensions), exclusion of people who "do not fit" in available sizes, and potential biases in personnel decisions[9].

From the perspective of this paper, it is crucial that these technologies:

- organize work: they enable a new division of tasks, a different tempo, a different workstation construction;
- enter performance evaluation systems: they generate data on which the assessment of a "good worker" is based;
- modify the threshold of "normal" performance: they make what was previously maximum effort recognizable as a new standard, and, as Pote et al. show, in practice this is often accompanied by the tempta-

[8] Peters, Wischniewski, *cit*. The relevant EU instruments are, respectively, Regulation (EU) 2023/1230 on machinery, Regulation (EU) 2016/425 on personal protective equipment and Regulation (EU) 2017/745 on medical devices.

[9] Pote, Asbeck, Asbeck, *cit*.

tion to increase requirements for "enhanced" individuals (overuse, overwork)[10].

This is where the law comes in. First, the relationship with health and safety: is augmentation a protective measure or also a source of new risks? Second, the relationship with equal treatment: the question is whether unsupported workers, or those who do not "fit" into an exoskeleton, will be indirectly discriminated against by norms calibrated to "enhanced" bodies. Finally, the relationship with data protection (especially biometric and body data).

The existing EU framework on occupational safety and health already offers some points of orientation here. The Framework Directive 89/391/EEC obliges the employer to adapt the work to the individual, "especially as regards the design of work places, the choice of work equipment and the choice of working and production methods", with a view in particular to alleviating work at a predetermined work-rate (Article 6(2)(d)). It also requires adapting to technical progress (Article 6(2)(e)), developing a coherent prevention policy covering technology, organisation of work and social relationships, which is the usual legal basis for addressing psychosocial risks (Article 6(2)(g)), and giving collective protective measures priority over individual ones (Article 6(2)(h))[11]. Read against the background of augmentation, these principles point in a clear direction: technology should serve to adapt work to the worker, not the worker to a performance norm set by the device. An exoskeleton issued to compensate for a workstation that remains ergonomically poor reverses this hierarchy. The Directive also requires that the planning and introduction of new technologies be the subject of consultation with workers and their representatives as regards their consequences for safety and health (Article 6(3)(c) and Article 11). The same logic is reflected in the new Machinery Regulation, whose ergonomic requirements include avoiding a working rhythm determined by the machine[12]. The problem is that these rules were written for equipment

[10] *Ibidem*.

[11] Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989, pp. 1-8, Articles 6, 11 and 13.

[12] Regulation (EU) 2023/1230 of the European Parliament and of the Council of 14 June 2023 on machinery, applicable from 20 January 2027, Annex III, point 1.1.6. See also D'Arcangelo, *Potenziamento e sicurezza del lavoratore*, in Delfino, De Vivo, Zaccaria (eds.),

that stands next to the worker, not for devices worn on or implanted in the body. If an exoskeleton is introduced as a protective measure, the worker is in principle obliged to use it correctly (Article 13). This raises the question of whether a refusal can still be legitimate while the evidence on the long-term effects of such devices remains incomplete[13].

The following sections will develop this intuition, showing how the change in the ontology of the worker's body translates into a moving benchmark of work ability and the need to revise classic labour law categories.

3. *Donna Haraway: Augmentation as a Change in the Point of Reference*

"The Cyborg Manifesto"[14] was primarily a feminist-rooted manifestation of the ontology of hybridization of nature and culture, but it also became an opening for discussion on the relationship between humans and the technology they create. Donna Haraway points out that the boundary between humans and technology has never been stable: the subject always functions in relation to the world of tools, machines, communication systems, and power. Her figure of the "cyborg" is not a science fiction description but an analytical metaphor that helps us see that in the world of work, the body is not pure biology but is always already connected with technology, whether in the form of hand tools, industrial machines, or contemporary digital interfaces. In this sense, augmentation does not introduce a completely new logic but radicalizes a process that has been ongoing for a long time: technology increasingly enters the body, and the body increasingly becomes an element of work infrastructure[15].

cit., p. 105 ff., who stresses that the health and safety risks of wearable devices, including psychosocial ones, cannot be separated from the protection of the personal data these devices collect.

[13] Maffei, *Robot, potenziamento umano e diritto al dissenso del lavoratore*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 135 ff., esp. pp. 147-150. Referring to the Italian technical report UNI/TR 11950:2024 on occupational exoskeletons, the author argues that as long as the scientific evidence on such devices remains immature, the worker retains some margin to refuse them, and that their introduction as a safety measure should preferably be agreed with the social partners.

[14] Haraway, *A Manifesto for Cyborgs: Science, Technology and Socialist Feminism in the 1980s*, in *SR*, 1985, no. 80, pp. 65-108.

[15] Haraway, *Simians, Cyborgs and Women: The Reinvention of Nature*, Routledge, 1991.

In this context, the worker's body can be described as a technobiological hybrid. This means that its efficiency and performance do not result solely from physiological characteristics but are co-created by assistive devices (exoskeletons, biometric sensors, fatigue prediction systems) and algorithms for assessing risk and efficiency. With the advent of augmentation, the boundary between the work tool (what "belongs" to the body "from the outside"), the worker's body (what was considered biologically given), and the production infrastructure (what organizes the work process) begins to shift.

An exoskeleton, implant, or biometric system cannot be easily assigned to one of these categories: they are simultaneously a tool, an element of the work environment, and a part of the worker's bodily experience. Consequently, what was considered obvious in labour law also changes. Previously, it was implicitly assumed that the starting point was the "natural" body: work capacity was understood as a biological property of the individual, and technology had an auxiliary or protective character (e.g. PPE). When devices begin to co-create the effect of work and shape its pace and scope, this presumption ceases to be stable.

From a legal perspective, this leads to a significant shift in analytical categories. If some tasks can only be performed with technological support, then the concept of "ability to work" ceases to be exclusively biological and becomes dependent on the technical configuration of the workstation. The same applies to the way we understand:

- performance (whether it is a measure of biological efficiency or "assisted" efficiency);
- safety and health protection (whether augmentation is a protective measure or a source of new risks);
- absenteeism and efficiency (whether "inefficiency" results from the body or from lack of access to technology).

In this sense, augmentation is not just a technology but a change in the point of reference against which the abilities of workers are assessed. What was previously seen as the limit of human bodily effort can become a new standard, but it is a standard co-created by assistive devices. Thus, the normality of abilities becomes fluid.

If the benchmark is co-created by technology, then it is no longer biologically neutral. The question arises whether labour law can continue to operate with categories derived from the "natural body" model, when

in practice the ability to work arises at the intersection of biology, infrastructure, and algorithmically processed body data. Answering this question will be crucial for further considerations on equal treatment, the moving threshold of performance, and potential pressure to "assimilate to the enhanced pattern".

The previous assumption of labour law doctrine was relatively stable: the worker was understood as a bodily subject with "natural" limits of efficiency, and the ability to work was a biological point of reference for assessing performance, safety, or the ability to perform work. Augmentation clearly undermines this foundation because part of the efficiency begins to result from the operation of assistive devices, so the result of work becomes co-produced by the body and technology.

Consequently, the point of reference ceases to be common. Instead of one category of "ability to work", at least two standards emerge: unenhanced ability and technologically enhanced ability[16]. This dichotomy does not require formal coercion; it arises through the calibration of organizational norms: work pace, absence thresholds, definitions of "normal performance". In the literature on in-body wearable devices, it is noted that their introduction into the workplace is not normatively neutral: systems monitoring physiological parameters or safety begin to co-determine what is considered an acceptable level of load, risk, and worker efficiency. At the same time, as shown by the analysis of the regulatory frameworks of the MDR (Medical Device Regulation) and the GDPR (General Data Protection Regulation), there is a lack of regulations specifically addressing the use of these technologies in employment, even though they interfere with bodily integrity and the processing of sensitive health data[17].

From the perspective of labour law, this leads to a series of doctrinal questions. First, it concerns equal treatment. Does an unenhanced worker become "unfit" in conditions of a moving ability benchmark, even though their biological efficiency falls within previous normative limits? Second,

[16] Ziviello, *Potenziamento umano e soft robotica: possibili implicazioni di diritto previdenziale,* in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 293 ff., describes this as a crisis of the traditional dichotomy between "able" and "unable" to work and warns against the emergence of a new category of "hyper-abled" workers, to the detriment of those who cannot afford or refuse technological assistance.

[17] Marassi, Földes, *From healthcare to employment: Tackling the regulatory challenges of in-body wearable devices at work*, in *ELLJ*, 2025, 16(1), pp. 45-64.

indirect discrimination: seemingly neutral requirements (e.g. constant work pace, standard response to thermal load) may favor people using assistive technologies. Third, the question of the employer's responsibility for shaping work norms arises. The decision to implement technology is not just a technical decision but also a norm-creating one, as it redefines average performance and safety. Finally, autonomy and the cost of refusal: even without a formal obligation to augment, the worker incurs a real cost of remaining "unenhanced" (risk of marginalization, lower performance evaluation, limited access to some tasks), which the literature on in-body wearables links to increasing organizational pressure in the name of health and safety protection and efficiency[18].

At this point, a forward-looking question emerges. Should labour law protect the pluralism of embodiments and recognize the equal rights of "unenhanced ability", or should it de facto sanction the performance norm co-created by technology? The answer to this question will determine whether augmentation is treated as an exceptional and optional tool or as a new, tacitly accepted standard of ability to work.

4. *Equality in Conditions of a Moving Ability Benchmark*

In the context of technological body enhancement, the key question is how "normal performance" at work is defined. Traditionally, although rarely explicitly articulated, the point of reference remained the biological body with its natural limitations and variability. Even where productivity indicators, work rhythm, or evaluation criteria were used, a common bodily basis was assumed in the background to which one could refer. With the advent of assistive technologies, the situation begins to change. Performance increasingly becomes the result of the interaction between the organism and the device, so it is no longer the effect of uniform, comparable "natural efficiency". The point of reference ceases to be exclusively biological as it shifts towards "enhanced" ability, available only to some workers.

In such a situation, there is a need to think about equality not in terms of one universal standard but in terms of a pluralism of abilities. This means recognizing that different ways of performing tasks can coexist in the work-

[18] *Ibidem*.

place: through an unassisted body, a body using protective technologies, or a body functioning based on more advanced forms of augmentation. Equality then does not consist in equalizing results but in shaping employment norms so that they do not favour one type of embodiment as the default point of reference. This shift in perspective allows us to better grasp why in the world of assistive technologies, the traditional understanding of "objective" performance criteria loses its apparent neutrality.

The risk arises when this pluralism is replaced by assimilation to the standard of the "enhanced" body. Importantly, this does not require a formal mandate to use technology or explicit coercion by the employer. In many scenarios, it is sufficient to calibrate work norms: the pace of task completion, sick leave thresholds, expected availability, or scope of duties. If these indicators are based on the capabilities of workers using assistive solutions, then those who do not use such technologies (for health, ethical, or financial reasons, or simply by choice) begin to function below the assumed standard. There is no overt discrimination. The change occurs at the level of the definition of "normality".

Interestingly, a similar intuition can be found in labour law doctrine on the worker's duty of diligence. In the Italian debate, it has been argued that the performance an employer may legally require is defined by an abstract model, i.e. by what can normally be expected from an average worker performing the same tasks, and not by what an individual worker achieves with the help of technology. Consequently, even where a worker agrees to use an exoskeleton to increase output, the "enhanced" performance does not become the legally required standard[19]. At the same time, the same author notes that what counts as "normal" is historically determined and may change with technical progress. This is exactly where the risk identified in this paper lies: the protection works as long as augmentation remains an individual choice, but it weakens once enhanced performance becomes widespread enough to reshape the abstract model itself.

Describing such dynamics leads us to the category of indirect discrimination. The mechanism of exclusion lies not in explicitly formulated dif-

[19] Monda, *Potenziamento del lavoratore, rendimento e obbligo di diligenza*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 157 ff., esp. pp. 160-166. The analysis refers to the Italian rule on the worker's duty of diligence (Article 2104 of the Civil Code) and to the case law on dismissal for poor performance, which measures performance against that of the average diligent worker in the same job.

ferentiating criteria but in seemingly neutral organizational requirements: schedule, minimum performance, efficiency assessment algorithms. In practice, they can act as structural technological pressure, the costs of which are borne mainly by unassisted workers. They become the reference group for evaluating the effects of norms, not because they are "weaker" but because they do not participate in the technologically elevated benchmark. With this approach, the question of equality does not concern technology itself as much as the basis on which the comparative standard, according to which work results are measured, is established.

From a legal point of view, however, indirect discrimination is not a free-standing concept. Under Directive 2000/78/EC, it occurs where an apparently neutral provision, criterion or practice puts persons having a particular religion or belief, a disability, a particular age or a particular sexual orientation at a particular disadvantage compared with other persons, unless it is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (Article 2(2)(b)). Directive 2006/54/EC provides the same for sex[20]. The disadvantage must therefore be linked to one of the protected grounds. In the case of augmentation, such links are not difficult to imagine:

- Workers who cannot use an exoskeleton because of a long-term health condition may fall under the concept of disability, which the Court of Justice understands broadly, as an impairment which, in interaction with various barriers, may hinder full and effective participation in working life[21].
- Older workers are more likely to have such conditions or to find adaptation to new devices more burdensome.
- Women may be disadvantaged if devices are available only in sizes designed for an average male body[22].
- A refusal motivated by deeply held ethical convictions might, at

[20] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, pp. 16–22, Article 2(2)(b); Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, pp. 23–36, Article 2(1)(b).

[21] CJEU, 11 April 2013, joined cases C-335/11 and C-337/11, HK Danmark (Ring and Skouboe Werge).

[22] Cf. Pote, Asbeck, Asbeck, *cit.*, on the exclusion of workers who do not fit the available sizes.

least in theory, be protected as a "belief", although recent case law of the Court of Justice suggests a rather narrow reading of this ground[23].

As regards justification, the employer will usually invoke legitimate aims such as health and safety or productivity. The decisive question is then whether calibrating work norms to enhanced bodies is really necessary, or whether the same aim could be achieved by less exclusionary means, e.g. by redesigning the workstation, to which Directive 89/391/EEC in any case gives priority. What anti-discrimination law does not cover is the refusal of augmentation as such, for economic, personal or simply precautionary reasons. A worker who is fully able to use the device but does not want to has no protected ground to rely on. This is a real gap, to which I return in the next section.

If the employer introduces a selection system favoring people using augmentation, this can lead to indirect discrimination against those who refuse modification for ethical, health, or economic reasons[24]. Labour law must therefore update the interpretation of "access to employment" to protect workers from technological coercion and unequal treatment[25].

Disability law also shows the inclusive side of augmentation. Under Article 5 of Directive 2000/78/EC, employers must take appropriate measures (reasonable accommodation) to enable a person with a disability to have access to, participate in, or advance in employment, unless this would impose a disproportionate burden on the employer. An exoskeleton or another assistive device can be exactly such an accommodation, opening jobs that would otherwise remain closed. The same logic, however, works in the other direction. Where a worker with a disability cannot use the device on which a new performance norm is based, the duty of reasonable accommodation requires adapting the work to that worker, not excluding them for failing to meet an "enhanced" standard[26]. In this sense, reasonable accommodation is a legal expression of the pluralism of abilities defended

[23] CJEU, 13 October 2022, C-344/20, L.F. v S.C.R.L.; CJEU (Grand Chamber), 15 July 2021, joined cases C-804/18 and C-341/19, WABE and MH Müller Handel. On the possible protection of a refusal to wear robotic devices as a "belief", and its limits, see Maffei, *cit.*, pp. 151-154.

[24] ILO, *cit.*

[25] On access to employment in the context of (pharmacological) enhancement see Avondola, *Potenziamento farmacologico occulto e accesso al lavoro*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 37 ff.

[26] Directive 2000/78/EC, Article 5. On reasonable accommodation as a regulatory alternative to enhancement see Cordella, *Potenziamento farmacologico e fragilità da "efficientismo" lavorativo*, in Delfino, De Vivo, Zaccaria (eds.), *cit.*, p. 79 ff.

in this paper: it assumes that the same job can be done in different ways by different bodies.

Inspiration from Donna Haraway's thinking helps us understand why this benchmark is not neutral. If the worker's body is always part of a broader network of technical, organizational, and social relations, then performance norms are also co-created by technology and do not exist "outside of it". Augmentation not only increases individual capabilities but also changes the conditions of comparability. Thus, labour law faces the question of whether equality should consist in adapting everyone to an enhanced standard or in protecting the pluralism of abilities, so that technology can support but not determine the only acceptable measure of "normal" performance.

5. *Nita Farahany: Autonomy, Consent, and the Cost of Refusing Augmentation*

In the classic legal approach, the worker's consent to certain actions by the employer is often seen as an act of individual decision. In the context of augmentation, this understanding quickly proves insufficient. Consent is not given under conditions of symmetry between the parties but in a situation of relational dependence: under the pressure of organizational hierarchy, performance evaluations, the risk of marginalization, or the loss of a specific professional position.

In this sense, consent to using an exoskeleton, biometric system, or BCI interface can be formally voluntary but simultaneously materially burdensome. The worker may "choose" knowing that refusal means a slower work pace, a worse ability assessment, more difficult access to bonuses or to more prestigious tasks. Thus, the phenomenon of relational consent emerges: consent that is not the result of unconstrained autonomy but the result of embedding the individual in an organizational structure where technology co-creates the criteria for success and "normality".

From this perspective, labour law cannot limit itself to the question of whether consent has been formally obtained but must ask whether it has been given under conditions of a real alternative. In other words, does the lack of consent leave the worker in an equal position, or does it generate a systemic cost of refusal?

Data protection law already recognises this problem, at least as far as the processing of personal data is concerned. The GDPR states that consent

should not provide a valid legal ground where there is a clear imbalance between the data subject and the controller (Recital 43). European data protection authorities have repeatedly stressed that, because of the dependency inherent in the employment relationship, employees can give free consent only in exceptional circumstances[27]. This is particularly relevant for augmentation technologies, which typically process health data or biometric data used to identify workers. These are special categories of data whose processing is prohibited in principle (Article 9(1)). Outside of consent, such processing is possible mainly where it is necessary for obligations in the field of employment and social protection law, and only if Union or national law, or a collective agreement, provides appropriate safeguards (Article 9(2)(b)). Article 88 explicitly allows Member States and social partners to adopt more specific rules for the employment context, and where new technologies are likely to result in a high risk to workers' rights, a data protection impact assessment is required (Article 35)[28]. Some national legislators go further. The Polish Labour Code, for example, provides that the lack of consent may not be a basis for unfavourable treatment of a worker, and allows the processing of special categories of data on the basis of consent only where the data are provided on the worker's own initiative[29]. In other words, positive law already accepts that consent in employment is "relational" and does not by itself legitimise interference. The problem is that this recognition concerns data, not the body. The GDPR can limit what happens with the signals collected by an exoskeleton or an EEG headband, but it says nothing about whether a worker may refuse to wear the device in the first place.

Nita Farahany proposes in this context a shift in emphasis from the question of consent to the question of the integrity of the person, physical

[27] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (General Data Protection Regulation), OJ L 119, 4.5.2016, pp. 1-88, Recital 43; Article 29 Working Party, *Opinion 2/2017 on data processing at work*, WP 249, 8 June 2017; European Data Protection Board, *Guidelines 05/2020 on consent under Regulation 2016/679*, version 1.1, 4 May 2020, section 3.1.1.

[28] GDPR, Articles 9, 35 and 88. On the combined assessment of health and safety risks and data protection risks of wearable devices see D'Arcangelo, *cit.*, pp. 112-117.

[29] Polish Labour Code (Act of 26 June 1974, Kodeks pracy), Article 22^1 – § 2 and Article 22^1 – § 1. Article 22^1 – § 2 allows the processing of biometric data without the worker's initiative only where it is necessary to control access to particularly important information or to premises requiring special protection.

and cognitive[30]. In her view, the minimum level of protection is defined by the sphere that cannot become the subject of organizational pressure, even when consent is formally expressed. This includes, above all, mental privacy, i.e. the right to keep cognitive states, emotions, patterns of concentration, or fatigue inaccessible to the employer, and the consistency of identity, which is threatened when technology co-shapes behavior, work rhythm, or well-being in a permanent manner.

Farahany does not demand the creation of "new cyborg rights". On the contrary, she indicates that existing categories of human rights and labour law require reinterpretation in the face of neurotechnologies and systems interfering with biometric data. It is not so much a new catalog of rights as a new boundary line: even if technology brings organizational or health benefits, it cannot lead to a situation where refusal to connect the body or mind to the system becomes de facto impossible.

In this sense, integrity in Farahany's view serves as a "lower limit of protection", a reminder that labour law cannot reduce autonomy to an act of consent if the institutional environment makes the lack of consent unprofitable, risky, or socially disqualifying. Refusal of augmentation thus becomes a test case for equality: if the worker incurs costs (e.g. lower ratings, marginalization), it means that technology has become a quietly accepted standard, not voluntary support. Labour law must therefore guarantee space for the pluralism of embodiments, not just for "enhanced" bodies. The key question is not "does the worker have the right to refuse?" but "what are the costs of refusal?" If the worker who decides to remain with the "unenhanced" way of working incurs clear costs (lower efficiency ratings, less professional mobility, limited participation in tasks), then consent to augmentation ceases to be a choice and becomes a mechanism of assimilation to the enhanced pattern. Refusal thus reveals the tension between:

- formal equality (everyone can use the technology), and
- material equality (not everyone bears the same consequences of not using it).

In Farahany's view, refusal is diagnostic because it allows us to assess whether the organizational system respects the pluralism of embodiments or creates a situation where only the "assisted" body is a full-

[30] Farahany, *The Battle for Your Brain: Defending the Right to Think Freely in the Age of Neurotechnology*, St. Martin's Press, 2023.

fledged carrier of the ability to work. If the cost of refusal is structurally high, it means that technology has become a silent standard, not voluntary support.

It is worth noting that the idea of protecting the refusal itself was once close to entering EU law. In its 2016 opinion on civil law rules on robotics, the European Parliament's Committee on Employment and Social Affairs proposed the principle that refusing an implant, a prosthesis or an extension to one's body should never result in unfavourable treatment or threats regarding employment. The principle did not survive into the resolution adopted by the Parliament in February 2017[31]. In legal scholarship, it has been argued that an employer cannot unilaterally impose devices that act on the worker's body, especially when they serve only to increase performance, because such an order goes beyond the ordinary scope of managerial prerogative; their use therefore requires the worker's agreement[32]. This is an important step, but it brings us back to the starting point of this section. If the use of augmentation depends on the worker's agreement, the real question is not whether such an agreement was formally given, but what happens to those who do not give it. Today, the refusal of augmentation is protected only indirectly and in fragments:

- by health and safety law, arguably, where devices are insufficiently tested;
- by data protection law, as regards the data the devices collect;
- by anti-discrimination law, where the refusal can be linked to a protected ground.

There is no general rule saying that remaining "unenhanced" may not lead to negative consequences.

At this point, the question of autonomy and consent intersects with the issues of equality and indirect discrimination. Should labour law guarantee space for "unenhanced ability" or should it accept the gradual normalization of performance co-created by devices? The answer to this question will

[31] EP, Committee on Employment and Social Affairs, *Opinion for the Committee on Legal Affairs with recommendations to the Commission on Civil Law Rules on Robotics* (2015/2103(INL)), 9 November 2016; European Parliament resolution of 16 February 2017 with recommendations to the Commission on Civil Law Rules on Robotics (2015/2103(INL)). See Maffei, *cit.*, p. 151, fn. 55, and Maio, *cit.*, p. 530 ff.

[32] Maffei, *cit.*, pp. 150-151; Monda, *cit.*, pp. 158-159, with further references to Maio and Delfino.

determine whether refusal remains a real choice or just a formal possibility burdened with unacceptable costs.

6. *From Artifacts to Benchmarks: Where Does the Line of Dispute Really Lie?*

The debate around workplace augmentation most often focuses on the devices themselves: identification implants, exoskeletons supporting the musculoskeletal system, or BCI interfaces measuring cognitive reactions. In public and regulatory discourse, technology appears as a "material gadget", something that can be described, tested, certified, and possibly included in the framework of health and safety or data protection. This way of thinking favors questions like: Is the exoskeleton safe? Who has access to biometric data? How should an implant be classified under medical or technical device law? This approach, although of course necessary, is artifact-centric: it focuses on technical objects rather than on how their presence transforms the very structure of work norms and the understanding of the ability to perform work. As a result, the dispute over augmentation is often reduced to a discussion about the permissibility of using a specific technical solution, rather than reflecting on how the point of reference against which we assess the worker changes.

From the perspective of labour law, what is most important is not what device is introduced, but what changes in the benchmark: in norms of work pace, selection and evaluation criteria, definitions of "efficiency" and "availability". Exoskeletons, implants, or biometric systems begin to act in a norm-creating manner not because they are technologically advanced, but because they become an element of standard calibration, setting a new minimum of acceptable productivity, load resistance, continuous concentration, or readiness for work.

In this sense, augmentation shifts the dispute from the level of "should we use the device?" to the level of "according to what threshold do we assess the worker?". If this threshold is co-created by "enhanced" bodies, then unassisted workers may find themselves in a worse situation not because something has been taken away from them, but because the comparative standard has changed. It is here that issues of equality, indirect discrimination, and the cost of refusal are revealed: not in the technology itself as an artifact, but in its ability to reorganize norms. This shift from artifacts to benchmarks

also reveals the economic environment in which augmentation develops. It is here that the concept of turbocapitalism becomes relevant. In a competitive economy characterised by constant pressure to increase productivity, reduce costs and accelerate innovation, technological enhancement is unlikely to remain a neutral option available to individual workers. Once a technology makes higher output, longer concentration or greater physical endurance possible, market competition creates incentives to translate those possibilities into organisational expectations. The relevant mechanism is therefore not necessarily direct coercion by the employer. It may operate through competition itself. What is technically possible gradually becomes economically desirable, and what is economically desirable may eventually be transformed into a new benchmark of "normal" performance. From this perspective, turbocapitalism does not determine the use of augmentation, but it creates a structural pressure towards its normalisation. The danger is that technologies initially introduced as instruments of assistance, safety or inclusion may become mechanisms for raising the performance threshold. The distinction between enhancement as support and enhancement as a new productivity requirement therefore cannot be understood solely at the level of individual consent or technical regulation. It must also be analysed in relation to the economic forces that shape workplace standards.

At this point, the two theoretical frameworks that guide the considerations in this text meet. First, Haraway shows that the norm of work ability has always been co-constructed by the body and technology. Augmentation only makes this process visible. Her perspective unmasks the apparent naturalness of the benchmark and shows that there is no "pure" biology separate from tools, infrastructure, and work organization. Second, Farahany indicates a boundary of protection that, when crossed, undermines the autonomy and integrity of the person. Even if norms are co-created by technology, they cannot lead to a situation where refusal to connect the body or mind to the system becomes economically or socially impossible. Her voice introduces the dimension of a minimal guarantee, a "lower limit" below which labour law should not descend. This synthesis contains the theoretical core of the paper. The dispute over workplace augmentation is not primarily about the devices themselves but about the struggle over what benchmark will become the default point of reference, and whether labour law will recognize the pluralism of embodiments or consolidate the norm of performance co-created by technology.

It is worth citing here the example of Chinese enterprises that experimentally used EEG headbands to monitor the level of attention and fatigue of workers in production and transport. This can be described as an example of "digital discipline": workers are categorized according to cognitive performance in real time, which affects task allocation and evaluations. In response to these practices, a discussion about the right to mental privacy in the workplace has emerged. In such cases, it is crucial to reach a consensus on the acceptable limits of neurotechnology use in the workplace and to define what qualifies as invasive and unacceptable forms of neurosurveillance. It is unlikely that companies will invest in neurotechnology solely to increase employee safety. There are also other objectives, such as cost optimisation and productivity enhancement. It is therefore essential to look for a consensus between privacy and business interests[33].

The EU legislator has already reacted to some of these practices. Since February 2025, the AI Act has prohibited the use of AI systems to infer the emotions of a natural person in the workplace, except where the system is intended for medical or safety reasons (Article 5(1)(f)). Other AI systems used to monitor and evaluate the performance and behaviour of workers are classified as high-risk. Among other things, this entails the obligation to inform workers' representatives before such a system is put into service[34]. This is a significant step, but it also illustrates the limits of an artifact-centric approach. According to the Regulation itself, the notion of emotions does not cover physical states such as pain or fatigue, and systems detecting the fatigue of professional drivers or pilots are given as an example of what falls outside the ban[35]. A device monitoring the "alertness" or fatigue of a worker on a production line may therefore escape the prohibition, even though it produces exactly the kind of cognitive performance indicators described above. The law thus asks whether a given device infers emotions, not whether the data it produces will become a new benchmark against

[33] Muhl, Adorno, *Neurosurveillance in the workplace: do employers have the right to monitor employees' minds?*, in *FHD*, 2023, 5, https://doi.org/10.3389/fhumd.2023.1245619.

[34] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act), OJ L, 12.7.2024, Article 5(1)(f), applicable since 2 February 2025; Article 6(2) and Annex III, point 4(b); Article 26(7).

[35] Regulation (EU) 2024/1689 (AI Act), Recital 18. See also EC, *Guidelines on prohibited artificial intelligence practices established by Regulation (EU) 2024/1689 (AI Act)*, February 2025.

which workers are sorted, evaluated and assigned tasks. It is precisely this second question that remains unanswered.

7. *Literary Heuristics: What Does Science Fiction Show?*

This section uses science fiction literature not as a prediction of technological development, but as a heuristic device for identifying how augmentation may reshape workplace norms, expectations and the conditions of labour-market participation. From this perspective, science fiction helps to make visible a process that may otherwise remain difficult to detect - the gradual transformation of augmentation from an optional form of support into a silent point of reference against which "normal" ability to work is evaluated. In practice, this means that labour law must focus not on the devices themselves but on the work norms that are co-created by them. I treat science fiction not as a futuristic vision of technological development but as a tool for shifting the analytical perspective[36]. Literature allows us to see the tensions associated with body augmentation (between agency, performance norms, and the boundaries of autonomy) before they become the subject of legal or institutional disputes. In the works of authors such as William Gibson, Madeline Ashby, or Richard K. Morgan, body-assisting technology does not appear as a neutral improvement but as an element of a broader social order that redefines what is considered "normal" ability to act. In this sense, literature acts like a beacon set not over regulations but over their possible consequences: it illuminates a fragment of the landscape that is not yet visible in real disputes but towards which small, everyday technical and organizational decisions are heading.

In Gibson's narratives, especially in those fragments where cybernetic modifications become an indispensable condition for functioning in the world of work and corporate contracts, the technologically assisted body is not a tool of emancipation but a condition for participation in the system. In "Neuromancer", augmentation is a prerequisite for survival in cyberspace, and those who cannot afford it are doomed to marginalisation. The protag-

[36] The use of literature as a "predictive" or heuristic tool is not new in labour law scholarship on robotics; see Gottardi, *Da Frankenstein ad Asimov: letteratura 'predittiva', robotica e lavoro*, in *LLI*, 2018, 4(2), p. 3 ff.

onist, Case, is punished by his former employers by having his nervous system damaged so that he can no longer connect to cyberspace: the capacity on which his livelihood depends is simply switched off. His later restoration comes at a price, as toxin sacs are placed in his bloodstream that will dissolve unless he completes his assignment. It is a literal image of the body as collateral for performance[37]. In "The Peripheral", Gibson goes further, showing a depressed near-future economy in which technologically mediated work, including bodies ("peripherals") operated at a distance, becomes one of the few ways to earn a living, and in which bodily modifications acquired in military service leave lasting traces[38]. Gibson's characters often have no real choice: either they accept augmentation or they lose their chance at a job, and the technologies are in the hands of large corporations that dictate the terms. Workers become dependent on a system that can exclude them at any moment. Thus, augmentation not only assists but also changes identity: the boundary between man and machine becomes blurred.

A similar logic can be found in Madeline Ashby's "Company Town", where continuous modernization and body optimization are embedded in the economy of the city-platform[39]. Its protagonist, Hwa, is one of the few inhabitants of the city without any bodily augmentation, and her "organic" status is precisely what sets her apart in a world where enhancement has become the norm. In these narratives, enhancement does not mark an individual advantage but shifts the point of reference: what was previously an exceptional improvement becomes a new minimum, a new "normality". Companies, on the other hand, treat their workers' bodies as property, reminiscent of contemporary biometric monitoring practices. In Richard K. Morgan's "Altered Carbon", where human consciousness can be transferred between bodies ("sleeves"), physical capacity ceases to be a biological given and becomes a matter of access to capital: the wealthy can afford new and enhanced bodies, while the poor take whatever is available[40]. Similar themes, though maintained in a more intimate, reflective register, appear in Martha Wells' "The Murderbot Diaries", where control, surveillance, and performance management interfaces show how technology can simultane-

[37] Gibson, *Neuromancer*, Gollancz, 1984.
[38] Gibson, *The Peripheral*, Penguin, 2015.
[39] Ashby, *Company Town*, Tor Books, 2016.
[40] Morgan, *Altered Carbon*, Gollancz, 2002.

ously support action and limit the margin of autonomy[41]. One of the most brutal visions is "The Windup Girl", in which Paolo Bacigalupi presents a world where genetic engineering and biotechnology have become tools of social and economic control in a future Thailand, where global corporations manipulate food and human DNA, creating new forms of inequality and dependence[42]. In this dimension, augmentation becomes a tool for the colonisation of the labour market by global corporations. A landmark work, although seemingly only touching lightly on issues related to the world of work, is of course Philip K. Dick's pioneering novel "Ubik", which shows how technology affects the perception of reality and the autonomy of the individual[43].

Literature allows us to capture the moment when augmentation begins to co-create the performance benchmark, before its material counterparts appear in HR policies or performance evaluation systems. Even if the scale of interference presented there is literarily exaggerated, the logic remains recognizable. The deeper technology enters into the relationship with embodiment, the harder it becomes to clearly separate "the decision of the person" from the action of technical and organizational infrastructure.

These literary images are not cautionary tales or simple metaphors for the future. Their function is heuristic: they help us see that body augmentation always takes place in a specific system of power, standards, and expectations towards "improved" efficiency. Science fiction enables us to notice phenomena that in the practice of the working world often remain invisible for a long time, because they first appear as minor shifts in norms, "neutral" evaluation criteria, or reasonably justified technical solutions. Literature, on the other hand, presents them immediately in structural form. This is a process in which body enhancement ceases to be an individual choice and begins to shape the very definition of equality, agency, and integration.

In this sense, the narratives of Gibson, Ashby, Morgan, or Wells do not replace legal analysis; they direct it. They suggest where lines of tension may appear in the future: where body-assisting technology becomes not only a tool for health protection or increased efficiency but also a silent point of reference against which "normal" ability to work is evaluated. Read in this

[41] Wells, *All Systems Red (The Murderbot Diaries)*, Tor.com Publishing, 2017.
[42] Bacigalupi, *The Windup Girl*, Night Shade Books, 2009.
[43] Dick, *Ubik*, Doubleday, 1969.

way, the novels translate directly into the legal questions discussed in the previous sections: who sets the performance benchmark and on the basis of which bodies (Section 2), what the refusal of augmentation costs and who bears that cost (Section 3), and whether regulation looks only at devices or also at the norms they create (Section 4).

8. *Trade Unions and Worker Augmentation*

Trade unions approach the phenomenon of worker augmentation (e.g. exoskeletons, implants, brain-computer interfaces) with caution and critical engagement, seeing both an opportunity to improve working conditions and the risk of new forms of control and inequality. In their view, European regulations are needed to protect workers from abuses. In 2016, the European Trade Union Confederation (ETUC) adopted a resolution on digitalisation calling for a fair digital transition based on good working conditions, a safe and secure work environment and strong trade union involvement in shaping the digital transformation of work.[44] According to ETUC, technologies should not lead to "digital Taylorism", i.e. maximizing control over workers, inequality, and technological coercion. However, no further action was taken by this trade union organisation with regard to the phenomenon of worker augmentation. Subsequent trade union policy initiatives, and more recently also EU policy, focused on the use of algorithms in the workplace[45].

This may be a mistake. Research shows that assistive technologies can reduce physical strain, lower the risk of injuries and prolong the working life of older people or people with disabilities[46]. However, to ensure transparency and inclusiveness, the implementation of these technologies would

[44] ETUC, *Resolution on digitalisation: "towards fair digital work",* adopted by the Executive Committee on 8-9 June 2016, https://www.etuc.org/sites/default/files/document/files/en-resol.digitalisation_adopted.pdf.

[45] See most recently European Parliament resolution of 17 December 2025 with recommendations to the Commission on digitalisation, artificial intelligence and algorithmic management in the workplace – shaping the future of work (2025/2080(INL)).

[46] EU-OSHA, *Exoskeletons in the workplace: Safety, health and ethical implications*, 2020, healthy-workplaces.osha.europa.eu; Bhat, Gavin, Warnell, Myall, *Mapping the evidence on occupational exoskeleton use for the workforce in healthcare, social care, and industry: A systematic scoping review*, in *WT*, 2025, 6, https://doi.org/10.1017/wtc.2025.10033.

need to be collectively negotiated, voluntary and protective of workers' autonomy[47]. This applies in particular to the risk of indirect discrimination. Workers who do not use assistive technologies (for health, ethical or economic reasons) may be marginalised if performance standards are set based on the capabilities of "augmented" workers[48]. It therefore seems reasonable for trade unions to demand the inclusion of provisions in collective agreements that guarantee voluntariness, data protection and non-discrimination[49], and to call for social dialogue on the implementation of these technologies[50]. This also applies to the financing of equipment by employers (e.g. exoskeletons as personal protective equipment) in order to prevent the deepening of inequalities[51].

Why is it so important for trade unions to start placing greater emphasis on dialogue around augmentation? Most studies indicate that even if the Industry 4.0 revolution does not result in a significant decline in the number of "human" jobs (which I consider too optimistic), there will still be a significant decline in sectors where automation and robotization are expected to work better. The only solution to maintain an adequate presence of "human" workers alongside robots seems to be augmentation[52]. However, it must be introduced in cooperation with trade unions to avoid the assimilation of new, excessive work performance standards. Despite conducting intensive desk research, I have not been able to identify any examples of collective bargaining around augmentation. This seems strange, considering e.g. the development of exoskeleton use on assembly lines and the immediate question of its impact on individual health and safety conditions. So, what can be said about solutions that interfere more with the body?

This absence is all the more striking because the legal channels for involving workers' representatives already exist:

- Directive 89/391/EEC. It requires that the planning and introduction of new technologies be the subject of consultation with workers

[47] ILO, *cit*.

[48] Adamczyk, Surdykowska, *cit*.

[49] ILO, *Work for a brighter future: Report of the Global Commission on the Future of Work*, International Labour Office, 2019.

[50] EP, *cit*.

[51] EU-OSHA, *cit*.

[52] Nikolova, Cnossen, Nikolaev, *Robots, meaning, and self-determination*, in *RPol*, 2024, 53(5), https://doi.org/10.1016/j.respol.2024.104987.

and their representatives as regards their consequences for safety and health (Article 6(3)(c)), and it provides for balanced participation in all health and safety matters (Article 11).

- Directive 2002/14/EC. It requires information and consultation on decisions likely to lead to substantial changes in work organisation (Article 4(2)(c)), which the introduction of augmentation technologies may clearly entail.
- The GDPR. It allows collective agreements to lay down more specific rules on the processing of workers' data (Article 88).
- The AI Act. It obliges employers to inform workers' representatives before putting a high-risk AI system into service at the workplace (Article 26(7)).[53]

Some national systems go further. In Germany, for example, works councils have a right of co-determination over the introduction of technical devices designed to monitor workers' behaviour or performance. They also have rights of information and consultation on the planning of technical installations, and may demand corrective measures where changes to workplaces clearly contradict established ergonomic knowledge[54]. The social partners themselves have also produced instruments that could serve as a model. The European Social Partners Framework Agreement on Digitalisation of 2020 sets out a joint process for introducing digital technologies at the workplace and addresses issues such as surveillance, data and the "human in control" principle[55]. In the Italian debate, it has been proposed that the introduction of wearable robotic devices as a safety measure should be agreed in national protocols between the social partners, the national accident insurance institution and the ministries responsible for labour and health, following the model of the shared protocols negotiated during

[53] Directive 89/391/EEC, Articles 6(3)(c) and 11; Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, OJ L 80, 23.3.2002, pp. 29–34, Article 4(2)(c); Regulation (EU) 2016/679 (GDPR), Article 88; Regulation (EU) 2024/1689 (AI Act), Article 26(7). On the role of workers' representatives in the introduction of wearable devices see also D'Arcangelo, *cit.*, pp. 114-115, with reference to the recent Italian law on workers' participation (Law No. 76 of 15 May 2025).

[54] Works Constitution Act (Betriebsverfassungsgesetz), § 87(1)(6) and §§ 90-91.

[55] European Social Partners Framework Agreement on Digitalisation, ETUC, BusinessEurope, CEEP and SMEunited, June 2020.

the COVID-19 pandemic[56]. None of these instruments was designed with augmentation in mind. Together, however, they show that the absence of collective bargaining on augmentation is not due to a lack of legal tools. It is rather a question of trade union priorities and capacity.

Overall, one may get the impression that trade unions are still lack to confront a stark dilemma: defending traditional jobs and ultimately losing them in many cases, versus augmentation resulting in increased productivity and thus greater job security (for a few) but also in exposure to external interference with the employee's physicality. This dichotomy is so significant that this topic is not on the mainstream agenda of the European trade union movement.

One possible explanation for the limited trade union engagement with augmentation is the interdisciplinary and technically complex nature of the phenomenon. Augmentation is a relatively new issue that combines elements of technology, labour law, ethics, occupational health and safety and personal data protection. Many people involved in trade unions do not have sufficient technical knowledge to understand how exoskeletons, implants or BCI systems work, or what risks and benefits they entail.

Examples of misunderstanding:

- Exoskeletons are often seen as modern personal protective equipment, when in fact they can change the definition of "normal" performance and lead to new forms of discrimination.
- Identification implants are seen as a convenient solution, but they carry the risk of privacy violations and dependence on the employer.
- Biometric monitoring systems (e.g. heart rate, stress level measurement) are often seen as tools for improving safety, when in fact they can be used to control and evaluate employee performance.

Drawing on existing trade union positions on digitalisation and artificial intelligence[57], the following minimum recommendations can be formulated for trade unions:

- Voluntariness: augmentation cannot be mandatory.
- Data protection: ban on using biometric data for evaluation or disciplining workers (cf. Articles 9 and 88 GDPR).

[56] Maffei, *cit.*, pp. 149-150.

[57] ETUC, *Resolution: Artificial Intelligence for Workers, Not Just for Profit: Ensuring Quality Jobs in the Digital Age*, 2025, https://www.etuc.org/en/document/artificial-intelligence-workers-not-just-profit-ensuring-quality-jobs-digital-age.

- Financing: devices should be paid for by the employer, not the workers.
- Social dialogue: consultations with unions before introducing technology (Article 6(3)(c) of Directive 89/391/EEC).
- Alternatives: augmentation should not replace better working conditions (e.g. more staff, ergonomic workstations) (cf. the priority of collective over individual protective measures, Article 6(2)(h) of Directive 89/391/EEC).

9. *Summary and Tentative Recommendations: Between Inclusion and New Lines of Division*

Technological enhancement of the body, from exoskeletons to brain-computer interfaces, is not just a matter of new tools and technologies appearing in the workplace, as was the case in previous industrial revolutions. It represents a shift in the paradigm of human work, where the boundary between "natural" and "assisted" ability to work becomes fluid. As Haraway and Farahany show, the worker's body has always been part of a technological network, but augmentation radicalizes this process, making it an element co-defining norms of performance, safety, and equality. In practice, this means that the benchmark of "normal" ability to work ceases to be based solely on biology and begins to be co-created by devices, algorithms, and work organization. This, in turn, raises a fundamental question: can labour law continue to operate with categories derived from the "natural body" model? Another important question concerns the protection of pluralism of choices in the workplace, so that technology supports rather than forces assimilation to a new standard.

Augmentation technologies bring the promise of inclusion: they can reduce physical barriers, extend the careers of older people, or enable people with mobility limitations to work[58]. At the same time, however, they generate new lines of division. These can be described in three categories:

- "Enhanced" vs. "natural". Workers using augmentation may become "more valuable" from the employer's perspective, leading to pressure for "improvement", overt or indirect[59].

[58] EU-OSHA, *cit.*; Bhat, Gavin, Warnell, Myall, *cit.*
[59] ILO, *cit.*

– Indirect discrimination. Selection systems, performance evaluations, or work schedules calibrated to "enhanced" bodies may marginalize those who, for ethical, health, or economic reasons, do not use the technology. For example, if the pace of work or absence thresholds are set based on the capabilities of workers with exoskeletons, unassisted individuals may be treated as "unfit", even though their biological efficiency falls within previous norms.

- Privacy and biometric data. Devices collecting body data (e.g. movement patterns, stress levels) pose risks of surveillance, worker segmentation, and the use of data for personnel decisions[60].

For augmentation to become a tool of integration rather than exclusion, labour law must address four fundamental challenges:

a) Equality and Indirect Discrimination

– Reinterpretation of legal categories: Current frameworks (e.g. EU equality directives) prohibit discrimination based on disability, age, or sex, but do not account for technological enhancement as a potential source of inequality: the refusal of augmentation is protected only where it can be linked to one of the protected grounds. It is necessary to extend protection to the refusal of augmentation and ensure that work norms (e.g. pace, load) do not favor only workers with "enhanced" bodies/minds.

- Equality test: The law should examine whether points of reference (e.g. "normal performance") are set in an inclusive manner or are based on standards available only to some workers. To some extent, this test already exists in the justification requirement for indirect discrimination: calibrating norms to enhanced bodies should be accepted only where it is genuinely necessary.

– Reasonable accommodation: Assistive devices should be recognised as a possible form of reasonable accommodation for workers with disabilities, but the inability to use a device must never in itself become a reason for exclusion.

b) Autonomy and Consent

– Relational consent: Formal consent to use technology is not sufficient if the worker incurs the cost of refusal (e.g. lower ratings, limited access to tasks). Farahany emphasizes that the law must protect physical and

[60] Kühler, Wagner, Brey, Sienna, *D3.7: Proposal for an Ethical Framework for Human Enhancement (Version V1.0)*, 2020, https://zenodo.org/records/4275579.

cognitive integrity as a lower limit of protection: even if technology brings benefits, it cannot lead to a situation where refusal becomes economically or socially impossible[61]. Data protection law already recognises this with regard to personal data; the same logic should be extended to the use of devices acting on the body.

- Right to "unenhanced" work: The worker should have a real alternative, without professional consequences, if they decide not to use augmentation. The principle proposed in 2016 by the European Parliament's Committee on Employment and Social Affairs, according to which refusing an implant, a prosthesis or an extension to one's body should never lead to unfavourable treatment in employment, could serve as a ready-made model.

c) Data Protection and Privacy

- Data minimization: Collections of biometric data (e.g. from sensors or implants) should be subject to strict rules (GDPR, principle of proportionality).

- Transparency and control: Workers must know what data is collected, what it is used for, and who has access to it. The ban on using health data for discriminatory purposes (e.g. in promotions or dismissals) should be absolute.

- Beyond emotion recognition: The AI Act's ban on emotion recognition at work does not cover the monitoring of fatigue or "alertness". Such data should not be allowed to become a new performance benchmark through the back door.

d) Health and Safety

- Adapting work to the worker: Augmentation should be assessed against the principles of Directive 89/391/EEC, i.e. adapting work to the individual and giving priority to collective over individual protective measures. Devices should complement, not replace, the ergonomic redesign of workstations, and their introduction should be the subject of consultation with workers' representatives.

The debate on augmentation often focuses on the devices themselves (e.g. "Is the exoskeleton safe?", "Will the implant interfere with brain function?"). Meanwhile, the key question is: how does technology change work norms? Science fiction literature (Gibson, Ashby, Morgan) shows that body enhancement can become a new standard that redefines "normality", before

[61] Farahany, *cit.*

we even notice that it excludes those who cannot or do not want to use it. The reality of such challenges is evidenced by research conducted a few years ago by the global Citrix group, which found that more than half of the business leaders and professionals surveyed (51%) believe that by 2035, technology will provide workers with at least twice the productivity, including through wearable technologies cooperating with various systems, exoskeletons improving performance-related tasks, augmented reality glasses, and neuronally connected technologies controlling various devices[62].

Therefore, labour law must focus not on gadgets but on:

- Shifting the point of reference: Are performance, health and safety, or evaluation norms set in an inclusive manner?
- Cost of refusal: Does a worker who does not use augmentation have a real chance of equal treatment?
- Pluralism of embodiments: Does the legal system protect the diversity of abilities, or does it stabilize the norm based on "enhanced" bodies?

Based on the analysis of ILO documents (2019, 2025), the European Parliament (2022), and EU-OSHA (2020), as well as the EU legal framework discussed above, the following recommendations can be formulated:

Area	Actions	Responsible Entities
Voluntariness	Ensure that the decision to augment is informed, voluntary, and not associated with negative consequences for those who refuse.	Employers, trade unions, regulators
Data Protection	Introduce clear rules for processing biometric data (anonymization, minimization, purposefulness), including through collective agreements (Article 88 GDPR) and data protection impact assessments.	Labour inspectorates, data protection authorities, social partners
Financing	Subsidize protective devices (e.g., exoskeletons reducing injuries) from public funds or by the employer.	State, social security systems

[62] Minahan, Obeidullah, *Work 2035. How people and technology will pioneer new ways of working*, Citrix, 2019, https://be.insight.com/content/dam/insight-web/be_be/learn/pdf/Citrix-work-2035.pdf.

Area	Actions	Responsible Entities
Social Dialogue	Include augmentation topics in collective labour agreements and consultations with trade unions, using existing information and consultation rights (Directive 89/391/EEC, Directive 2002/14/EC, AI Act).	Social partners, employers
Safety	Determine limits on working hours under technological load and monitor the risk of secondary injuries.	Labour inspectorates, occupational health and safety specialists
Hierarchy of Prevention	Treat augmentation as a complement to, not a substitute for, collective measures and ergonomic workstation design.	Employers, labour inspectorates, OSH specialists
Equal Treatment	Do not calibrate performance standards exclusively to enhanced workers; provide reasonable accommodation where devices cannot be used.	Employers, equality bodies, courts
Education and Training	Provide training on device operation and legal education regarding rights and risks.	Employers, training institutions

Technological enhancement of the body is a mirror reflection of broader changes in the labour market: the increasing role of algorithms, uncontrolled data transfer, and pressure for maximum efficiency to meet the consumption stimulated by global corporations, which is a natural consequence of turbocapitalism. It reflects broader transformations of the labour market. In such an environment, the risk is not merely that new technologies will be introduced, but that the performance gains they make possible will gradually be transformed into new organisational benchmarks. Labour law faces a choice between Assimilation (acceptance that "normal" ability to work will increasingly depend on technology, which may deepen inequalities) and Inclusion (protection of pluralism of embodiments, so that augmentation is a tool of support, not coercion).

The objective is not to preserve a supposedly "natural" worker against technological change. It is to preserve a socially and legally constructed space in which unenhanced work remains a legitimate and equal form of participation in the labour market, rather than becoming a deviation from

a technologically elevated norm. The cyborgization of work is not the future; it is already happening. Whether it becomes an opportunity for greater justice depends on whether its implementation can be shaped collectively, transparently and through regulation. ILO and EU documents provide tools, but implementation must be swift and practical, from health and safety rules to data protection and anti-discrimination law. Actions should be taken now, before new lines of division become permanent.

Abstract

The paper examines how workplace body-enhancement technologies, including exoskeletons, implants, biometric monitoring, and brain-computer interfaces, challenge traditional labour law. It argues that these technologies redefine the concept of work ability by shifting the benchmark from natural human capacity to technologically assisted performance. While augmentation can improve occupational safety, extend working lives, and promote inclusion, it also creates new risks of indirect discrimination, privacy violations, and pressure to adopt enhancement technologies. The author proposes that labour law should protect the pluralism of human abilities rather than normalize enhanced performance as the new standard. Drawing on the theories of Donna Haraway and Nita Farahany, the paper emphasizes autonomy, bodily integrity, and the real cost of refusing augmentation. It also highlights the limited engagement of trade unions with these emerging issues and recommends stronger regulation, collective bargaining, data protection, voluntariness, and social dialogue to ensure that technological innovation promotes inclusion instead of creating new forms of workplace inequality.

Keywords

Augmentation, Labour Law, Inequality, Trade Unions.

Mark Bell*

Diverging Pathways: Accommodation of Worker Diversity and the Case-Law of the Court of Justice

Contents: 1. Introduction. 2. Embracing Workplace Accommodations: Persons with Disabilities. 2.1. The Nature of the Reasonable Accommodation Duty. 2.2. The Scope of Appropriate Measures. 3. Extending Workplace Accommodations to Persons with Caring Responsibilities. 4. Between Ambivalence and Antagonism: Workplace Accommodations and Persons with Religious Beliefs and Practices. 5. Conclusions.

1. *Introduction*

Writing in 2002, Professor Marco Biagi observed "further efforts must be made in order to make the principle of equality more effective in the labour market. In order to make this achievement more realistic non-traditional tools must also be experimented with"[1]. Although almost one quarter of a century has passed since these words, they continue to resonate with today's world of work. In the intervening period, workplace accommodations emerged in Europe as an innovative way of tackling labour market disadvantage. Accommodations can be described as measures that seek to remove or mitigate barriers to participation in employment. These adjustments can relate to physical infrastructure, equipment and technologies, but they can also extend to all the ways in which work is organised, including

* This article is based on a paper presented at the XXIII International Conference in Commemoration of Professor Marco Biagi held at the Fondazione Marco Biagi in March 2026.

[1] Biagi, *Equality and the Labour Market*, in *IJCL*, 2002, p. 127.

policies and procedures. Workplace accommodations are most frequently associated with advancing equality for persons with disabilities, but they are a general technique that can be used to respond to the obstacles that arise when human diversity encounters "standard" operating methods[2]. For example, consider an occupational requirement to work a variety of shifts at different times and days. This could be difficult to reconcile with the availability of care services for those workers with caring responsibilities. It could be problematic to combine with some workers' religious observance requirements. It might not be suitable for those workers whose health requires a regular pattern of rest. In these scenarios, modifying the standard work schedule could be a way to remove the barrier that it presents for certain workers. The premise of workplace accommodations is that treating all persons in an identical fashion can be inimical to the pursuit of equality. At times, providing different treatment is necessary to bring about "substantive equality"[3]. Yet genuine dilemmas arise around the circumstances in which equality demands a departure from treating people in the same manner[4]. In addition, accommodation requests can throw up thorny questions around how to balance the rights and interests of all the parties affected. This includes the person who needs the accommodation, their employer, co-workers, and third parties (such as customers and service-users).

EU anti-discrimination law explicitly endorses workplace accommodations in respect of persons with disabilities. Directive 2000/78, hereafter the "Employment Equality Directive", obliges employers to provide reason-

[2] Lawson, *Reasonable Accommodation Law in Europe: Where Now and Where Next?*, in O'Cinneide, Ringelheim, Solanke (Eds.), *Research Handbook on European Anti-Discrimination Law*, Edward Elgar Publishing, 2025, p. 209. See also, Davidov, Mundlak, *Accommodating All? (or: 'Ask Not What You Can Do for the Labour Market; Ask What the Labour Market Can Do for You')*, in Blanpain, Hendrickx (Eds.), *Reasonable Accommodation in the Modern Workplace: Potential and Limits of the Integrative Logics of Labour Law*, Wolters Kluwer, 2016, p. 195; Buonocore Porter, *Accommodating Everyone*, in *SHLR*, 2016, p. 85.

[3] Lawson, cit., p. 209. On substantive equality, see, inter alia, Fredman, *Discrimination Law*, 3rd edn, Oxford University Press, 2022, ch. 1; Loenen, *The Conceptualization of Equality and Non-discrimination as Legal Standards: From Formal to More Substantive Equality*, Brill, 2024, ch. 3; DeVos, *The European Court of Justice and the March Towards Substantive Equality in European Union Antidiscrimination Law*, in *IJDL*, 2020, p. 62.

[4] Minow, *Making All the Difference: Inclusion, Exclusion, and American Law*, Cornell University Press, 1990, pp. 20-21.

able accommodation for persons with disabilities[5]. In respect of the other protected characteristics found within EU anti-discrimination law, there is no express duty of accommodation, but indirect discrimination is prohibited. Article 2(2)(b) of the Employment Equality Directive states:

"indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary…"[6].

As discussed further in this article, there is potential for the prohibition of indirect discrimination to be interpreted in a way that places employers under an obligation to provide accommodations.[7] For example, an employer's requirement to work Saturdays is likely to put persons with particular religious beliefs at a particular disadvantage, e.g. Jews or Seventh Day Adventists who observe sabbath from sunset on Friday. If we assume that the employer has legitimate business reasons for requiring work on Saturdays, the question arises as to whether it is "appropriate and necessary" for the employer to apply this schedule to the employees affected. This test opens the door to consider whether it would be proportionate for the employer to make an adjustment to the schedule to accommodate the religious practices of certain employees.

This article explores how workplace accommodations have been handled within the case-law of the Court of Justice of the European Union

[5] Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16, article 5.

[6] There is an equivalent prohibition of indirect discrimination on grounds of racial or ethnic origin in article 2(2)(b), Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin [2000] OJ L180/22. Indirect discrimination on grounds of sex is prohibited in several legislative instruments including article 2(1)(b), Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) [2006] OJ L204/23.

[7] See, *inter alia*, Bribosia, Rorive, *Reasonable Accommodation Beyond Disability in Europe?*, Office for Official Publications of the European Union, 2013, p. 38; Howard, *Law and the Wearing of Religious Symbols in Europe*, Taylor & Francis, 2019, p. 232; Vickers, *Conscientious Objections in Employment: Is a Duty of Reasonable Accommodation the Answer?*, in Adenitire (Ed.), *Religious Beliefs and Conscientious Exemptions in a Liberal State*, Hart Publishing, 2019, p. 186; Loenen, *cit.*, p. 161.

(CJEU). It identifies three situations where the Court has been confronted with applicants seeking workplace accommodations on the basis of EU anti-discrimination law. Section 2 considers case-law on persons with disabilities; section 3, case-law on persons with caring responsibilities; and section 4, case-law on persons with religious beliefs and practices. The examination of this case-law exposes considerable divergence in the Court's approach. The Court has embraced and expanded workplace accommodations for persons with disabilities. Recently, it has shown willingness to extend this case-law to persons with caring responsibilities, at least in respect of those caring for persons with disabilities. In contrast, the Court has been ambivalent towards the possibility of workplace accommodations for persons with religious beliefs. Section 5 concludes the article by analysing the reasons that may explain the variations within the case-law. Obviously, the legislative framework is the primary reason why accommodation duties are stronger in respect of persons with disabilities. The article finds, however, that this does not entirely account for the pattern of the Court's case-law.

2. *Embracing Workplace Accommodations: Persons with Disabilities*

This section examines the approach taken by the CJEU to making workplace accommodations for persons with disabilities. The duty to provide reasonable accommodation is set out in Article 5 of the Employment Equality Directive:

"In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer."

There has been a significant body of case-law that relates to this provision[8], but, for the purposes of this article, it is sufficient to concentrate on

[8] A more detailed account of this case-law can be found elsewhere in the academic literature. See, *inter alia*, Ferri, Lawson, *Reasonable Accommodation for Disabled People in Employment: a Legal Analysis of the Situation in EU Member States, Iceland, Liechtenstein and Norway*, Publications Office of the European Union, 2016, pp. 51-55; Daly, Whelan, *Disability in Employment*

the overall trajectory that emerges. This section contends that the Court has adopted an expansive interpretation of the legislation, which has been guided by an underlying goal of promoting labour market inclusion for persons with disabilities. Specifically, it examines two strands that emerge from the case-law: (i) the nature of the reasonable accommodation duty; and (ii) the scope of appropriate measures. It must be acknowledged that there are other aspects of the Court's case-law on disability rights that have attracted criticism[9]. Without contradicting those perspectives, the argument here is that its case-law on reasonable accommodation has been largely favourable towards disability rights.

2.1. *The Nature of the Reasonable Accommodation Duty*

Although Article 5 placed a duty to provide reasonable accommodation on employers, it did not clarify how it related to the prohibition of discrimination. Article 2 of the Directive identifies several forms of conduct that constitute "discrimination": direct discrimination, indirect discrimination, harassment, and an instruction to discriminate. A failure to provide reasonable accommodation is not mentioned in this list. The distinction thereby drawn between "discrimination" and "accommodation" could have been the basis for a more restrictive interpretation of the latter. Waddington pointed out that excluding reasonable accommodation from the concept of discrimination could have legal and practical consequences for complainants, such as leading to weaker sanctions and remedies[10]. Moreover, this

Equality Law: A Reappraisal of the Reasonable Accommodation Duty and Issues Arising in its Implementation, in *MJECL*, 2021, p. 744; Gyulavári, *Recent CJEU Case Law on 'Reasonable Accommodation' at Work: Towards the Recognition of a New Discrimination Form*, ERA Forum, 2023, p. 361; Waddington, Broderick, *Court Practices Regarding Disability Discrimination, Including Reasonable Accommodation, at EU and Member State Level, and in Light of the UN CRPD*, Publications Office of the European Union, 2024, pp. 28-38; Lawson, *cit.,* pp. 218-221.

[9] Academic literature has often criticised the Court's stance on the definition of disability: Broderick, Waddington, *Emerging Trends in Disability Anti-Discrimination Law in Europe*, in O'Cinneide, Ringelheim, Solanke (Eds.), *Research Handbook on European Anti-Discrimination Law*, Edward Elgar Publishing, 2025, p. 340. There has also been criticism of its use of the EU Charter of Fundamental Rights in relation to disability: Ferri, *The Unorthodox Relationship between the EU Charter of Fundamental Rights, the UN Convention on the Rights of Persons with Disabilities and Secondary Rights in the Court of Justice Case Law on Disability Discrimination*, in *European Constitutional Law Review*, 2020, p. 275.

[10] Waddington, *Equal to the Task: Re-examining EU Equality Law in the Light of the United*

placed EU law at odds with the UN Convention on the Rights of Persons with Disabilities (CRPD), which was adopted in 2006[11]. The Convention is clear that "denial of reasonable accommodation" constitutes "discrimination on the basis of disability"[12].

Although there was the potential for the distinction between "discrimination" and "accommodation" to prove a weakness in the Directive, an overview of the case-law reveals how the Court has avoided this jeopardy. At the outset, it identified that failure to provide reasonable accommodation could be the basis for a finding of direct or indirect discrimination. *Chacón Navas* concerned an employee who was dismissed following long-term sickness[13]. While the judgment is primarily concerned with the definition of disability[14], the Court held that:

"The prohibition, as regards dismissal, of discrimination on grounds of disability … precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post"[15].

In essence, this implies that it constitutes prohibited discrimination to dismiss a person with a disability if the provision of reasonable accommodation would have permitted the person to perform the essential functions of their position.

The Court's reasoning on the connection between discrimination and accommodation has become clearer with the evolution of the case-law. *Nobel Plastiques Ibérica* concerned an employee with a disability who had been selected for redundancy[16]. The criteria used included productivity rate,

Nations Convention on the Rights of Persons with Disabilities, in *European Yearbook of Disability Law*, 2013, p. 190.

[11] Sixty-first session of the General Assembly, A/RES/61/106, 12 December 2006.

[12] CRPD, article 2. See further, Ferri, Lawson, *cit.*, pp. 48-51; Broderick, Ferri, *International and European Disability Law and Policy - Text, Cases and Materials*, Cambridge University Press, 2019, pp. 96-106; Lawson, *cit.*

[13] Case C-13/05 *Chacón Navas v Eurest Colectividades SA* EU:C:2006:184.

[14] See further on this aspect, Waddington, *Case C-13/05, Chacón Navas v. Eurest Colectividades SA, judgment of the Grand Chamber of 11 July 2006,* in *CMLR*, 2007, p. 487; Waddington, *Saying All the Right Things and Still Getting It Wrong: The Court of Justice's Definition of Disability and Non-Discrimination Law*, in *MJECL*, 2015, p. 576.

[15] *Chacón Navas*, *cit.,* para 51.

[16] Case C-397/18 *DW v Nobel Plastiques Iberica SA* EU:C:2019:703.

level of multi-skilling on the job, and rate of absenteeism. The applicant argued that the adverse scores that she received under those criteria were linked to the effects of her disability. The CJEU accepted that these criteria could place persons with a disability at a particular disadvantage, so this was a potential case of indirect discrimination[17]. At this point, the Court brings into play the duty to provide reasonable accommodation. Specifically, the Court concluded that the selection criteria could not be justified if the employer had not taken appropriate measures to provide reasonable accommodation for the worker, prior to her selection for redundancy[18]. In justifying this conclusion, the Court stated that "it must be borne in mind" that the definition of discrimination on grounds of disability found in Article 2 CRPD includes denial of reasonable accommodation[19]. This demonstrated an awareness that the text of the CRPD was different to that of the Directive, but an apparent disposition on the part of the Court to avoid any substantive conflict of norms. Gyulavári argues that this case is a prime illustration of the nexus between the reasonable accommodation duty and exemptions from the prohibition of discrimination[20]. The accommodation duty becomes applicable in the context of determining whether the company's redundancy criteria were objectively justified.

In *Tartu Vanglu*, a prison officer had been dismissed because his hearing had fallen below the minimum level required for his role. He was not, however, permitted to use hearing aids during the assessment of his auditory acuity. The referring court sought guidance from the CJEU on whether this could constitute direct discrimination on grounds of disability. The CJEU held that this was a difference of treatment because of disability, so it fell within the concept of direct discrimination[21]. Such conduct may be permitted if it constitutes a genuine and determining occupational requirement[22]. In considering whether it was a justified occupational requirement, the Court recalls the employer's duty to provide reasonable accommodation. Specifically, permitting the employee to use a hearing aid during the assessment of his hearing was an "appropriate measure" that the employer could

[17] Paras 59-60.
[18] Para 71.
[19] Para 72.
[20] Gyulavári, *cit.*, p. 365.
[21] Case C-795/19 *XX v Tarta Vanglu* EU:C:2021:606, para 30.
[22] Directive 2000/78, article 4(1).

have taken[23]. This was in the context of an employee who had performed his role satisfactorily for 14 years and in the absence of any indication that permitting the use of a hearing aid would give rise to a disproportionate burden for the employer[24]. Accordingly, national legislation that required the employee to be dismissed with no ascertainment of whether reasonable accommodation could be provided was contrary to the Directive[25]. In this case, the Court converged the concept of direct discrimination with the duty to provide reasonable accommodation[26].

Recent case-law has continued in this trajectory. In *Pauni*, the Court had to determine whether a collective agreement that permitted the dismissal of an employee after 180 days of sick leave constituted indirect discrimination on grounds of disability[27]. The Court held that such a provision could only be justified if, prior to the employee's dismissal, the employer was required to provide reasonable accommodation that might enable the employee to return to work[28]. In summary, the Court has rejected an approach that considered "discrimination" and "accommodation" as substantively different legal norms. Instead, it has blended these concepts. This has minimised the significance of reasonable accommodation not being mentioned in the definition of discrimination in the Directive and, in so doing, it has favoured harmony with the CRPD. Nevertheless, Gyulavári points out that most of the Court's case-law achieves this outcome through connecting the accommodation duty with the exemption tests for direct and indirect discrimination[29]. As a matter of legal doctrine, this remains distinct from the notion that failure to provide reasonable accommodation is *per se* discrimination on grounds of disability. These cases also display a common theme of seeking to sustain the relationship between the employer and the

[23] *Tarta Vanglu*, cit., para 51.

[24] Para 51.

[25] Para 53.

[26] See also Case C-824/19 *TC and UB v Komisia za zashtita ot diskriminatsia and VA* EU:C:2021:862, where the Court held that direct discrimination could arise where there was a failure to investigate the possibility of reasonable accommodation.

[27] Case C-5/24 *Pauni* EU:C:2025:689. See further, Ylhäinen, *Indirect Discrimination and the Duty to Accommodate: Reframing the Boundaries of Directive 2000/78 in Bervidi and Pauni*, in *ELLJ*, 2026, p. 339.

[28] Paras 54-61.

[29] Gyulavári, *cit.*, p. 375. As discussed below, he points out that in this respect the Court's decision in *HR Rail* departs from the pattern of its other case-law.

employee. On several occasions, the Court has asserted the importance of not overlooking the potential consequences of job loss for persons with disabilities "who generally face greater difficulties than non-disabled persons in re-entering the labour market"[30].

2.2. *The Scope of Appropriate Measures*

Article 5 of the Employment Equality Directive places a duty on employers to take "appropriate measures". Guidance on the meaning of this term can be found in recital 20 in the preamble of the Directive, which states that these are:

"effective and practical measures to adapt the workplace to the disability, for example adapting premises and equipment, patterns of working time, the distribution of tasks or the provision of training or integration resources."

Although this indicates that a flexible approach should be adopted, the Court has played a critical role in confirming that appropriate measures should be interpreted broadly. This issue was central to the *HK Danmark* cases[31]. In these cases, the applicants developed medical conditions that prevented them continuing to work full-time. After a period of sickness absence, they were both dismissed from their jobs. Subsequently, their trade union brought proceedings arguing that they should have been offered reduced hours because of the duty to provide reasonable accommodation[32]. The employers argued that reducing working hours did not fall within the scope of "appropriate measures" according to Article 5 of the Directive. They contended that the reference to "patterns of working time" in recital 20 was limited to altering the "rhythms of work", such as providing more breaks for workers with disabilities[33].

These cases arose after the EU had ratified the CRPD[34] and the Court

[30] Cases C-335/11 and 337/11 *HK Danmark, acting on behalf of Jette Ring v Dansk almennyttigt Boligselskab; HK Danmark, acting on behalf of Lone Skouboe Werge v Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S* EU:C:2013:222, para 91; Case C-270/16 *Ruiz Conejero v Ferroser Servicios Auxiliares SA, Ministerio Fiscal* EU:C:2018:17, para 51; *Pauni*, *cit.*, para 50.

[31] *HK Danmark*, cit.

[32] Para 23.

[33] Para 51.

[34] Council Decision 2010/48/EC concerning the conclusion, by the European Com-

confirmed that this meant that the Employment Equality Directive "must, as far as possible, be interpreted in a manner consistent with that convention"[35]. It drew attention to the "broad definition" of reasonable accommodation found in Article 2 CRPD[36]. Accordingly, it held that reasonable accommodation encompasses the "elimination of the various barriers that hinder the full and effective participation of persons with disabilities in professional life on an equal basis with other workers"[37]. Ultimately, this was a purposive approach that favoured labour market inclusion[38]; if a reduction in working hours would allow the worker to continue in employment, then it fell within the concept of an "appropriate measure"[39].

HK Danmark concerned employees who wished to continue in their existing positions, albeit with reduced hours. A more challenging question was whether reasonable accommodation encompassed transfer to a *different* job within the same organisation. This was confronted by the Court in *HR Rail*[40]. The complainant was a trainee working as a technician on the Belgian railways. After one year, he was diagnosed with a heart condition, and this required the fitting of a pacemaker. The railway tracks contained electromagnetic fields, but the pacemaker was incompatible with repeated exposure to such fields. Consequently, the company's medical centre confirmed that he was unfit to continue in his existing position. The complainant was temporarily reassigned to the role of warehouseman, but he was dismissed after three months. According to the company's staff rules, reassignment in the event of disability was only available to permanent members of staff and not to trainees. The Belgian *Conseil d'État* sought an interpretation of Article 5 of the Employment Equality Directive in relation to whether it required an employer to assign an employee to another post where, because of disability, he was no longer able to perform the essential functions of his current position[41]. When considering the

munity, of the United Nations Convention on the Rights of Persons with Disabilities [2010] OJ L23/35.

[35] *HK Danmark*, cit., para 32.

[36] Para 53.

[37] Para 54.

[38] Broderick, Waddington, *cit.*, p. 351.

[39] *HK Danmark*, cit., para 56.

[40] Case C-485/20 *XXXX v HR Rail* EU:C:2022:85.

[41] Para 24.

wording of the Directive, recital 17 appeared to militate against such an interpretation[42]. It states:

"This Directive does not require the recruitment, promotion, maintenance in employment or training of an individual who is not competent, capable and available to perform the essential functions of the post concerned or to undergo the relevant training, without prejudice to the obligation to provide reasonable accommodation for people with disabilities."

In *HR Rail*, it was clear that, even after reasonable accommodation had been provided, the employee could no longer perform "the essential functions of the post concerned". Nevertheless, Advocate-General Rantos argued in favour of a purposive approach to the interpretation of the duty on the basis that reasonable accommodation was "the means to achieve substantive equality in a concrete and individualised situation of discrimination"[43]. Drawing inspiration from the CRPD and the EU Charter of Fundamental Rights (CFR), he contended that "people with disabilities should be kept in employment rather than being dismissed for unfitness, which should only be a last resort"[44]. The judgment of the Court followed his reasoning. Surprisingly, it made no reference to recital 17. Instead, it cited the definition of appropriate measures found in recital 20. This mentions "measures to adapt the workplace to the disability". In the view of the Court, adaptation of the "workplace" extended to reassignment to another position therein[45]. Gyulavári highlights that this case was also significant because it treated the duty of accommodation as a free-standing legal obligation, which was not dependent on a finding of direct or indirect discrimination[46].

The interpretation of provisions of EU law relies on a combined analysis of the text, context, and purpose[47]. *HR Rail* illustrates that the Court has been guided by purpose in its interpretation of Article 5 of the Employment Equality Directive. A stronger emphasis on the text of the Directive might have confined the duty to provide reasonable accommodation to

[42] Daly, Whelan, *cit.*, p. 748.

[43] Case C-485/20 *XXXX v HR Rail* EU.:C:2021:916, Opinion of AG Rantos, para 84.

[44] Para 68.

[45] *HR Rail*, cit., para 41.

[46] Gyulavári, *cit.*, p. 375.

[47] Lenaerts, *Interpretation and the Court of Justice: A Basis for Comparative Reflection*, International Lawyer, 2007, p. 1016. See, e.g., Case C-19/23 *Denmark v Parliament and Council (Adequate Minimum Wages)* EU:C:2025:865, para 106.

situations where the employee remains capable of performing the essential functions of "the post concerned"[48]. Instead, it relied upon other sources to take a wider view of when reasonable accommodation should be available. For example, it pointed out that Article 26 CFR speaks of "the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration"[49]. In *Ca Na Negreta*, the Court reaffirmed that reassignment to another position fell within the scope of reasonable accommodation[50]. In support of this conclusion, it cited also Article 27(1) CRPD on work and employment[51]. This mentions the situation of persons who acquire a disability during the course of employment and it requires states to prohibit discrimination in the "continuance of employment".

★★★

Standing back from the detail, the CJEU has proved to be a receptive venue for applicants seeking to rely upon the duty to provide reasonable accommodation[52]. Lawson and Waddington observed that there has been "clarity and resolution" in the Court's interpretation of Article 5 of the Employment Equality Directive[53]. It has sustained this approach by emphasising the need to interpret the duty in the light of the fundamental rights of persons with disabilities found in the CRPD and, more recently, the CFR. A practical focus on doing what it takes to promote the inclusion of persons with disabilities in the workplace has allowed the Court to eschew a narrow reading of the text of the Directive. This is particularly evident in its endorsement of job reassignment as a form of accommodation that must be

[48] AG Rantos argued that, "read broadly", the reference to the "post concerned" in recital 17 could be taken to mean the post to which the employee has been reassigned: *HR Rail*, cit., para 74.

[49] *HR* Rail, cit., para 42.

[50] Case C-631/22 *JMAR v Ca Na Negreta SA* EU:C:2024:53.

[51] Para 50.

[52] Miller makes the case that the whole body of the Court's case-law on disability rights has been "quite plaintiff-friendly": Miller, *The European Disability Rights Revolution*, in *ELR*, 2019, p. 88.

[53] Lawson, Waddington, *The Unfinished Story of EU Disability Non-discrimination Law*, in Bogg, Costello, Davies, (Eds.), *Research Handbook on EU Labour Law,* Edward Elgar Publishing, 2016, p. 494.

considered. The Court has yet to declare unequivocally that denial of reasonable accommodation constitutes a form of discrimination for the purposes of EU law. Nevertheless, it can be inferred from its integrated reading of the Directive's provisions that non-discrimination and accommodation are inextricably linked concepts.

3. *Extending Workplace Accommodations to Persons with Caring Responsibilities*

Persons with caring responsibilities can encounter barriers to participation in employment because of the challenges connected to combining working and caring. Given that women continue to be over-represented amongst those providing care, this issue is closely intertwined with gender equality in the labour market[54]. The value of workplace accommodations for those with caring responsibilities has been recognised by the EU legislator in the 2019 Work-life Balance Directive.[55].This created a right for certain employees to request flexible working arrangements for caring purposes[56]. In brief, this extends to employees with children up to at least the age of eight, as well as carers[57]. Workers can request to "adjust their working patterns", which includes "remote working arrangements, flexi-

[54] Waddington, *Carers, Gender and Employment Discrimination: What Does EU Law Offer Europe's Carers?*, in Moreau (Ed.), *Before and After the Economic Crisis: What Implications for the 'European Social Model'?*, Edward Elgar Publishing, 2011, pp. 103-107.

[55] Directive 2019/1158/EU on work-life balance for parents and carers and repealing Council Directive 2010/18/EU [2019] OJ L188/79. See further, Oliveira, De La Corte-Rodríguez, Lütz, *The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?*, in *ELR*, 2020, p. 295; Chieregato, *A Work-Life Balance for All? Assessing the Inclusiveness of EU Directive 2019/1158*, in *IJCLLIR*, 2020, p. 59; Weldon-Johns, *EU Work-family Policies Revisited: Finally Challenging Caring Roles?*, in *ELLJ*, 2021, p. 301; Bell, Waddington, *Similar, Yet Different: the Work-life Balance Directive and the Expanding Frontiers of EU Non-discrimination Law*, in *CMLRev*, 2021, p. 1401; De la Corte-Rodríguez, *The Transposition of the Work-Life Balance Directive in EU Member States (II): Considerable Work Still To Be Done*, Publications Office of the European Union, 2024.

[56] Directive 2019/1058, article 9. For a more detailed analysis, see Waddington, Bell, *The Right to Request Flexible Working Arrangements Under the Work-life Balance Directive - A Comparative Perspective*, in *ELLJ*, 2021, p. 508.

[57] "Carers" are defined as "a worker providing personal care or support to a relative, or to a person who lives in the same household as the worker, and who is in need of significant care or support for a serious medical reason": Directive 2019/1058, article 3(1)(d).

ble working schedules, or reduced working hours"[58]. The right to request flexible working arrangements for caring purposes is not the same as the duty to provide reasonable accommodation. Primarily, it places the employer under a procedural duty to consider and respond to the request, whereas reasonable accommodation is an obligation to *act*, ie to take appropriate measures[59]. Notwithstanding the important differences that exist between the two duties, they share a common premise. Both recognise that fostering inclusion in the labour market may require adaptation of the "standard" way of organising work.

Even if the Work-life Balance Directive does not include a duty to provide reasonable accommodation for persons with caring responsibilities, there is the potential for this to be derived from other provisions of EU anti-discrimination law. Indeed, several cases have reached the CJEU where workers sought adjustments to their working conditions because of caring responsibilities[60]. These cases mostly arose under related legal instruments, such as the Parental Leave Directive[61] or the Part-Time Work Directive[62]. The Court has not yet fully explored whether failing to provide an accommodation to a worker with caring responsibilities could constitute a breach of the prohibition of indirect discrimination on grounds of sex[63]. In contrast, the Court has confronted equivalent issues in relation to the duty to provide reasonable accommodation in the Employment Equality Directive and workers who are carers of persons with disabilities.

The Court's first venture into this terrain was *Coleman*[64]. This case concerned alleged discrimination encountered at work by the mother of a child with a disability. A preliminary issue in the legal proceedings was whether the prohibition of discrimination on grounds of disability could be relied upon by a person without a disability (the mother), but who experienced discrimination because of her association with a person with a disability (her child). In a seminal decision, the CJEU held that the Employment Equality Directive "applies not to a particular category of person but by reference to

[58] Article 3(1)(f).
[59] See further, Waddington, Bell, *cit.*, p. 516.
[60] Waddington, Bell, *cit.*, pp. 513-514.
[61] E.g., Case C-366/18 *Ortiz Mesonero v UTE Luz Madrid Centro* EU:C:2019:757.
[62] E.g., Case C-221/13 *Mascellani v Ministero della Giustizia* EU:C:2014:2286.
[63] On the potential for such a claim, see Waddington, 2011, *cit.*, p. 111.
[64] Case C-303/06 *Coleman v Attridge Law and Law* EU:C:2008:415.

the grounds"[65]. Consequently, direct discrimination on grounds of disability included a situation where an employee was treated less favourably because of their child's disability, and where care for the child "is provided primarily by that employee"[66]. In the course of its judgment, the Court acknowledged that "Directive 2000/78 includes a number of provisions which, as is apparent from their very wording, apply only to disabled people"[67]. Specifically, it mentioned the duty to provide reasonable accommodation, thus indicating that persons without a disability could not rely upon that provision. The decision in *Coleman* opened the door to the concept of "discrimination by association"[68], but simultaneously closed the door on reasonable accommodation claims being framed in this manner.

Seventeen years later, the Court revised its position in *Bervidi*[69]. This case concerned the mother of a minor child with "extensive and comprehensive needs arising from disability"[70]. The applicant worked as a station operator for the Rome underground transport system. Station operators had "alternating and rotating shifts", but she sought permanent assignment to a morning shift.[71]. This was to enable her to support her child's care programme, which took place in the afternoons. On a provisional basis, her employer assigned her to a fixed location with a preferential working schedule (compared to other employees), but it did not grant her fixed working hours on a permanent basis, as she had requested. In subsequent legal proceedings, the Italian Supreme Court of Cassation referred to the CJEU two key issues: whether a "family caregiver of a severely disabled child" could rely on the prohibition of indirect discrimination on grounds of disability, and whether the employer was under a duty to provide reasonable accommodation for such caregivers[72]?

It was not clear from *Coleman* that the prohibition of indirect discrimination on grounds of disability could be relied upon by carers of persons

[65] Para 50.

[66] Para 56.

[67] Para 39.

[68] See further, Waddington, *S. Coleman v. Attridge Law and Steve Law,* in *CMLRev*, 2009, p. 665; Connor, *Discrimination by association: a step in the right direction*, in *JSWFL*, 2010, p. 59.

[69] Case C-38/24 *Bervidi* EU:C:2025:690. See further, Waddington, *An Iceberg of a Judgment: Case C-38/24 Bervidi*, in *MJECL*, forthcoming.

[70] Para 20.

[71] Para 21.

[72] Para 32.

with disabilities. Article 2(2)(b) of the Employment Equality Directive refers to measures that "would put persons having … a particular disability" at a particular disadvantage. Waddington observed that recognising that indirect discrimination could occur by reason of association with the protected characteristic "would be in line with the broad purpose of the Directives, even though it would not be in accordance with a literal interpretation of the wording"[73]. In *Bervidi*, the Court opted for a purposive, rather than a literal, approach to interpreting this provision. It held that the rationale of its decision in *Coleman* was that discrimination *on grounds of* disability was not confined to persons with disabilities, but extended to those who experienced such discrimination "by association"[74]. Accordingly, the Court held that the Directive meant that discrimination by association could also take the form of indirect discrimination[75]. Notably, the Court argued that this was an interpretation of the Directive that would be compliant with various provisions of the CFR: Article 21(1) on the right to non-discrimination; Article 24 on the rights of the child; and Article 26 on the right of persons with disabilities[76]. The Court also pointed out that this was consistent with the interpretation of the right to non-discrimination found in the European Convention on Human Rights, as well as the CRPD[77].

The Court did not, however, stop at this point. Instead, it departed from the statement that it had made in *Coleman* about Article 5 of the Employment Equality Directive being limited to persons with disabilities. It leant heavily on a purposive interpretation of the reasonable accommodation duty in the light of the CFR and the CRPD; indeed, it pointed out that neither of those instruments were in force when the decision in *Coleman* was issued[78]. On the one hand, the Court identified obligations in both instruments to uphold the best interests of children with disabilities[79]. Through this lens, it concluded that providing reasonable accommodation for carers is beneficial for the persons to whom they provide care. On the

[73] Waddington, 2011, *cit.*, p. 124.

[74] *Bervidi*, cit., para 54.

[75] Para 55. This was also in line with existing case-law on the prohibition of discrimination on grounds of racial or ethnic origin: Case C-83/14 *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia* EU:C:2015:480.

[76] Paras 57-58.

[77] Paras 60-64.

[78] Para 70.

[79] CFR, article 24(2), and CRPD, article 7(2).

other hand, the Court emphasised the broad nature of the duty to provide reasonable accommodation in the CRPD[80]. As discussed above, since *HK Danmark*, the Court has repeatedly drawn upon this aspect of the CRPD to favour an expansive reading of Article 5 of the Employment Equality Directive. In his Opinion, Advocate General Rantos drew attention to the interpretation of non-discrimination adopted by the UN Committee on the Rights of Persons with Disabilities (CmRPD)[81]. In General Comment No. 6, the Committee stated that "the obligations to prohibit all discrimination on the basis of disability includes persons with disabilities and their associates, e.g. parents of children with disabilities"[82]. Finally, the CJEU connected the concepts of indirect discrimination and reasonable accommodation. It argued that the prohibition of indirect discrimination by association would be "deprived of an important element of its effectiveness" if there was not an accompanying obligation to provide reasonable accommodation[83]. Again, this follows a pattern discussed in the previous section whereby the Court has integrated reasonable accommodation into the prohibition of discrimination.

Ultimately, the Court held that an employer is required:

"to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden on that employer"[84].

There is no doubt that *Bervidi* represents a major extension of the concept of reasonable accommodation. Earlier academic literature had doubted that the Court could depart so radically from the literal wording of the Directive[85]. It is notable that the Court is careful to refer to a parent who is providing "the assistance which enables" his or her child "to receive the

[80] *Bervidi*, cit., paras 72 and 76.

[81] Case C-38/24 *Bervidi* EU:C:2025:184, Opinion of AG Rantos, para 38.

[82] CmPRD, "General Comment No. 6 (2018) on equality and non-discrimination" (2018) CRPD/C/GC/6, para 17.

[83] *Bervidi*, cit., para 74.

[84] Para 80.

[85] Ferri, Lawson, cit., p. 55; Lawson, *cit.*, p. 221.

primary care required"[86]. This approach can be welcomed insofar as it recognises that a working parent is very likely to be relying upon other sources of care, which might entail care that is tailored to the child's condition. This is subtly different to the expression used in *Coleman*, which referred to situations where care for the child "is provided primarily by that employee"[87]. It is also in keeping with the definition of carer in the Work-life Balance Directive, which refers to "providing personal care *or support*"[88].

The Court does not indicate whether others who provide assistance or care for persons with disabilities will fall within the scope of the reasonable accommodation duty. The referring court had asked whether "caregiver" could extend to "any person, whether a member of the family or a de facto cohabiting partner, who cares in a domestic setting"[89]. The CJEU held that this question was inadmissible because it was not clear how it linked to a case where the applicant was the mother of a child with a disability[90]. Nevertheless, it is evident that there are other types of caring relationship where a need for accommodation can arise. For example, demographic change draws attention to the situation of those who are caring for older relatives, often in circumstances where the older person has a disability. Notably, the Work-life Balance Directive includes caring for parents within its definition of "carer"[91]. The purposive nature of the reasoning of the CJEU in *Bervidi* supports the proposition that the duty to provide reasonable accommodation can be relied upon by carers of persons with disabilities, even beyond parents caring for children. In its judgment, the CJEU referred to point (x) in the preamble of the CRPD. This provides that "persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities". After quoting this provision, the Court stated that "it follows" that there was "an obligation, on the employer, to adapt the working conditions of that employee"[92]. This provides a pos-

[86] There is a different formula used in para 77, which refers to an employee who "cares for a child who has a disability".

[87] *Coleman*, cit., para 56.

[88] Directive 2019/1158, article 3(1)(d).

[89] *Bervidi*, cit., para 32.

[90] Para 85.

[91] Directive 2019/1158, article 3(1)(e).

[92] *Bervidi*, cit., para 73.

sible basis upon which to recognise a duty of reasonable accommodation for "family members" caring for persons with disabilities. At the same time, the very notion of discrimination "by association" implies that some degree of proximity is required in order to bring the person under the protective cloak of the law.

In summary, *Bervidi* is a consequential decision. 25 years after the EU legislature enacted a duty of reasonable accommodation for persons with disabilities, the Court extended this obligation to parents who provide assistance and care for their children with disabilities. In so doing, the Court recognised that adaptations to the working environment, including in relation to working time, could play a role in supporting the participation of carers within the labour market[93]. This represents a continuity with the social inclusion rationale that is reflected in its case-law on reasonable accommodation for persons with disabilities. It is notable, however, that *Bervidi* relied on the prohibition of indirect discrimination combined with the duty to provide reasonable accommodation for persons with disabilities. This makes it less clear whether the Court would impose a duty to adjust working conditions in circumstances without any connection to disability, such as parents caring for children without disabilities. Such cases would have to rely entirely on the prohibition of indirect discrimination. As discussed in the next section, the Court has proven to be less receptive to this argument in the context of religious belief and practice.

4. *Between Ambivalence and Antagonism: Workplace Accommodations and Persons with Religious Beliefs and Practices*

Sections 2 and 3 of this article have demonstrated the expansive interpretation of reasonable accommodation in the CJEU case-law that pertains to disability. This section turns to examine workplace accommodations in relation to religious diversity. The fundamental right to freedom of religion encompasses the right to manifest religious beliefs. In EU law, this is enshrined in Article 10(1) CFR, which includes the right "either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance". It is well-established

[93] Para 77.

that the exercise of religious freedom may, under certain circumstances, give rise to a need for accommodation in the sense of being granted an exemption from generally applicable rules[94]. This occurs across a wide spectrum of law and policy; for example, the CJEU has decided several cases concerning legislative exemptions from animal welfare requirements in order to accommodate religious rites[95]. In the context of this article, it is most relevant to concentrate upon accommodation requests that arise in the course of employment[96]. These vary, but common issues that arise concern freedom to wear religious symbols, to have time off for religious observance, and where employees have a conscientious objection to certain activities.[97]. In the CJEU case-law, the issue that has predominated has been workplace dress-codes that prohibit the wearing of visible signs of religious, political or philosophical beliefs. This has given rise to a series of cases that all concern Muslim employees who wished to wear an Islamic headscarf, but who were not permitted to do so. There is a substantial body of academic literature on the variety of legal issues found in these cases[98]. For the purposes of this article, it is sufficient to focus only on the Court's view as to whether the Employment Equality Directive should be interpreted in a manner that would, in effect, require an employer to accommodate those employees who wished to wear religious symbols.

[94] Raza, *Religious Accommodation and its Limits*, Hart Publishing, 2024, p. 53.

[95] See further, Granet, *"As I Have Commanded Thee": Flemish Decrees and CJEU Jurisprudence Put Religious Slaughter Under the Knife*, in *ELR*, 2021, p. 380.

[96] For an overview, see Vickers, *Religious Freedom, Religious Discrimination and the Workplace*, 2nd edn., Hart Publishing, 2016; Alidadi, *Religion, Equality and Employment in Europe: The Case for Reasonable Accommodation*, Hart Publishing, 2017; Scarponi, *Gli "accomodamenti ragionevoli" in materia religiosa nell'evoluzione giurisprudenziale delle alte corti. Linee guida di tendenza e interrogativi aperti*, in *Diritto del lavoro OPEN Labour Law*, 2025, p. 142.

[97] Ringelheim, *Religion, Diversity and the Workplace: What Role for Law?*, in Alidadi, Foblets, Vrielink (Eds.), *A Test of Faith? Religious Diversity and Accommodation in the European Workplace*, Ashgate, 2012, p. 338.

[98] See, *inter alia*, Howard, 2019, *cit.,* p. 150; Raza, *cit.,* pp. 37 and 86; Van Den Brink, *The Protected Grounds of Religion and Belief: Lessons for EU Non-Discrimination Law*, in *GLJ*, 2023, p. 855; Spitaleri, *Religious Freedom and Employment Discrimination in the Case Law of the European Court of Justice,* in Paladini, Del Ángel Iglesias Vásquez (Eds.), *Protection and Promotion of Freedom of Religions and Beliefs in the European Context*, Springer, 2023, p. 215; Vickers, *"Nothing but Trouble", or Reasoned Inconsistency? The Development of Religion and Belief Protection since 2000*, in *IJDL*, 2025, p. 414; Mulder, *The Dialogue Between the Courts Revisited: An Analysis of National Preliminary References and Their Impact on Advancing CJEU Case Law on Religious Discrimination*, in *LLR*, 2025, p. 183.

The Court's first consideration of this issue was in the 2017 *Achbita* case[99]. This concerned a Muslim employee who informed her employer, G4S, that she would begin wearing an Islamic headscarf at work. Her employer responded that its "position of neutrality" meant that employees were not permitted to wear visible signs of religious, philosophical or political beliefs in the workplace[100]. Ultimately, she was dismissed because she would not comply with this policy. The CJEU rejected the argument that this constituted direct discrimination; instead, it recognised that the employer's requirement that employees "dress neutrally" might give rise to indirect discrimination if it placed employees of a particular religion or belief at a particular disadvantage[101]. With regard to objective justification, the Court accepted that "the desire to display, in relations with both public and private sector customers, a policy of political, philosophical or religious neutrality must be considered legitimate".[102]. The Court also held that prohibiting employees from wearing visible signs of political, philosophical or religious beliefs was an appropriate way of pursuing this aim, so long as it was applied "in a consistent and systematic manner"[103]. Consequently, the crux of the case was whether the prohibition of wearing visible signs was *necessary* to achieve the legitimate aim of displaying neutrality. The test of necessity asks whether less restrictive measures could have been sufficient to achieve the intended aim. This can also be described as application of the principle of proportionality[104].

Exploring whether the employer's requirement was proportionate opens the door to considering if adjustments could have been made that would have sufficiently attained the company's objective, while reducing the obstacles that this created for employees of a particular religion or belief. The nature of such an inquiry is quite similar to the type of questions that arise under the duty to provide reasonable accommodation. Indeed, this connection was identified in the legal proceedings prior to the Court's

[99] Case C-157/15 *Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* EU:C:2017:203.

[100] Para 13.

[101] Paras 30 and 34.

[102] Para 37.

[103] Para 40.

[104] Case C-417/23 *Slagelse Almennyttige Boligselskab, Afdeling Schackenborgvænge v MV and others* EU:C:2025:1017, para 144.

judgment. The European Commission argued that the company could have provided the option for employees of wearing a headscarf in a "matching colour and style" to the workplace uniform[105]. Alternatively, Advocate General Kokott identified the possibility of transferring the employee to a "back-office" position that did not involve direct contact with customers[106]. She pointed out, however, that the Directive only provided for reasonable accommodation in respect of persons with disabilities. Accordingly, while employers were free to explore "individual solutions tailored to the circumstances involved, one should not impose a particularly significant organisational burden on them"[107].

In contrast, Advocate General Sharpston argued that reasonable accommodation was an appropriate way of handling these issues. Her opinion was issued in the parallel *Bougnaoui* case, which also concerned a Muslim employee dismissed for wearing an Islamic headscarf[108]. On the question of whether it was proportionate for an employer to prohibit the wearing of visible signs of religious belief in pursuit of a policy of neutrality, Advocate General Sharpston drew attention to the need to balance the different rights and interests at stake: "the employer and employee will need to explore the options together in order to arrive at a solution that accommodates both the employee's right to manifest his religious belief and the employer's right to conduct his business"[109]. In an echo of the test for disability accommodation, Advocate General Sharpston accepted that it would be relevant to take into account any costs that arose in the process of making an adjustment: "an employer in a large undertaking can be expected to take greater steps to make a reasonable accommodation with his workforce than an employer in a small- or medium-sized one"[110].

[105] Case C-157/15 *Achbita, Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV* EU:C:2016:382, Opinion of AG Kokott, para 105.

[106] Para 108.

[107] Para 110.

[108] The factual scenario in *Bougnaoui* was, however, different in nature to that of *Achbita*, because the employer acted in response to a complaint from a specific client. This led the Court to focus its judgment in that case on the possibility of direct discrimination and the exceptions thereto: Case C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2017:204.

[109] Case C-188/15 *Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA* EU:C:2016:553, Opinion of AG Sharpston, para 128.

[110] Para 125.

In *Achbita*, the position adopted by the CJEU was closer to that proposed by Advocate General Kokott. On the one hand, it did not endorse an interpretation of the necessity test as giving rise to an obligation on the employer to search for an accommodation with the employee. On the other hand, its advice to the referring court indicated that some consideration should be given to the options available to the employer prior to the decision to dismiss the employee:

"it is for the referring court to ascertain whether, taking into account the inherent constraints to which the undertaking is subject, and without G4S being required to take on an additional burden, it would have been possible for G4S, faced with such a refusal, to offer her a post not involving any visual contact with those customers, instead of dismissing her. It is for the referring court, having regard to all the material in the file, to take into account the interests involved in the case and to limit the restrictions on the freedoms concerned to what is strictly necessary"[111].

This paragraph is framed in tentative language that conferred ample discretion on the referring court[112]. The implication is that the employer should have offered the employee the alternative of working in a role with no face-to-face customer contact, but only if making this offer would have imposed no "additional burden" on the employer. This is far removed from the duty of reasonable accommodation for persons with disabilities. That requires a wide-ranging search for any "appropriate measures" to remove the barrier. While the CJEU identifies a measure that could be taken in this situation (reassignment to different role in the organisation), it can be questioned whether the nature of the proposed adjustment can be reconciled with the values that underpin anti-discrimination legislation[113]. The Employment Equality Directive invokes "the need to foster a labour market favourable to social integration"[114]. Yet the Court implies that it would be appropriate for a company to transfer Muslim women who wear an Islamic headscarf to roles where

[111] *Achbita*, cit., para 43.

[112] Ultimately, the Labour Court of Ghent concluded that there was no indirect discrimination in this case: Van Drooghenbroeck, *Country Report Non-discrimination: Transposition and Implementation at National Level of Council Directives 2000/43 and 2000/78. Belgium*, Publications Office of the European Union, 2025, p. 64.

[113] Xenidis, *The Polysemy of Anti-Discrimination Law: The Interpretation Architecture of the Framework Employment Directive at the Court of Justice*, in *CMLR*, 2021, p. 1690.

[114] Directive 2000/78, recital 8. See also, Ringelheim, 2012, *cit.,* p. 352.

customers would not meet them in person. It is very difficult to reconcile this approach with the Directive's aim of social integration[115].

In the cases since *Achbita*, it is notable that the CJEU has not revisited the possibility of reassigning workers to back-office positions[116]. On the contrary, its decision in *Comune d'Ans* indicates that an employer may justify prohibiting the wearing of religious symbols even in respect of employees without customer-facing roles. That case concerned an employee of a municipality who was responsible for handling public contracts. This role was primarily back-office in nature[117]. In response to a request from the applicant to be permitted to wear a headscarf at work, the municipal board amended the terms of employment to enshrine a policy of "exclusive neutrality" that applied to all employees, irrespective of whether their roles involved engagement with the public[118]. The CJEU held that Member States, including lower tiers of government, "must be afforded a margin of discretion in designing the neutrality of the public service"[119]. It accepted that the municipality was acting in pursuit of a legitimate aim:

"an entirely neutral administrative environment can be effectively pursued only if no visible manifestation of beliefs – philosophical or religious in particular – is allowed when employees are in contact with users of the public service or with other employees, since the wearing of any sign, even a small-sized one, undermines the ability of that measure to achieve the aim allegedly pursued and therefore calls into question the consistency of that policy"[120].

[115] Xenidis, cit., p. 1690; Sharpston, *Shadow Opinion of Former Advocate-General Sharpston: Headscarves at Work (Cases C-804/18 and C-341/19)*, in *EU Law Analysis*, 2021, para 243, https://eulawanalysis.blogspot.com/2021/03/shadow-opinion-of-former-advocate.html, accessed 21 July 2026; Howard, *Religious Discrimination at the CJEU and the Social Inclusion Approach*, in *ELLJ*, 2024, p. 719.

[116] Cases C-804/18 and C-341/19 *IX v WABE eV and MH Müller Handels GmbH v MJ* EU:C:2021:594; Case C-344/20 *LF v SCRL* EU:C:2022:774; Case C-148/22 *OP v Commune d'Ans* EU:C:2023:924. See further, Mulder, *Religious Neutrality Policies at the Workplace: Tangling the Concept of Direct and Indirect Religious Discrimination. WABE and Muller*, in *CMLRev*, 2022, p. 1501; Howard, *OP v Commune d'Ans: Another Step in the Wrong Direction for Headscarf-Wearing Women*, in *ILJ*, 2024, p. 305.

[117] *Commune d'Ans*, cit., para 12.

[118] Para 15.

[119] Para 33.

[120] Para 39. It is notable that, notwithstanding the CJEU judgment in *Commune d'Ans*, the Liège Labour Court subsequently held that the actions of the municipality constituted

There is a difference between *Achbita* and *Commune d'Ans* because the former concerned a private sector employer and the latter involved the public sector. It is not entirely clear whether the Court would accept that a private sector employer is also entitled to prohibit wearing religious symbols amongst back-office staff because of the desire to create an "entirely neutral" environment.

The CJEU case-law could be read as being antagonistic towards workplace accommodation of religious employees. There are, though, points in these cases where the Court acknowledges that the right to manifest one's religious beliefs should be accorded some weight in workplace decision-making. In *WABE* and *Müller Handels*, the Court identified a variety of provisions of the CFR that were engaged, including freedom of religion and freedom of business[121]. It stated that "the assessment of observance of the principle of proportionality must be carried out in accordance with the need to reconcile the requirements of the protection of those various rights and principles at issue, striking a fair balance between them"[122]. This balancing act was, though, a task left to national authorities:

"in Directive 2000/78, the EU legislature did not itself effect the necessary reconciliation between the freedom of thought, conscience and religion and the legitimate aims that may be invoked in order to justify unequal treatment, for the purposes of Article 2(2)(b)(i) of that directive [on indirect discrimination], but left it to the Member States and their courts to achieve that reconciliation"[123].

The deference of the CJEU towards national decision-making in this arena means that Member States have options: they may permit employers to enforce "neutrality" policies[124], but they may also opt to provide stronger protection of freedom of religion via national law[125].

Whether one agrees or disagrees with the Court's case-law on religious symbols in the workplace, it is evident that its approach to the interpretation

indirect discrimination on grounds of religion and that the complete prohibition on wearing religious symbols was not objectively justified: Van Drooghenbroeck, *cit.*, p. 67.

[121] *WABE and Müller Handels*, cit., para 84.

[122] Para 84.

[123] Para 87.

[124] It is, though, necessary that such policies operate in accordance with criteria laid down by the CJEU; e.g., they must be applied in a "consistent and systematic manner": *WABE and Müller Handels*, cit., para 70.

[125] *WABE and Müller Handels*, cit., para 89.

of the Employment Equality Directive is markedly different in this context when compared to the case-law on disability accommodation discussed in sections 2 and 3[126]. There are few traces of the expansive approach to interpretation when one looks at the case-law on religious symbols. Instead, it is characterised by caution and deference to national authorities. While the Court recognises that the cases engage the protection of fundamental rights, it places emphasis on the competing rights at stake. The case-law strives to balance the right to manifest religious beliefs with Article 16 CFR on the freedom of business. In a vivid contrast, the Court has never invoked Article 16 CFR as a counterbalance to the right to reasonable accommodation for persons with disabilities. The final section of this article reflects upon the possible explanations for the divergent pathways of the case-law on workplace accommodations.

5. *Conclusions*

This article set out to identify the trajectories in the CJEU's case-law on workplace accommodations. Although accommodations are potentially relevant to each of the protected characteristics found in EU anti-discrimination law, the existing body of case-law has primarily explored this issue in relation to disability, caring responsibilities and religious practices. This article has established that there are differences in the approach of the CJEU to workplace accommodations in respect of each of these characteristics. Its case-law on reasonable accommodation for persons with disabilities has been largely ambitious and expansive. In respect of persons with caring responsibilities, the Court's case-law was initially cautious, but a turning point was reached in its 2025 *Bervidi* decision. This created a duty to provide reasonable accommodation for carers of persons with disabilities. The exact parameters of this duty remain to be explored, and the decision does not determine whether equivalent duties might arise for other carers (e.g. parents of young children). Nevertheless, this was a bold judgment that significantly extended the law. In contrast, the Court's stance on the accommodation of religious diversity in the workplace might be described as ambivalent (at best). It is true that the Court has acknowledged the need for a

[126] Vickers, *"Nothing but Trouble"*, cit., p. 425.

fair balance of all the competing rights and interests presented by such cases. Yet the scales appear to be tilted firmly in favour of the freedom of employers to stifle expression of religious identity in the pursuit of "neutrality". The Court's case-law does not prevent individual employers or individual Member States from being more generous in their protection of religious freedom in the workplace, but an employee seeking accommodation of their religious practices is unlikely to find a remedy in EU law at present.

On one level, there is a straightforward explanation of the different trajectories in the case-law: they reflect the content of the legislation that the Court is interpreting. The EU legislator chose to establish a duty of reasonable accommodation for persons with disabilities; it did not create any parallel obligation for other protected characteristics. The CJEU is, therefore, on solid ground when it is cautious about reading an accommodation duty into other provisions of anti-discrimination legislation. Yet the bare text of the legislation does not fully explain the Court's appetite for expanding the disability accommodation duty. Requiring employers to consider reassigning workers with disabilities to different jobs and extending the accommodation duty to carers of persons with disabilities are both instances where the Court's decisions sit uneasily with a literal reading of the Directive's provisions. Of course, it is well-known that the Court's interpretative methods are not based on the mere words of the text; instead, they draw heavily on the underpinning purpose of the law. The Union's ratification of the CRPD has provided a mandate for the Court to interpret expansively the reasonable accommodation duty. Notably, Article 27 CRPD establishes the objective of "a labour market and work environment that is open, inclusive and accessible to persons with disabilities".

Turning to the accommodation of religious diversity, this centres on the concept of indirect discrimination. The stance taken by the Court in the case-law on wearing religious symbols was not the only possible interpretation that it could have adopted. The Opinion of Advocate General Sharpston in *Bougnaoui* presented a coherent argument for interpreting the justification test for indirect discrimination in a manner that imposed some obligation on the employer to accommodate the employee's religious practices. The Court consciously chose to read the legislation in a more restrictive fashion[127]. In seeking to explain this choice, it seems credible that

[127] Howard, *Islamic Headscarves and the CJEU: Achbita and Bougnaoui*, in *MJECL*, 2017, p. 365.

this was influenced by the lack of consensus amongst the Member States in respect of managing religious diversity[128]. This is transparent in the Court's reasoning in *WABE* and *Müller Handels* where it expressed the view that the Employment Equality Directive:

"establishes a general framework for equal treatment in employment and occupation, which leaves a margin of discretion to the Member States, taking into account the diversity of their approaches as regards the place accorded to religion and beliefs within their respective systems"[129].

Yet deference to national diversity does not provide a complete account of the Court's reticence in this area. It is notable that other strands of its case-law on religious discrimination have not adopted this approach[130]. The Employment Equality Directive also contains an exception from the prohibition of discrimination in respect of differences of treatment by organisations with an ethos based on religion or belief.[131] Without entering into the details of the case-law on that topic, it can be observed that the Court has been rigorous in applying this provision and it has resisted arguments that it should respect the diversity of national legal traditions in that sphere[132].

Bearing this in mind, it can be postulated that there is a latent scepticism in the case-law about the concept of workplace accommodation of religious diversity. Arguably, this belies the Court's position on the legitimacy of neutrality policies. It has readily accepted the proposition that a company acts appropriately when it prohibits religious expression as a way of preserving an image of neutrality. The Court has not sought to probe the meaning of neutrality or the objectives that it seeks to attain. For example,

[128] McCrea, *Article 10,* in Peers, Hervey, Kenner, Ward (Eds.), *The EU Charter of Fundamental Rights: A Commentary* 2nd edn, Hart Publishing, 2021, p. 331; Ringelheim, *Headscarf Bans in the Public Workplace before the Court of Justice: OP v. Commune d'Ans or the Art of Ambiguity*, in *ELLJ*, 2024, p. 923.

[129] *WABE* and *Müller Handels*, *cit.,* para 86. See also the explanation of the Court's decision in *Commune d'Ans* by the President of the CJEU: Irish Centre for European Law, *Review of the CJEU in 2023*, 23 February 2024, https://www.youtube.com/watch?v=kf1wexkRRkE, accessed 21 July 2026.

[130] Ringelheim, 2024, *cit.*, p. 921; Sharpston, *cit.*, para 260; Vickers, *"Nothing but Trouble"*, cit., p. 424.

[131] Directive 2000/78, article 4(2).

[132] See further, van den Brink, *When Can Religious Employers Discriminate? The Scope of the Religious Ethos Exemption in EU Law*, in *European Law Open*, 2022, p. 89; Unruh, *Is German Religionsverfassungsrecht under Threat from the European Union?*, in *OJLR*, 2020, p. 1.

Ringelheim posits that neutrality could be interpreted as relating to *actions*: employees act neutrally when they treat all co-workers and third parties in the same manner irrespective of religion or belief. Instead, she points out that the Court has endorsed the much broader notion that neutrality is about *appearance*[133]. Ultimately, the CJEU's favourable disposition towards neutrality policies clashes with the basic premise of accommodating of religious diversity. The wide reading of neutrality conveys a secular norm where religious identity is left "at the door" when you go to work[134]. In contrast, an accommodationist approach embraces a pluralistic perspective that affords space for the inclusion of religion in public life[135].

This article has shown that the CJEU has adopted a different approach when faced with accommodation requests connected to disability and religion. Looking ahead, the implications of this for accommodation requests connected to other protected characteristics is less clear. As indicated in section 3, this is mostly likely to arise before the Court in the context of caring responsibilities. The Work-life Balance Directive has enacted a procedural right for parents of young children and carers to request flexible working arrangements for caring purposes. This "right to request" appears to preserve managerial discretion as to whether to accede to such requests[136]. It is easy to imagine that an employee whose request is denied by their employer might explore whether the failure to provide a workplace accommodation breaches other provisions of EU law. For instance, if a woman caring for a young child is refused permission to reduce her working hours, could this be indirect discrimination on grounds of sex? The existing body of case-law makes it difficult to anticipate the approach that the Court will take. It could build on its decision in *Bervidi* to shift in this direction or alternatively it could emphasise that reasonable accommodation is a disability-specific concept. What seems to be evident is that the direction that the Court takes cannot be explained purely by the wording of the legislation. Rather, it is strongly influenced by its understanding of the context and purpose of the law. This means that the hesitancy around religious accommodation may not necessarily be replicated in respect of other protected characteristics.

[133] Ringelheim, *cit.*, p. 918.

[134] *Achbita*, Opinion of AG Kokott, *cit.*, para 116.

[135] Raza, *cit.*, p. 44.

[136] Recital 36 of Directive 2019/1158 states "the employer should be able to decide whether to accept or refuse a worker's request for flexible working arrangements".

Abstract

The way in which work is organised can pose obstacles to participation because of workers' diverse personal characteristics. This is well-known in relation to persons with disabilities, but it can affect a wider range of workers, such as persons with caring responsibilities or persons with religious beliefs and practices. Providing "accommodations" in the workplace can entail adjustments to operational practices and policies, while keeping a balance with business requirements. This article explores how claims for workplace accommodations have been handled by the Court of Justice of the European Union in its interpretation of anti-discrimination legislation. It identifies divergent trajectories in the case-law on accommodation for persons with disabilities, persons with caring responsibilities, and persons with religious beliefs and practices. In part, this can be explained by choices made by the legislature. Yet the case-law also reveals the Court's understanding of the purpose of the law.

Keywords

Reasonable accommodation, Disability, Carers, Religion, EU law.

Matilde Biagiotti

Transforming Working Time for Gender Equality: the Four-Day Week as a Driver of Organisational Change*

Contents: 1. Introduction. 2. Work-life balance as a driver of gender equality within the European legal framework. 2.1. Working-time flexibility as a measure to promote gender equality. 3. Working-time reduction: the potential of the four-day working week to achieve gender equality. 4. The Italian case: gender inequalities and four-day working week experiments. 4.1. Legislative initiatives and corporate practices: evaluating short-week models through a gender lens. 5. Concluding remarks: towards a gender-responsive four-day working week.

1. *Introduction*

Despite regulatory progress and the implementation of policies promoting equality, women continue to face multiple obstacles in accessing the labour market and advancing in their professional careers in many European Member States. One of the most evident manifestations of such inequality is occupational segregation, which unfolds along both horizontal and vertical dimensions. Horizontal segregation refers to the tendency of women to be concentrated in sectors and professions with a predominantly female presence, generally characterised by lower economic and social recognition. Vertical segregation, on the other hand, highlights the underrepresentation of women in senior and managerial positions, revealing the persistence of barriers that hinder access to roles of greater responsibility and opportunities for career advancement. Another critical issue, often connected with

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these two phenomena, lies in the difficulty of reconciling private and professional life: women, indeed, continue to bear a disproportionate share of family responsibilities and unpaid care work, which consequently limits their full participation in the labour market[1].

This article analyses the main and most effective regulatory and contractual responses to the phenomenon of female occupational segregation, examining how everyday organisational practices – in particular those relating to working-time management – create and reproduce gender gaps and assessing the role played by institutions, legal systems and social partners in creating, confirming or counteracting such inequalities within the EU framework. Indeed, "time" constitutes the central element of the main existing work-life reconciliation tools: the use of leaves means – from the worker's point of view – a trade-off between the time allocated to professional activity and that dedicated to private life[2]; similarly, "part-time" work entails the renunciation of a portion of working hours in exchange for a greater amount of time for personal life; conversely, the most recently developed flexible work arrangements allow the work schedule to be adapted to individual needs and preferences of the worker, reconciling work time with free time without sacrificing one for the benefit – or to the detriment – of the other.

This article argues that working-time regulation should no longer be understood merely as an instrument of work-life reconciliation but as an organisational governance tool capable of promoting substantive gender equality.

[1] Aa.Vv., *The future of gender equality in the EU*, ETUI, 2026, pp. 16-18; ANPAL, *Conciliazione vita lavoro: sviluppo di policy. Analisi comparata internazionale*, 2019, pp. 6-11; Staffieri, *Armonizzazione dei tempi di vita e di lavoro*, in *DPL*, 2023, 29, pp. 1773-1774; Romano, Petruccioli, *Gender diversity management, culture inclusive e sfide dell'attualità. Una review sistematica della letteratura*, in *ESS*, 2020, 1, pp. 224-226, describe the phenomenon of *flex-insecurity*, whereby increases in female employment have not translated into improved labour-market access or job quality.

[2] Militello, *Tempi di lavoro e conciliazione. L'orario di lavoro scelto come strumento di parità*, in Aa.Vv., *Diritto di conciliazione. Prospettive e limiti della trasposizione della direttiva 2019/1158/UE*, in *Quaderno DLM*, 2023, 14, pp. 41-42, refers to a division between time allocated to productive work and time devoted to reproductive, care and assistance work. With regard to working time from a gender perspective: Chung, *Flexible working arrangements and gender equality in Europe*, European Commission, DG JUST, 2024; Lazzeroni, *Genere e tempi di lavoro*, in *MGL*, 2020, 1, pp. 43-57; ILO, *Working Time and Work-Life Balance Around the World*, 2022; Santagata de Castro, *Work-life balance, flessibilità dell'orario di lavoro e discriminazioni*, in this journal, 2023, 1, pp. 47-83. Concerning the individual right to work-life balance, see Zucaro, *Il diritto all'equilibrio vita-lavoro*, Giappichelli, 2024.

Methodologically, the article adopts a comparative legal approach combining the analysis of EU legislation, national implementing measures and selected best practices. The legislative analysis is complemented by an examination of collective bargaining, which is considered as an essential mechanism through which statutory rights are translated into organisational practices.

The research proceeds as follows. It begins by outlining the EU work-life balance regulatory framework, with a specific focus on Directive 2019/1158/EU ("WLB directive") and the implementation of flexible working arrangements (FWAs)[3]. It then traces the connection between flexibility and gender equality by cross-examining the organisational facilitators of FWAs with the corporate drivers of gender-equity policies, thereby identifying the conditions under which working-time flexibility can effectively foster gender-inclusive change. This analytical framework provides the basis for examining its most recent and innovative manifestation: the four-day working week. Finally, the analysis contextualises this instrument within the Italian employment landscape by evaluating both recent legislative proposals and company-level collective practices through a gender lens.

2. *Work-life balance as a driver of gender equality within the European legal framework*

The European legislator has recently adopted a series of measures that, directly or indirectly, affect the organisation of work across Member States from a gender perspective. These interventions follow the adoption of the European Pillar of Social Rights, which has proven to be a valuable tool for labour market inclusion and for managing structural vulnerability in the workplace.

Within the Pillar, principle no. 2 ("Gender Equality") and principle no. 9 ("Work-Life Balance") are of particular significance for the present analysis. The comparison with art. 33 ("Family and Professional Life") of the EU Charter of Fundamental Rights ("the Charter"), on which it is based, highlights several innovations. First, the Pillar emphasises the balance between

[3] Directive 2019/1158/EU of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU.

professional activity and family life – an aspect that is less explicitly stated in the title of art. 33 – and downgrades the concept of "professional life" to the narrower term "professional activity": this choice reflects contemporary challenges linked to digitalisation, overproductivity and overworking, which increasingly hinder the ability to "disconnect" from work[4].

The content of the Pillar's provision goes beyond that set out in the Charter in several respects. First, principle no. 9 extends the personal scope of the provision beyond parents to include carers, thereby recognising that care within the family context now extends beyond the care of children to include the care of sick or elderly people. Second, art. 33 of the Charter provides, as means of reconciling family and working life, the rights to protection against dismissal on grounds related to maternity, to paid maternity leave and to parental leave following the birth or adoption of a child. The Pillar represents a step forward in this respect as well, supplementing leave – the traditional means of work-life balance – with two additional mechanisms: the right to request flexible working arrangements and access to care services. With regard to leave, principle no. 9 specifies that it must be "suitable" and that women and men have equal access to special leaves of absence. In this respect, several scholars have credited principle no. 9 with moving beyond the gendered, mother-centred approach reflected in art. 33 of the Charter. In particular, while art. 33(2) expressly refers to "paid maternity leave", the reference to "parental leave" is not accompanied by an equivalent qualification as to payment. This textual asymmetry has been regarded in the literature as reinforcing a model in which care responsibilities remain primarily associated with women, rather than encouraging their more equal sharing between men and women[5].

Together with principle no. 2, principle no. 9 was subsequently operationalised through the WLB directive, which is part of the EU strategy to combat female occupational segregation[6].

[4] Eurofound, *Working anytime, anywhere: The quality of working time in the EU*, Publications Office of the EU, 2026, pp. 17-18. Maserati, *Prevedibilità dell'orario di lavoro e programmabilità dei tempi liberi nel rapporto full-time*, in *RGL*, 2025, 1, pp. 51-53.

[5] See Bell, *The principle of equal treatment and the European Pillar of Social Rights*, in *DLRI*, 2018, 160, 4, pp. 786-791; McGlynn, *Work, Family and Parenthood: the European Union Agenda*, in Conaghan, Rittich (eds.), *Labour Law, Work and Family*, Oxford University Press, 2005, pp. 217 and 228.

[6] For a general overview of the legislative measures driven by the European institutions, see Aa.Vv., *The future of gender*, cit., pp. 8-15.

The rationale guiding the European institutions in this field has evolved over time, in parallel with changes in societal attitudes towards the issue across different national contexts. The earliest legislative interventions, grounded in the traditional "male breadwinner" model, were gradually replaced by the "dual-earner" or "dual-career" paradigm[7]. However, this transition long collided with the "gender-blind" structure of directive 2003/88/EC[8]. By privileging flexibility in working-time arrangements in favour of employers and by conceptualising non-working time merely as rest and recuperation for a worker assumed to have no external care responsibilities, it proved structurally deficient in protecting those outside this paradigm[9]. While subsequent instruments – such as those on pregnant workers, parental leave and part-time work[10] – contributed to supporting women in managing care responsibilities, they failed to promote an equitable sharing of such tasks with male workers[11]. The focus on part-time work as the primary reconciliation tool further reinforced this imbalance. Rather than fostering substantive equality, part-time often consolidated the gendered division of care and served employers' organisational needs more than workers' genuine choices[12]. Ultimately, the limitations of traditional leaves and their unequal

[7] Romano, Petruccioli, *cit.*, pp. 229-232; Scarponi, *"Work life balance" fra diritto UE e diritto interno*, in *WP C.S.D.L.E. "Massimo D'Antona"*, 2021, 156, pp. 2-5; Calvellini, *Flessibilità e work-life balance: un percorso tra realtà e retorica*, in *Labor*, 2021, 4, pp. 410-413.

[8] Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time. Hereafter the "working-time directive".

[9] Zucaro, *Conciliazione vita-lavoro e gender gap nella cura. L'evoluzione legislativa nel prisma del quadro normativo europeo*, in *RGL*, 2022, 2, pp. 311-313, describes the first EU work-life balance measures as adopting a "mother-friendly" approach, based on the assumption that women alone were responsible for caregiving.

[10] Respectively: Council Directive 92/85/EEC; Council Directive 96/34/EC; Council Directive 2010/18/EU; Council Directive 97/81/EC. Directive 2019/1158/EU repeals directive 2010/18/EU. See Chieregato, *Conciliazione vita-lavoro: la nuova Direttiva UE sull'equilibrio tra attività professionale e vita familiare*, in *LG*, 2020, 2, pp. 126-128; Scarponi, *cit.*, pp. 2-5.

[11] Chieregato, *A Work-life balance for all? Assessing the inclusiveness of EU Directive 2019/1158*, in *IJCL*, 2020, 36, I, pp. 8-11.

[12] The literature on the subject is extensive: Barbieri, Cutuli, Guetto, Scherer, *Part-time employment as a way to increase women's employment: (Where) does it work?*, in *IJCS*, 2019, 60, 4, pp. 249-268; Beham, Baierl, Eckner, *When does part-time employment allow managers with family responsibilities to stay on the career track? A vignette study among German managers*, in *EMJ*, 2020, 38, 4, pp. 580-590; Brollo, *Occupazione femminile e flessibilità dei tempi di lavoro: il part-time*, in Brollo, Serafin (eds.), *Donne, politica e istituzioni: il tempo delle donne*, Forum Editrice

uptake by men and women, combined with the highly gendered concentration in part-time employment, have reinforced occupational segregation and the gender employment gap across European labour markets.

In response, the WLB directive explicitly aims to "achieve equality between men and women […] by facilitating the reconciliation of work and family life for workers who are parents, or carers" (art. 1), recognising that "limited incentives" for male caregiving and the lack of awareness-raising in this area "reinforces gender stereotypes and differences between work and care" (recital 11)[13]. To overcome these limitations, the directive introduces both new and strengthened individual rights to "paternity, parental and carers' leave", alongside the "right to request flexible working arrangements".

Among these, the latter represents one of its most innovative features: under art. 9, workers with children up to at least eight years of age, as well as carers, are entitled to request FWAs under certain conditions, recognising the value of flexible working hours to balance private life and professional activity. Pursuant to art. 3 of the directive, flexible working arrangements shall mean "the possibility for workers to adjust their working patterns, including through the use of "remote working arrangements", "flexible working schedules", or "reduced working hours" (emphasis added). This responds directly to the difficulties of balancing private and professional life within an occupational context characterised by extended and variable working hours[14]. Crucially, working-time programmability – the employer's inability to unilaterally alter it and the worker's ability to modify its duration

Universitaria Udinese, 2013; De Marco, *Disparità di genere e part-time involontario*, in *iQual*, 2025, 8; Calvellini, *cit.*, pp. 420-429; Militello, *Tempi di lavoro*, cit., pp. 45-49.

[13] Recital (6) of the Directive, on the other hand, states that work-life balance policies should contribute to gender equality by promoting women's participation in the labour market and the fair sharing of caregiving responsibilities between men and women. On the topic, Chung, *Flexible working arrangements*, cit., pp. 1-3. Concerning the instruments for the legal protection of parental rights within the context of Italian labour law, see Vallauri, *Genitorialità e lavoro. Interessi protetti e tecniche di tutela*, Giappichelli, 2020.

[14] Recital (10) of Directive 2019/1158 states: "work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of 'extended working hours and changing work schedules' (emphasis added), which has a negative impact on women's employment". On the topic see also Salazar, *Conciliazione vita-lavoro: principio da costruire legislativamente e culturalmente*, in *DPL*, 2025, 21, pp. 1288-1292.

and allocation – becomes central when flexibility is conceived as a reconciliation tool[15].

By intervening on this second dimension of time programmability, the WLB Directive introduces a possibility to modify the traditional regulation of working time which, until now, has remained an area almost entirely subjected to the employer's control[16]. Moreover, by establishing a worker's right to request a flexible work organisation for reconciliation needs and imposing on the employer the obligation to provide a response, the European legislator has introduced a mechanism that – despite its limited prescriptive power, since any adjustments remain subject to the employer's approval – enables an effective assessment of organisational choices, paving the way for a judicial balancing between these choices and the individual worker's right to work-life balance.

In this perspective, it may also be argued that such a right could be invoked by workers in light of the "protective" safeguards provided by art. 21 ("Non-discrimination") and art. 23 ("Equality between women and men") of the Charter, which, together with the anti-discrimination directives, elevate non-discrimination to a general principle of EU law[17]. This approach finds further support in art. 11 and 12 of the WLB directive, prohibiting less favourable treatment or retaliatory dismissal against workers who exercise their rights to leaves, time off from work and FWAs[18].

From this perspective, a combined reading of the WLB directive and EU anti-discrimination legislation remains essential: while the former primarily introduces procedural rights (beyond the regulation of leave en-

[15] Calvellini, *cit.*, pp. 413-417, refers to the two concepts through the notions of a *minimal* or *defensive* dimension in the former case, and a *maximal* or *expansive* dimension in the latter. Militello, *Tempi di lavoro*, cit., pp. 43-45, emphasises the importance of the 'predictability' of 'working time' in the former case and of the 'right to influence the organisation of working time' in the latter. Maserati, *cit.*, pp. 43-45.

[16] Militello, *Tempi di lavoro*, cit., pp. 41-42 and 55-61, refers to dir. 2003/88/EC as "gender blind".

[17] Scarponi, *cit.*, p. 12 ff., argues that the Directive enables this by clearly defining rights holders and employers' obligations. According to Zucaro, *Conciliazione vita-lavoro*, cit., pp. 313-317, the Directive paves the way for recognising discrimination based on family caregiving responsibilities as a protected ground under EU anti-discrimination law. Waddington, Bell, *The right to request flexible working arrangements under the Work-life Balance Directive – A comparative perspective*, in *ELLJ*, 2021, 12, 4, pp. 520-521.

[18] Art. 11, Directive 2019/1158/EU. On the subject, see Chieregato, *Conciliazione vita-lavoro*, cit., pp. 130-133.

titlements), the latter confers rights of a substantive nature. Indeed, since caregiving responsibilities remain highly gendered, it appears probable that workers requesting FWAs will frequently belong to a group protected by anti-discrimination regulation on the basis of one or more protected grounds: gender, in the case of women (but also men) with caring responsibilities; disability, where the request is submitted by a worker with a disability; or, via discrimination by association, in the case of individuals who are not characterised by a protected ground but who are nonetheless closely associated with an individual who is so characterised[19].

Some questions remain as to the actual capacity of these two regulatory frameworks, when considered together, to achieve a genuine redistribution of care responsibilities from a gender perspective. This appears particularly interesting when considering that different work-life balance models can be identified within the European framework[20]: a "Mediterranean model" (including countries such as Italy and Spain), where family is considered the primary provider of assistance and care and where collective bargaining still plays a pivotal role in regulating the issue; a "Nordic model" (such as in the Netherlands, in Sweden or in Denmark), where a strong social State is accompanied by the interaction of both public and private conciliation policies; and a "Continental model" (such as that found in Germany and France), where a combination of public policies and economic incentives for the private sector is in place. Moreover, it is important to consider that the implementation of the WLB directive has been quite heterogeneous across the Member States, making it complex to identify a common pattern behind it[21]. This structural divergence, which ranges from bare-minimum

[19] Waddington, Bell, *cit.*, p. 527. A recent development concerning the extension of the obligation to provide reasonable accommodation in the field of disability was marked by the *Bervidi* judgment of the Court of Justice, delivered on 11 September 2025 (CJEU, 11 September 2025, case C-38/24, *Bervidi, G.L. v AB SpA*). The Italian referring court asked whether that obligation also extends to caregivers of disabled children. Relying on *Coleman*, the literal interpretation of art. 2(1) of Directive 2000/78/EC and its overall objective, the Court recognised indirect discrimination "by association".

[20] On the topic, see Salazar, *cit.*, pp. 1288-1292.

[21] Pursuant to art. 18 ("*Reporting and Review*") of directive 2019/1158/EU, Member States are required to submit data concerning the implementation of the directive at national level by 2 August 2027, thereby enabling the Commission to prepare an official report. On the implementation of the directive, see De la Corte-Rodríguez, *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work still to be done*, European network of legal experts in gender equality and non-discrimination, 2023.

statutory compliance (as seen in countries aligning strictly with the ten-day paternity limit or the five-day carers' leave) to highly evolved frameworks typical of the Nordic and certain Continental systems, is far from neutral. Crucially, these diverse legislative interventions on work-life balance contribute to defining a specific national regulatory framework that is subsequently shaped and complemented by the initiatives of social partners, who play a pivotal role in resolving the concrete challenges linked to the promotion of gender equality.

2.1. *Working-time flexibility as a measure to promote gender equality*

The implementation of the WLB directive remains highly fragmented with regard to its most innovative instrument: flexible working arrangements. Their gender-equality potential, however, depends not only on formal availability but heavily on the substantial conditions governing access, use and institutional recognition. Member States diverge significantly as regards the typologies of adjustments available, whether workers hold an absolute or relative right to use them, the personal scope of entitlement and applicable statutory time limits[22].

First, national legislators have introduced a wide range of instruments aimed at improving work-life balance. Part-time work remains the mechanism most commonly promoted across Member States[23], often in combination with reconciliation schemes providing for flexibility both in the place of work – through, for example, teleworking – and in working time, by means of arrangements such as flexitime. The architecture of these national measures is closely linked to the legal nature of the entitlement granted to the workforce, establishing a sharp dichotomy between an absolute right to the arrangement and a merely relative right, which instead subordinates the adjustments to managerial approval. Crucially, while an absolute right to part-time work is widely integrated into the majority of domestic frameworks, broader FWAs (including teleworking and flexitime) generally constitute only a relative right. Notable exceptions are found in Portugal,

[22] De la Corte-Rodríguez, *cit.*, pp. 103-106.

[23] This is registered, for example, in Austria, Belgium, Spain, Hungary, Latvia, Poland and Slovenia.

Hungary, Ireland and Romania, where teleworking constitutes an absolute right for all workers[24].

Similarly, the personal scope of flexible work-life balance entitlement varies considerably across the European landscape. Albeit to a limited extent, a statutory distinction is drawn between public and private sector provisions in certain jurisdictions[25]. A more pronounced divergence emerges regarding the specific categories of eligible workers, dictated primarily by the maximum age of children up to which parents may claim these instruments (ranging from 8 to 15 years), as well as by the restrictive targeting to the narrow categories covered by the WLB directive. Conversely, several Member States opt for universal workforce entitlement: in Austria, part-time work and telework are recognised for all public sector employees; in Belgium, part-time work in the form of a four-day week is recognised within public employment; in Spain, all private sector workers with demonstrable reconciliation needs hold flexible working entitlements; finally, the Netherlands grants identical rights to all employees, provided that the employer retains at least ten workers[26].

This comparative overview shows that national legislation provides only a variable baseline for access to flexibility; its gender-equality potential ultimately depends on how social partners adapt and develop such measures within specific sectoral, territorial and organisational contexts[27]. Accordingly, assessing the gender-equality potential of working-time flexibility requires a cross-analysis of, on the one hand, the factors shaping its adoption and use within organisations and, on the other, the rationales underpinning corporate gender-equality and inclusion policies. Company-level collective bargaining is particularly relevant in this respect, as it is the level at which statutory rights are translated into organisational practices and adapted to specific workplace conditions.

The first analytical dimension concerns the conditions that enable or, conversely, hinder the adoption of flexible working-time arrangements within organisations. "Sectoral" characteristics are particularly significant in

[24] Eurofound, *Working anytime, anywhere*, cit., p. 57.

[25] This is registered, for example, in Austria and Belgium, where a distinction is made between public and private sector.

[26] De la Corte-Rodríguez, *cit.*, pp. 103-106.

[27] ILO, *The contribution of social dialogue to gender equality*, December 2020.

this respect[28]. Flexibility in the organisation of working time may be introduced relatively easily in some sectors, such as finance and real estate, whereas work organisation appears less adaptable in education, healthcare, commerce, social services, manufacturing and construction. In addition, "company size" constitutes a further structural factor influencing the decision to adopt flexible arrangements[29]. Previous research has shown that large companies are generally better positioned to implement a range of flexible arrangements, given the substantial resources they can invest. Similarly, such arrangements may also be introduced in small enterprises, especially as a result of simplified management structures and the possibility of relying on informal agreements within a limited workforce. Conversely, medium-sized enterprises often face greater difficulties, given the scale of resources required to maintain production while lacking the flexibility to rely on informal arrangements, which may prove impracticable in organisations characterised by a larger workforce and multiple departments[30]. Furthermore, workers' "occupational level" must also be taken into account: empirical data show that both skill level and hierarchical position significantly affect access to these measures, with highly skilled employees and managers tending to enjoy greater access to flexibility arrangements. Lastly, the degree of "influence exercised by trade union representatives", together with their stance on the issue, is equally significant, particularly in the context of collective bargaining aimed at securing flexible arrangements that adequately reflect workers' needs. The broader "national context" also plays a pivotal role in the dissemination of FWAs, with available data suggesting that positive attitudes towards such instruments are more common in labour markets with an established tradition of flexibility, whereas scepticism may arise where flexibility is less widespread[31].

Among the non-structural factors mediating corporate flexibility are "employers' willingness" and the prevailing "organisational culture". From the employer's perspective, the potential benefits of flexibility in-

[28] On the topic, see: Eurofound, *Working anytime, anywhere*, cit., p. 32; Chung, *Flexible working arrangements*, cit., pp. 8-10; Jacobi, Hamjediers, Naujoks, *Tailored to Women, Provided to Men? Gendered Occupational Inequality in Access to Flexible Working-Time Arrangements*, in *SIR*, 2025, 176, pp. 1181-1182.

[29] Jacobi, Hamjediers, Naujoks, *cit.*, pp. 1183-1184.

[30] Chung, *Flexible working arrangements*, cit., pp. 33-39.

[31] Chung, *Flexible working arrangements*, cit., pp. 48-53.

clude improved productivity and overall organisational performance, greater employee well-being and engagement, a healthier organisational culture, and lower absenteeism, work-related stress, illness and replacement costs[32].

The factors outlined above – capable of influencing organisational flexibility across different national, sectoral and corporate contexts – are equally identifiable in relation to the dissemination of work-life balance measures within broader gender equality programmes. In general, the strategic drivers prompting companies to implement these arrangements can be categorised into three distinct operational rationales. The "organisational driver" reflects the recognition that workload distribution affects both gender equality and individual and collective well-being, with implications for organisational productivity. The second driver, the "economic" one, responds to the need for greater financial support for arrangements – such as leave entitlements – that remain inadequately compensated. Finally, the "cultural driver" promotes interventions aimed at addressing disparities within the territorial context[33] in which the company is located and operates.

According to the literature, work-life balance measures and the flexibilisation of working hours exert positive effects across several dimensions that historically feed the gender gap. Primarily, flexibility supports women's continued participation in full-time employment. Certain flexible working arrangements and working-time reductions, such as the "four-day working week" examined in the subsequent sections, render full-time employment more attractive to women who currently work part-time to reconcile paid work with care responsibilities, potentially narrowing the pay gap associated with part-time employment[34]. Furthermore, while flexibility does not automatically guarantee a gendered redistribution of care burdens and family responsibilities, it nonetheless establishes the material conditions for a more equitable allocation of workloads and unpaid care work by enabling male workers to use such arrangements, ultimately fostering broader female labour market participation.

[32] On the topic, see ILO, *Guida per l'organizzazione dell'orario di lavoro*, 2025, pp. 1-2; De Spiegelaere, Piasna, *Perché e come ridurre l'orario di lavoro*, ETUI, 2018, pp. 26-45.

[33] Staffieri, *Armonizzazione dei tempi*, cit., pp. 1775-1779, categorises the three rationales underpinning WLB measures.

[34] Maraziotis, *Flexibility for equality: Examining the impact of Flexible working time arrangements on women's convergence in working hours*, in *BJIR*, 2024, 62, pp. 410-414.

Crucially, the gender impact of work-life balance measures depends significantly on the context in which they are implemented. As the previous analysis of organisational flexibility demonstrates, neither flexibility nor work-life balance measures are inherently gender-equal; their long-term efficacy depends on their design, workplace culture and their capacity to challenge, rather than reproduce, deeply rooted gendered assumptions about care work.

At the macro level, national attitudes towards gender equality and the size of the gender gap shape both the scale of intervention required and the conditions for achieving lasting results. Moreover, the specific characteristics of each productive sector, together with the gender composition of its workforce, are equally decisive for the development of effective work-life balance measures. This has implications, for instance, with regard to the intended beneficiaries of the measures adopted, who may constitute either the majority or the minority within a given sector, thereby generating the risk of marginalisation precisely of those individuals whom such measures are intended to include.

At the company level, similar dynamics may be observed, further shaped by the significance of organisational culture, both in terms of prevailing conceptions and structures of work and with regard to sensitivity to issues of Diversity, Equity and Inclusion. These elements assume particular importance when employers decide whether to adopt a comprehensive "gender mainstreaming" strategy across organisational and decision-making processes[35]. Furthermore, flexibility measures are increasingly interpreted through a gendered lens, with potentially adverse consequences for both women and men. Women remain disadvantaged by the assumption that they use, or will eventually use, flexible arrangements primarily for care purposes. Men who use such measures to manage family and care responsibilities, rather than for training or performance-related purposes, may likewise face negative repercussions[36].

Against this background, collective bargaining has often intervened in areas where legislation remains hesitant, pioneering the gender-sensitive management of working and non-working time. The concrete in-

[35] Chung, van der Lippe, *Flexible Working, Work-Life Balance, and Gender Equality: Introduction*, in *SIR*, 2020, 151, pp. 375-378.

[36] Jacobi, Hamjediers, Naujoks, *cit.*, pp. 1183-1184.

itiatives implemented by social partners and companies can be mapped across the same economic, cultural and organisational drivers previously identified.

The "economic rationale" drives companies to negotiate paternity, parental and carers' leave exceeding statutory minimum standards in duration and compensation, introducing highly flexible options such as hourly utilisation[37]. In addition, company-level collective agreements frequently expand paid time off for specific family contingencies, such as children's integration in nursery, medical appointments and care in the event of illness of children or of persons for whom the worker is recognised as a caregiver. Furthermore, companies design sophisticated welfare schemes that offer financial incentives and flexible benefits, including welfare credits for educational services, childcare subsidies, health screening grants, discounts for cultural events and training courses, as well as corporate bonuses upon childbirth or adoption.

Welfare schemes also form the core of interventions governed by a "cultural rationale", frequently deployed to compensate for structural shortcomings in local public infrastructures and services, for example through the establishment of services and partnership arrangements related to early childhood facilities and care provision. The corporate adoption of DE&I strategies and organisational models should likewise be understood as an integral part of this culture-driven approach[38]. These frameworks integrate a wide range of gender equality initiatives, from the drafting of ethical codes and corporate codes of conduct to the implementation of work-life balance measures and the unbiased organisation of work activities. Furthermore, they include the design of training and awareness-raising initiatives on diversity and equal opportunities, as well as systematic research and gender demographic monitoring – both within the company and across the broader sector – aimed at formulating targeted policy interventions[39]. In this way, a diversity-sensitive perspective can be structurally embedded across all corporate decision-making and organizational processes.

[37] Altilio, *La parità di genere nella contrattazione collettiva aziendale*, Adapt WP, 2025, 3, pp. 10-22; ILO, *The contribution of social*, cit.

[38] Staffieri, *Armonizzazione dei tempi*, cit., pp. 1773-1774.

[39] Santoni, Crespi, *Conciliazione famiglia e lavoro tra smart-working e diversity management. Una riflessione su pratiche e nuove semantiche*, in *ALSS*, 2022, 1, pp. 54-59; Altilio, *La parità di genere*, cit., pp. 27-28.

Finally, the "organisational rationale" leads companies to adopt advanced measures for the management of work activities, including flexible working hours, working-time accounts, facilitated part-time work, remote working and the adoption of shortened working weeks[40]. For instance, working-time accounts (such as the Italian *banca delle ore*) allow workers to accrue credits from overtime or unused leave, which may subsequently be used for training, health-related absences or work-life balance purposes[41].

In shaping the execution of work, collective bargaining operates on two analytical axes: spatial and temporal flexibility. With regard to the former, digital innovations have undoubtedly increased the remote execution of work through smart working, without affecting workers' overall remuneration[42]. However, while remote work has become an established work-life balance tool, its long-term efficacy has gradually been questioned, especially because it may significantly interfere with the amount of time devoted to work-related tasks, increasingly resulting in hyperconnectivity and thereby undermining the boundary between professional and private life that it was, conversely, intended to strengthen[43]. On the other hand, temporal flexibility involves the modulation of daily and weekly schedules based on the intersection of workers' needs and business predictability. In this domain, collective bargaining encompasses a wide range of established measures aimed at ensuring a degree of flexibility in entry and exit times

[40] On the topic, broadly, ILO, *Guida per l'organizzazione*, cit., pp. 20-26; Staffieri, *Pari opportunità e contrasto alla violenza di genere nella contrattazione collettiva*, in *DPL*, 2024, 47/48, pp. 2778-2779; Altilio, *La parità di genere*, cit., pp. 10-22; Chung, *Flexible working arrangements*, cit., pp. 5-7; Staffieri, *Armonizzazione dei tempi*, cit., pp. 1775-1779; Senatori, *La «nuova» conciliazione vita-lavoro e la contrattazione collettiva: una sfida che si ripete*, in *RGL*, 2022, 4, pp. 596-611.

[41] Moreover, it is possible to identify also working-time accounts based "on solidarity", built from the donation of hours by both the company itself and other workers. ILO, *Guida per l'organizzazione*, cit., p. 27; Altilio, *La parità di genere*, cit., pp. 10-22.

[42] Altilio, *La parità di genere*, cit., pp. 10-22.

[43] Calvellini, *cit.*, pp. 423-429; Militello, *Il work-life blending nell'era della on demand economy*, in *RGL*, 2019, 1. On the general issues concerning agile work, see Santagata De Castro, Monda (eds.), *Il lavoro a distanza: una prospettiva interna e comparata*, in *Quaderno DLM*, 2023, 13. For a general reflection on remote work and gender equality, see at least: Gabriele, *Il diritto alla disconnessione e il tempo per la cura: la dimensione multilevel e le prospettive di tutela*, in *DML*, 2023, 3; Schiavetti, *La parità di genere nei luoghi di lavoro, tra work-life balance e nuove tecnologie*, in *Federalismi.it - Focus: Lavoro, Persona, Tecnologia*, 2023, 4; Jansen, De Angelis, *Remote work vs part-time employment: a new work-family balance?*, INAPP WP, 2025, 139; Santoni, Crespi, *cit.*, pp. 45-66; Tinti, *Il lavoro agile e gli equivoci della conciliazione virtuale*, in *WP C.S.D.L.E. "Massimo D'Antona"*, 2020, 419.

(commonly referred to as "flexitime"), as well as flexibility in the management of lunch breaks and the personalised planning of weekly schedules[44]. These traditional arrangements are increasingly complemented by more recent experiments promoting the "four-day working week" as part of a broader reconsideration of work organisation, which may also pursue gender-equality objectives, as will be discussed in the next section.

3. *Working-time reduction: the potential of the four-day working week to achieve gender equality*

The previous section has shown that working-time organisation constitutes a central dimension of work-life balance policies and, more broadly, of organisational strategies capable of promoting gender equality. Against this background, the analysis now turns to the "four-day working week" (hereafter, also, "4DW"), the most ambitious recent attempt to rethink working-time organisation, and examines its potential implications for gender equality.

The four-day working week constitutes a new model of work organisation whereby standard weekly working hours are distributed over four days rather than five. Two principal modalities may be distinguished: the first entails a reduction in the overall number of weekly working hours without any loss of salary (a "reduced four-day week"); the second consists in the redistribution of the standard weekly working hours over four days without any reduction in total hours, commonly described as "compressed four-day week[45]". Both models have gained increasing attention in light of recent developments, including the reorganisation of work during and in the immediate aftermath of the Covid-19 pandemic, as well as broader labour market dynamics such as the phenomenon of "great resignations" and the persistent gender employment gap[46].

[44] ILO, *Guida per l'organizzazione*, cit., pp. 20-26.

[45] Del Frate, *Studio sulla flessibilità funzionale dell'orario di lavoro*, Giappichelli, 2024, p. 128; Chung, *Flexible working arrangements*, cit., pp. 76-78; Carcano, *Accordi sulla "settimana corta": vantaggi e limiti*, in *DPL*, 5, 2024, p. 298.

[46] Aa.Vv., *Work Time Reduction: A Critical Analysis of the Main Arguments for Adopting a 4-Day Workweek*, in Machado (ed.), *Human Resource Management in a Disrupted World, Lecture Notes on Multidisciplinary Industrial Engineering*, Springer Nature Switzerland, 2025, pp. 334-337.

The four-day working week is not an entirely new instrument; rather, it must be placed within a broader series of interventions which, at both international and supranational levels, have progressively contributed to the reduction of working time[47]. Given the centrality of working hours within the Western model of labour regulation – where they function as the primary metric for measuring work performance and determining remuneration – their regulation has historically proven complex, considering also that they are managed across multiple regulatory levels, such as statutory legislation and collective bargaining[48].

This structural complexity is likewise evident in the implementation of the four-day working week. As a form of working-time reduction, this instrument must be assessed within the broader framework outlined above: not as an inherently gender-equal model, but as an organisational arrangement whose effects depend on its design, the surrounding institutional context and its interaction with wider equality policies.

To fully evaluate its transformative potential, it is necessary to examine the principal drivers encouraging the adoption of the four-day working week across three distinct yet interconnected analytical perspectives: that of workers, that of companies and employers, and that of society at large. From the employees' standpoint, the reduction of working time – particularly in the form of a "reduced" four-day week – fosters substantial improvements in working conditions. These include enhanced work-life balance, reduced physical and mental fatigue, lower occupational stress and expanded opportunities for personal self-realisation and overall quality of life[49]. From the employers' perspective, organisational benefits include enhanced individu-

[47] ETUC, *Bargaining for working time reduction. ETUC Study on Working Time Reduction in Collective Agreements*, 2025, pp. 36-46; Eurofound, *Working time reduction and its impact on productivity: A systematic literature review*, 2026. Del Frate, *Prove di sostenibilità per la c.d. four day week, tra contrattazione collettiva e poteri unilaterali*, in Aa.Vv., *Tempi di lavoro, misure di conciliazione e welfare negoziale tra legge e contratto collettivo*, Adapt University Press, 2024, pp. 67-70; Aa.Vv., *Work Time Reduction*, cit., pp. 334-337; Cabrita, *Four days a week? Europe debates shorter working times*, Eurofound, 6 October 2025; Cazzola, *Politically (in)correct - Settimana corta o weekend lungo?*, in *Boll. Adapt*, 2023, 14.

[48] Ferrante, *L'orario di lavoro tra presente e futuro*, in *LLI*, 2022, 8, 1, pp. 115-125; Del Frate, *Prove di sostenibilità*, cit., pp. 77-80; Aa.Vv., *Analisi e formulazione di ipotesi di riduzione di orario di lavoro a parità di salario*, Inapp paper, 2026, 63, pp. 7-9.

[49] De Spiegelaere, Piasna, *cit.*, pp. 25-45; Aa.Vv., *Work Time Reduction*, cit., pp. 338-340; Carcano, *cit.*, pp. 300-301.

al and collective productivity, lower absenteeism rates and reduced turnover-related costs[50]. Additional time available to workers may also be devoted to training and professional development, thereby strengthening human capital within the enterprise[51]. Furthermore, the adoption of the four-day working week requires a structural reorganisation of workloads and business processes, offering an opportunity to modernise workplace models alongside broader transformations driven by digitalisation and sustainability goals. In addition, higher employee satisfaction and well-being foster staff retention, thereby supporting long-term organisational growth and enhancing corporate reputation[52]. Indeed, in contemporary labour markets, adopting innovative and socially responsible working models – as occurs with the implementation of DE&I frameworks – constitutes a significant competitive advantage in attracting talent[53]. Finally, at the macro-societal level, the four-day week promotes social, economic and environmental sustainability. On the one hand, reduced commuting and the periodic closure of workplaces can lower energy consumption and carbon emissions, while additional non-working time may foster more sustainable individual consumption patterns and civic participation[54]. On the other hand, positive impacts extend to broader employment dynamics: a reduction in individual working hours can facilitate job redistribution, thereby generating new employment opportunities, while more adaptable schedules enable older workers to extend their participation in the labour market, strengthening the sustainability of pension systems and mitigating demographic pressures[55].

The implementation of the four-day working week is shaped by the same structural, organisational and cultural conditions previously identified in relation to flexible working arrangements. Although these factors operate differently depending on whether a "reduced" or a "compressed" four-day week is involved, they remain decisive in determining both the feasibility of the measure and its capacity to promote gender equality.

[50] Eurofound, *Working time reduction*, cit., pp. 5-9 and the research conducted in Chapter 3 (pp. 32-37).

[51] Chung, *Flexible working arrangements*, cit., pp. 76-78.

[52] ETUC, *cit.*, pp. 15-18; Eurofound, *Working time reduction*, cit., pp. 42-44.

[53] Jain, Chouliara, Blake, *From Five to Four: Examining Employee Perspectives Towards the Four-Day Workweek*, in *AD*, 2025, 15, 3, 114, pp. 5-8.

[54] De Spiegelaere, Piasna, *cit.*, pp. 35-37; Aa.Vv., *Work Time Reduction*, cit., pp. 344-345; Carcano, *cit.*, pp. 300-301; ETUC, *cit.*, pp. 20-21.

[55] De Spiegelaere, Piasna, *cit.*, pp. 32-35; ETUC, *cit.*, pp. 21-23.

At the structural level, the effects of a four-day working week vary considerably according to workers' individual circumstances, sectoral characteristics and the broader regulatory environment. Worker uptake of the arrangement and individual outcomes are heavily conditioned by heterogeneous personal and caregiving commitments, specific job roles, pre-existing shift patterns and commuting frequency and duration[56]. Sectoral characteristics are equally decisive: the 4DW may prove especially beneficial in highly stressful sectors or in occupations characterised by high turnover, where improved working conditions could enhance retention and overall performance[57]. Conversely, factors such as seasonality, the structure of production chains involving interdependent departments, and the maintenance of international or global business relations with clients and stakeholders require tailored solutions and deep financial evaluations[58]. Finally, institutional and national frameworks significantly shape the implementation of the four-day working week. Financial incentives – such as the availability of public subsidies – are closely intertwined with the legal architecture governing working time: the choice of the appropriate regulatory instrument, whether statutory legislation or collective bargaining, thereby represents a pivotal element[59]. Moreover, this regulatory dynamic is linked to and influenced by both national collective bargaining coverage and the country's prevailing work culture[60].

At the organisational level, the effective adoption of the four-day week relies on the internal capacity of companies to redesign work in ways that make shorter working weeks sustainable. Introducing this measure requires a comprehensive reorganisation of workloads, alongside coherent wage policies and robust negotiation processes involving all relevant parties. This holistic approach is critical to prevent the 4DW from being reduced to a mere vehicle for cost-cutting or performance intensification, without a real commitment to enhancing workers' well-being[61].

[56] Eurofound, *Working anytime, anywhere*, cit., pp. 25-26; Du Bois, Baert, Sterkens, Derous, *From Policy to Practice: Unraveling Individual Uptake of Compressed Work Schedules*, in *HRMJ*, 2025, 64, pp. 1229-1230.

[57] Eurofound, *Working time reduction*, cit., pp. 9-10 and 62-63.

[58] Jain, Chouliara, Blake, *cit.*, pp. 5-8.

[59] Del Frate, *Studio sulla flessibilità*, cit., pp. 148-153.

[60] On the role of collective bargaining in the regulation of working time, see ETUC, *cit.*

[61] ETUC, *cit.*, pp. 12-13. This concern is particularly salient in the case of compressed working weeks. On the topic, see Du Bois, Baert, Sterkens, Derous, *cit.*, pp. 1237-1240.

Finally, at the cultural level, the long-term effectiveness of the four-day week depends on dismantling deeply entrenched workplace norms, particularly those linked to presenteeism and long-hours commitment models[62]. Without a genuine shift in managerial culture and evaluation metrics, shorter working hours risk reproducing informal career penalties and marginalising workers who use them.

Against this background, the potential contribution of the four-day working week to gender equality, which constitutes the primary focus of the present analysis, requires separate consideration. In this respect, the literature has identified several interrelated mechanisms through which this instrument may support more equal labour-market outcomes and a fairer distribution of care responsibilities.

A first mechanism concerns women's participation in the labour market. By improving work-life balance, enhancing predictability and programmability of working time, and making full-time employment more attractive, the four-day working week may encourage women's participation in paid work[63]. Given the high incidence of female part-time employment and the associated gender pay gap, the 4DW may also facilitate transitions from part-time to full-time employment, thereby contributing to narrowing both pay disparities and career inequalities[64]. Furthermore, since many of the most remunerative and senior positions currently presuppose long and uninterrupted working hours, a shorter standard working week may remove this barrier, opening access to leadership roles previously perceived as incompatible with family responsibilities[65]. A second mechanism relates to the redistribution of unpaid care work. The uptake of the four-day week by male workers may encourage a more balanced sharing of caring duties within households, while also challenging the stigma traditionally attached to reduced or flexible working arrangements when used for family-related reasons[66]. This shift is reinforced by a broader erosion of the "ideal worker"

[62] Eurofound, *Working anytime, anywhere*, cit., pp. 9-12. Chung, *Flexible working arrangements*, cit., pp. 79-81.

[63] Chung, *Flexible working arrangements*, cit., pp. 76-78; De Spiegelaere, Piasna, *cit.*, pp. 27-31; ETUC, *cit.*, pp. 23-24.

[64] Aa.Vv., *Work Time Reduction*, cit., pp. 341-343.

[65] Chung, *Flexible working arrangements*, cit., pp. 79-81; Chung, *A social policy case for a Four-Day Week*, in *JSP*, 2022, 51, 3, p. 557.

[66] By collectively reducing working hours for all employees, this mechanism also removes the social "excuses" that have historically allowed men to opt out of domestic and care

norm: by moving the measure of commitment away from presenteeism and towards tangible outcomes, the four-day week helps normalise the fact that every worker – regardless of gender – holds responsibilities beyond the workplace, thereby dismantling a stigma that has historically and disproportionately affected women[67]. Finally, these changes may generate broader economic effects at household level, including higher family income resulting from increased female labour market participation and a greater capacity to organise and access childcare services. Furthermore, by remaining within full-time employment regimes, women can also better protect their pension entitlements and long-term wage growth, in this way addressing the gender pension gap at its root.

Despite its potential benefits, the four-day week also entails significant risks and limitations for gender equality. Introduced in isolation and on a purely voluntary or corporate-led basis, it is unlikely to reverse structural inequalities in unpaid care or to foster gender equality in the labour market. Working-time reduction is part of a broader cultural transformation – much like gender equality itself – which relies on the coordinated action of multiple institutional actors. When individual companies take the lead in implementing such arrangements without State coordination, governments may be less inclined to intervene, both in terms of working-time regulation and for the promotion of equality policies[68]. A further concern arises from the operational design of the model, especially regarding the distinction between a "reduced" and a "compressed" four-day week. Concentrating standard weekly hours into four extended working days, as in the case of the "compressed" model, often proves incompatible with children's schedules and caregiving routines. If the model is imposed as a general organisational measure, it could potentially amount to indirect discrimination against workers with primary care responsibilities, who

activities. See: Mullens, *Time for a feminist future? A study on the impact of a 30-hour workweek on women's lives*, PhD dissertation, Vrije Universiteit Brussel, 2023, p. 225; Chung, *A social policy case*, cit., pp. 557-559.

[67] See Chung, *Flexible working arrangements*, cit., pp. 79-81, 92; Chung, *A social policy case*, cit., pp. 557-559; De Spiegelaere, Piasna, *cit.*, p. 65; Mullens, Glorieux, *Reducing weekly working hours: Temporal strategies and changes in the organization and experiences of work-Results from a qualitative study of a 30-hour workweek experiment*, in *TS*, 2023, 32, 2, pp. 162-163.

[68] Chung, *Flexible working arrangements*, cit., pp. 48-53.

are still predominantly women[69]. From a socio-cultural perspective, the four-day week may also reinforce rather than dismantle traditional gender roles. As a matter of fact, additional free time for women is often absorbed by unpaid domestic and care work, thereby reinforcing women's role as primary caregivers. Moreover, if the measure is adopted individually or voluntarily – resembling contemporary part-time models – it may attract a strong flexibility stigma, especially when associated with care or maternity. This can generate informal career penalties, slower wage growth and reduced access to promotion, ultimately contributing to a two-speed gender-segregated labour market[70] in which high-level positions remain tied to a long-hours culture.

4. *The Italian case: gender inequalities and four-day working week experiments*

Both models of the four-day working week described have gained traction in several Member States through legislative initiatives and collective agreements. An increasing number of experiments is also observable in Italy. Consistent with the aim of this study – to assess whether working-time reorganisation, conceived through a flexible and gender-aware lens, can serve as a driver of female inclusion rather than a source of further marginalisation – this section and the following one examine the Italian context and the conditions under which the 4DW might promote substantive gender equality.

First and foremost, the examination of certain data concerning the current condition of the Italian labour market – from a gender perspective – helps to understand and highlight the need to introduce innovative labour market organisation measures capable of improving some of the critical indicators that remain still present[71].

[69] Du Bois, Baert, Sterkens, Derous, *cit.*, p. 1237; Del Frate, *Studio sulla flessibilità*, cit., p. 150; De Spiegelaere, Piasna, *cit.*, p. 50.

[70] Chung, *Flexible working arrangements*, cit., p. 80, uses the concept "*two-tiered labour market system*" talking about the obstacles against career and remuneration prospects. Also, Chung, *A social policy case*, cit., p. 556.

[71] Data are taken from: Esposito (ed.), *Rapporto annuale sul mercato del lavoro e politiche di genere (Gender Policy Report)*, INAPP, December 2025. For an overview of EU data and trends, refer to the study by Aa.Vv., *The future of gender*, cit., pp. 18-38.

In 2025, the employment rate of the female population remains lower than that of the male population (53.9% compared with 71.4%), while concerning the unemployment rate of individuals, the gap is more limited, though still worrying (7.4% for women and 6.2% for men). By contrast, the disparity is far more pronounced in relation to the inactivity rate, which stands at approximately 41.7% for women, almost double that recorded for men (23.9%)[72]. Compared with 2024, a slight increase in women's employment rates can be observed: however, this growth is concentrated in the 45-64 age group; instead, for men, together with a similar rise in employment rates among those aged over 55, an increase in employment is also evident in the 25-34 age group[73].

A factor that significantly affects labour market participation indicators is parental status. According to data for 2025, having a child of dependent age produces markedly different effects on the labour market position of men and women: the employment rate for men remains on average 30% higher than that for women. Particularly alarming figures emerge with regard to maternal unemployment – which tends to be approximately double that of fathers – as well as non-participation in the labour market, which again is roughly twice as high for women as for men. An additional cause for concern is that these figures do not improve substantially as the age of dependent children increases, thereby highlighting the long-term effects of motherhood on women's employment prospects and career opportunities[74].

An analysis of the data concerning the underlying reasons for non-participation in the labour market indicates that "education and vocational training" constitutes the principal reason among economically inactive men aged 25-34 (45.5%). For women, by contrast, the predominant reason is "family-related responsibilities", accounting for 43.9% in the same age group. This proportion increases further among those aged 35-44 (61.5% for women compared with 4.6% for men) and remains consistently higher than that recorded for male workers across all subsequent working-age groups[75]. Finally, with regard to the contractual arrangements characterising newly employed individuals, the proportion of part-time contracts among women

[72] Esposito (ed.), *cit.*, p. 10.
[73] Esposito (ed.), *cit.*, p. 16.
[74] Esposito (ed.), *cit.*, pp. 11-12.
[75] Esposito (ed.), *cit.*, pp. 19-20.

stands out: 48.7% of newly employed women are engaged on a part-time basis, compared with 27.5% of newly employed men[76].

The aforementioned data depict female employment in Italy as still facing significant challenges, structurally linked to deep-rooted critical issues relating to a work culture characterised by prolonged working hours and a persistently patriarchal allocation of care responsibilities within households. This situation continues to be reinforced by the inadequacy of regulatory instruments designed to counteract such tendencies. Alongside a comparatively generous period of maternity leave of five months, there exists a paternity leave entitlement of negligible duration[77] – ten days, corresponding to the minimum required under the WLB directive – and parental leave which, although generous in terms of its overall duration available to families (ten months, extendable to eleven), remains negatively affected by its limited financial coverage[78]. Similarly, Legislative Decree No. 105/2022, implementing the WLB directive, merely grants priority access to smart working for working parents (with children up to 12 years of age or disabled children), workers with disabilities and workers with caregiving responsibilities towards dependent family members requiring assistance. Yet, because the employer retains the final decision, this priority falls short of creating a genuine right to flexible working[79].

Within this context, the implementation of novel working-time flexibility measures – such as the four-day working week – assumes a potentially transformative significance, challenging both traditional organisational structures and entrenched cultural norms[80]. In Italy, this evolution has been driven primarily by innovative company-level collective agreements, alongside legislative reform proposals aimed at reshaping national working-time regulation.

[76] Esposito (ed.), *cit.*, pp. 21-22.

[77] Draft law no. 2228/2025, introducing equal parental leave for fathers, was rejected on 27 February 2026.

[78] While compensation may reach up to 80% of salary for three months, it is reduced to 30% of remuneration for the remaining period.

[79] See Dagnino, *Sull'attuazione della Direttiva UE 2019/1158: il nodo del "lavoro flessibile"*, in *LG*, 2023, 2, p. 140 ff.

[80] Chung, *Flexible working arrangements*, cit.

4.1. *Legislative initiatives and corporate practices: evaluating short-week models through a gender lens*

This section reviews the main legislative proposals and collective bargaining practices concerning the four-day working week in Italy, with a view to assessing their potential and limitations from a gender equality perspective.

Between 2022 and 2024, four legislative proposals on working-time reduction were introduced in Parliament, namely no. 142/2022, no. 1000/2023, no. 1505/2023[81] and no. 2067/2024. Although none was ultimately approved – with the most recent one, a synthesis of earlier initiatives, being rejected in March 2026 – together they illustrate the gradual evolution of a regulatory debate around the four-day working week.

Regarding their scope of application, proposals no. 142/2022, 1000/2023 and 2067/2024 applied to both the public and private sectors, whereas proposal no. 1505/2023 targeted exclusively the private sector.

The regulatory design of working-time reduction also varies, even if only to a limited extent, across the four proposals. All of them envisaged the possibility of implementing the reduction through a four-day working week. However, they differ as regards the extent of the proposed reduction: proposal no. 142/2022 envisaged a reduction of standard weekly working time to up to 34 hours, while proposals no. 1000/2023 and 2067/2024 reduced it to up to 32 hours; by contrast, proposal no. 1505/2023 merely referred to a reduction in weekly working time without being more specific. Despite these differences, all four proposals share one essential feature, namely the maintenance of workers' previous remuneration. The proposals also differ with regard to the regulatory instrument governing the implementation of the new working-time regime. The first proposal relied primarily on statutory intervention, while the remaining proposals entrusted

[81] For a discussion on the first three proposals, see: Del Frate, *Studio sulla flessibilità*, cit., pp. 143-148; the articles in *Boll. Spec. Adapt*, 2024, 4, by: Alifano, Martini, Sala, Virgili, *La riduzione dell'orario di lavoro: le proposte di legge*; Marchiotti, Zanella, Zaniboni, *Oggetto, finalità e ambito di applicazione delle proposte di legge in materia di riduzione dell'orario di lavoro*; Biundo, Chirico, Prosdocimi, *Il ruolo della contrattazione collettiva nelle proposte di legge sulla riduzione dell'orario di lavoro*; Nardo, Sannipoli, *L'organizzazione del tempo di lavoro all'interno delle tre proposte di legge relative alla riduzione dell'orario di lavoro*; Altilio, Catalano, Guerra, Papini, *Incentivi e sanzioni per la riduzione dell'orario di lavoro: l'analisi delle proposte di legge*.

implementation to collective bargaining – at national level in no. 1000/2023 and at any bargaining level in no. 1505/2023 and no. 2067/2024. The latter proposal is particularly noteworthy because it combined the two regulatory approaches: it initially entrusted the implementation of working-time reduction to collective bargaining, subsequently providing that, once the period of application of the support measures had expired, the statutory standard working time laid down in art. 2 of Legislative Decree no. 66/2003 would be amended accordingly.

Institutional support, in the form of financial incentives and dedicated governance structures, occupies a central place across all four proposals, reflecting the awareness that a reduction in working time can only be sustainable if accompanied by appropriate economic and organisational support. To ensure the financial viability of working-time reduction while preserving workers' remuneration, the proposals provided for a range of measures. First, with the exception of proposal no. 1000/2023, all acts envisaged the use of specific funds: proposal no. 142/2022 provided for the establishment of a *Fondo di incentivazione alla riduzione dell'orario di lavoro* to support employers implementing a reduction in working time of at least 10%; proposals no. 1505/2023 and 2067/2024 identified the *Fondo Nuove Competenze* as the primary financial instrument. Secondly, all four proposals provided for social security contribution exemptions of varying scope for employers introducing reduced working-time schemes. Finally, proposals no. 1000/2023 and 2067/2024 envisaged the establishment of a "National Observatory on Working Time". Under the latter proposal, the Observatory – composed of experts in labour law and business organisation, as well as ministerial and trade union representatives – would be responsible for monitoring the effects of collective agreements reducing working hours, assessing the effectiveness of training schemes and for reviewing investments in new technologies.

The gender dimension receives uneven attention across the four proposals. Work-life balance and the reconciliation of "individual and family time with social time, working time, training, cultural activities and service provision", within a broader commitment to economic, environmental and social sustainability, were identified among the objectives of proposals no. 142/2022, no. 1000/2023 and no. 2067/2024. By contrast, proposal no. 1505/2023 contained no explicit reference to gender equality or to the promotion of women's employment. The rationale underpinning the re-

lationship between working time and gender equality is expressed clearly in proposals no. 1000/2023 and 2067/2024: the current organisation of working time is one of the structural factors contributing to the gender pay gap[82], since women are more likely to reduce or interrupt their participation in paid employment to take care of family responsibilities. This dynamic is particularly significant in a labour market where remuneration remains closely linked to working time, thereby reinforcing the traditional allocation of unpaid care work within households, according to which the lower earner – typically the woman – is more likely to withdraw from the labour market. Against this background, proposal no. 2067/2024 expressly provided that the reduction in working time might not be compensated through an increase in overtime, thereby seeking to preserve the intended effects of the measure. As a whole, although gender equality constituted one of the principal justifications advanced in support of working-time reduction, none of the proposals systematically incorporated a gender perspective into the design of the measure. Rather than shaping its regulatory architecture, gender equality primarily operated as a policy objective underpinning the reform.

Having examined the legislative proposals put forward regarding the reduction of working hours, the focus now turns to analysing how certain companies have implemented the four-day working week through company-level collective agreements. The aim is to map the main models and technical solutions in corporate practice. This analysis serves as a basis for assessing, in the concluding section, under which implementation conditions the 4DW can effectively promote gender equality.

First, attention must be devoted to the rationale underlying the adoption of the 4DW. Where the measure has been introduced with the explicit aim of facilitating the reconciliation of personal and professional life, employees' well-being is more likely to become an explicit organisational objective and to be structurally embedded into work organisation. This is the case with the four-day working weeks introduced at Leonardo S.p.A.[83] – where individual well-being and the harmonisation of working and

[82] The reference made in the proposal is to the work of Goldin, *Career and family: women's century-long journey toward equity*, Princeton University Press, 2021.

[83] Arts. 17.1-17.6 of the agreement, signed on 20 December 2023, https://fiomcgil-taranto.it/wp-content/uploads/2024/01/2023.12.20-Verbale-di-Accordo-per-il-rinnovo-del-Contratto-Integrativo-Aziendale-Leonardo.pdf.

non-working time are central considerations – as well as at Lavazza[84], Intesa Sanpaolo[85], Fastweb[86], and Luxottica[87], where corporate welfare measures and work-life balance policies are conceived as strategic responses to contemporary cultural and social transformations.

Another critical issue concerns the technical and practical modalities through which the four-day week is adopted within corporate environments. In this respect, a primary structural distinction can be drawn between companies applying the 4DW universally across their entire workforce and those designing the policy for specific groups of workers or operational units. Most company-level agreements favour a universal scope of application, sometimes managing the adoption through department-specific schedules. For instance, differentiated short-week schemes have been introduced across various departments at Lamborghini[88], whereas at Leonardo S.p.A. the measure has been experimented within operational units whose activities cannot be performed remotely. In other cases, such as Luxottica, implementation is conditional upon the participation of all staff within the same operational area to ensure less complex and more effective organisation of work. A further technical variation relates to whether the scheme is mandatory or voluntary. The former model is exemplified by Lavazza – which enforces a collective closure on Fridays – and Lamborghini, which has restructured the ordinary collective working schedule. The voluntary

[84] On the agreement, signed on 23 November 2022, see Aa.Vv., *Analisi e formulazione*, cit., pp. 19-20 and Valente, *Per una storia della contrattazione collettiva in Italia/150 - Il contratto integrativo Lavazza, tra formazione ed eguaglianza*, in *Boll. Adapt*, 2023, 9.

[85] On the agreement, signed on 26 May 2023: Porcheddu, *Smart working e 'settimana corta' in Intesa Sanpaolo: un esempio di 'transizione digitale' negoziata*, in *DRI*, 2023, 3, pp. 852 ff.

[86] The agreement was signed on 26 July 2023, https://www.fistelcisl.it/wp-content/plugins/pdf-poster/pdfjs/web/viewer.html?file=https://www.fistelcisl.it/wp-content/uploads/2023/07/20230726FASTWEB_FastwebAir_accordointegrativo-3.pdf&download=true&print=true&openfile=false, pp. 4-6.

[87] On the agreement, signed on 30 November 2023, see Sacconi, *Il mio canto libero – Accordo Luxottica frutto di un complesso scambio aziendale tra produttività e orario*, in *Boll. Adapt*, 2023, 42; Alifano, Porcheddu, *Per una storia della contrattazione collettiva in Italia/188 - L'accordo Luxottica: un presidio di territorio oltre la "settimana corta"*, in *Boll. Adapt*, 2024, 6; Aa.Vv., *Analisi e formulazione*, cit., pp. 26-27.

[88] On the agreement, signed on 5 December 2023, Zaniboni, *Per una storia della contrattazione collettiva in Italia/181 – Flessibilità e conciliazione vita-lavoro: le parole d'ordine dell'Ipotesi di Contratto integrativo aziendale di Automobili Lamborghini*, in *Boll. Adapt*, 2023, 44.

model, by contrast, is favoured by Intesa Sanpaolo, which leaves workers free to opt for the instrument.

A third structural dimension emerges in companies where work-life balance constitutes a primary objective of the 4DW. In these contexts, the reduction of working time is rarely implemented as an isolated measure; rather, it forms part of a broader framework encompassing targeted instruments in support of parenthood and employee well-being. For example, in the most recent renewal of its company-level collective agreement concluded in December 2025[89], Intesa Sanpaolo expressly undertook the short working week as a dedicated tool for supporting working parents. In particular, the company guarantees a "very short week" (*settimana cortissima*) consisting of 7.5 daily hours over four days (for a total of 30 hours per week, distinct from the standard 9x4 model used elsewhere in the group), for parents with children up to three years of age, while ensuring full pay. Similarly, Leonardo S.p.A. has coupled working-time reduction with broader corporate welfare initiatives, including nurseries[90] and birth bonuses.

Corporate practices reveal a further trend: the implementation of the four-day week as part of a broader set of spatial and temporal flexibility measures. A prominent example is the provision of remote working arrangements alongside the four-day week, as established in company-level agreements of Lamborghini, Sace S.p.A.[91], SIAE[92], Lavazza, Intesa Sanpaolo and Fastweb. Further noteworthy practices include the use of working-time accounts (*banca delle ore*) – as provided for at Lamborghini, Lavazza and Intesa Sanpaolo – as well as flexitime arrangements in entry and exit from work, also introduced at Lavazza and Intesa Sanpaolo.

[89] The agreement was signed on 24 December 2025. Very interesting is the *Accordo Genitorialità ("*Parenthood Agreement*")*, available at https://www.falcri-is.com/wp-content/uploads/2025/12/20251224_Accordo-Genitorialita-DEF.pdf, 4*b*.

[90] An agreement has been recently signed between 2A, Engineering, Eni, FiberCop, Fincantieri, Intesa Sanpaolo, ITA Airways, Leonardo, and Open Fiber to establish the "*Cresciamo il futuro"* Foundation, with the aim of creating an extensive national network of nurseries accessible to all employees of the participating companies. See https://www.leonardo.com/it/press-release-detail/-/detail/22-10-2025-nasce-la-fondazione-cresciamo-il-futuro.

[91] The agreement, signed on 20 December 2023, is available at the following link: https://www.sace.it/docs/default-source/le-nostre-persone/vivere-in-sace/contratto-integrativo-aziendale-sace-spa.pdf?sfvrsn=40771bb9_1.

[92] On the agreement, signed on 15 December 2023, Altilio, *Per una storia della contrattazione collettiva in Italia/203 - CCNL Siae: misure sperimentali e innovative per il personale non dirigente*, in *Boll. Adapt*, 2024, 17.

Finally, a crucial criterion emerging from the Italian four-day working week experiences concerns the participatory governance mechanisms surrounding the introduction of flexibility measures. Employee and trade union involvement in the design and negotiation of the 4DW has played a central role at Lamborghini, Lavazza and Luxottica. These participatory governance mechanisms appear particularly valuable when complemented by systematic post-implementation monitoring: positive examples include Lamborghini – where monitoring is conducted by a joint working group (*Gruppo di lavoro paritetico)* – as well as Luxottica[93], which provides for quarterly monitoring activities. The active involvement of workers and trade union representatives increases the likelihood that new working-time arrangements reflect employees' actual needs while remaining compatible with organisational requirements.

5. *Concluding remarks: towards a gender-responsive four-day working week*

The article moved from the premise that female occupational segregation remains a persistent structural challenge within European labour markets. In this context, the traditional organisation of working time has historically acted as a key determinant in shaping the employment gender gap, often producing discriminatory effects against women due to the difficulty of reconciling paid work with family and caregiving responsibilities. However, recent legal and organisational evolutions have contributed to a revision of working time's role: organised through the lens of flexibility, it has transitioned from a mechanism of marginalisation into a strategic tool for women's inclusion and the promotion of substantive equality. Building on this theoretical framework, the research has connected the analysis of working-time flexibility to its most recent and innovative manifestation, namely the four-day working week. Indeed, the same factors influencing the successful implementation of corporate flexibility and gender-equality measures – such as sector, company size, union representation and organisational culture – have proved to be particularly significant also in the adop-

[93] At Luxottica, different Committees are involved in the proposition and evaluation of new working models, such as the *Commissione Pari Opportunità* and the *Commissione Organizzazione e orario di lavoro*.

tion of the four-day working week. The focus on the Italian case study has contextualised the spread of this innovative instrument within an employment landscape that still faces structural gender gaps: key indicators include lower female employment, high inactivity rates, the long-term impact on parenthood on women's career and their heavy reliance on part-time.

In this context, shorter working weeks could potentially address many of these critical issues. However, for the potential benefits to become concrete, the present analysis identifies the conditions under which the four-day week can effectively foster gender equality. Such conditions emerge from a cross-analysis of the legislative proposals advanced on the topic and the first experiences of company-level collective bargaining, considered alongside the factors previously examined with regard to the introduction of flexibility measures aimed at gender equality.

Before focusing on these conditions, it seems necessary to clarify which model of the four-day week is considered potentially valuable for promoting gender equality. In the light of the research carried out, the "compressed" week appears to be an unsuitable model for these purposes, particularly when considered within the context of the Italian labour market. More specifically, there is a significant risk of perpetuating and exacerbating existing inequalities in the distribution of family and care responsibilities: restructuring the standard working week into four days risks extending – rather than combat – the culture of long working hours, which is one of the primary causes of women's occupational segregation. Furthermore, from this point of view, the adoption of a compressed working week would require – even more so than a "reduced" four-day week – an institutional framework and services to support families and care which still appear inadequate at national level.

Having clarified this point, let us now turn to identifying the conditions under which "reduced" four-day weeks can become effective tools for gender equality.

First, the organisational design of the measure is crucial. The identification of a clear rationale behind the measure aimed at promoting work-life balance and gender equality is essential to counter the risk that it might be implemented solely for branding purposes, inducing somehow companies to provide effective responses also in these terms. The scope of application of the measure is likewise quite relevant: a universal approach prevents both the *a priori* exclusion of potential beneficiaries and the targeting of specif-

ic categories of workers (such as parents or caregivers). By avoiding measures restricted to these groups – which could otherwise cause new forms of marginalisation – universal application promotes the widespread diffusion of the scheme and helps prevent the gender stereotyping often associated with flexible arrangements. Similarly, the voluntary basis of the scheme may prove to be a double-edged sword: on the one hand, it risks increasing the gender gap if the measure is primarily adopted by women, leaving intact the effort of men in care and family responsibilities; on the other hand, it would allow workers to choose the instrument best suited to their needs, particularly where other forms of organisational flexibility are available, at the same time avoiding the risk of discriminating someone through its general imposition. These implementation modalities also lead to two broader recommendations. Regular monitoring should be carried out not only after the adoption of the measure – to evaluate its efficacy and prevent potential gendered use of the four-day week – but also during the initial design phase. This earlier stage allows for a reasoned and tailored planning that accounts for the specific needs of different departments and workers. Furthermore, a universal scope of application of the 4DW should be favoured, although targeted measures may occasionally be necessary to guarantee a minimum standard of success in specific sectors or departments, in line with the logic of positive actions and based on their starting points in terms of gender equality.

Second, embedding the four-day week within a broader set of measures aimed at gender equality and work-life balance is fundamental to ensuring a redistribution of care responsibilities between men and women. This trend is already observable in ongoing four-day week initiatives that seek to provide tools capable of filling the gaps left by statutory provisions, for instance by improving leave schemes and paid time off, as well as introducing various welfare benefits. In these terms, the four-day working week serves as a valuable tool for labour market inclusion not only for women but also for workers disadvantaged by other factors of discrimination, such as disability or age. Accordingly, the design and implementation of four-day working week schemes should be supported by highly trained Diversity, Equity and Inclusion (DE&I) professionals.

Similarly, the four-day week should not be introduced in isolation from other flexibility measures available in the workplace. This approach enhances its capacity to promote gender equality, as it enables individual family units to select the most suitable arrangements for their specific needs.

Finally, the involvement of workers and trade union representatives in designing and adopting a four-day working week, as observed in ongoing corporate experiences, appears essential to the success of the initiative also from a gender equality perspective. Actively shaping work arrangements around the diverse needs of employees transforms flexibility from a structural risk that may discriminate against certain categories into a tool for inclusion and well-being. Ultimately, this drives the deeper transformation of organisational culture required both to reduce working time and to promote gender equality.

Having identified the conditions under which the four-day week can effectively promote gender equality, the final issue addressed is the determination of which regulatory approach is best suited to achieve this objective. The answer cannot be reduced to a single regulatory instrument, given the multifaceted nature of the intervention required to ensure gender equality in the Italian – as well as European – employment context.

The role of collective bargaining appears to be fundamental on two fronts[94]. At national level, collective bargaining can establish minimum standards concerning the organisation of working time and gender equality measures, taking into account the specific characteristics of the relevant productive sector. At company level, collective agreements can promote highly innovative models (both in terms of working-time arrangements and gender equality policies) through investment in tailor-made initiatives based on the characteristics and needs of specific workforces. However, an approach relying solely on collective bargaining risks producing fragmented outcomes and reinforcing a multi-speed labour market. Legislative intervention is therefore equally essential, particularly in light of the need for structural reforms aimed at ensuring that gender equality becomes a reality in the labour market. These should include measures concerning, for instance, leave schemes and childcare and care infrastructures, alongside the broader need to restructure organisational models that remain grounded in a culture of long and highly bureaucratised working hours. Addressing these issues requires a comprehensive reconsideration of matters such as technological investment, wage levels and training.

From this perspective, the most appropriate regulatory strategy would be to rely on collective bargaining for the introduction and adaptation of

[94] As emphasised also by ETUC, *cit.*, p. 76.

four-day working week schemes, while legislative intervention should subsequently provide the structural reforms necessary to transform the organisation of working time more broadly. Such reforms are crucial given that the current organisation of working time continues to constitute a structural and cultural source of discrimination, with a substantial impact on the achievement of gender equality.

Abstract

The essay investigates the evolution of EU working-time regulation from a work-life balance tool into a strategic governance mechanism for substantive gender equality. Using Directive 2019/1158/EU, especially art. 9 on flexible working arrangements, as a starting point, the study explores the gendered implications of working-time flexibility and reduction, with particular attention to the innovative model of the four-day working week. Drawing on the Italian case, it examines recent legislative proposals and company-level collective agreements to identify the optimal conditions for inclusive organisational change and to avoid new forms of marginalisation.

Keywords

Working-time reduction, Four-day working week, Gender equality, Work-life balance, Italian labour law.

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Work-Life Balance and Anti-Discrimination Law: Sex, Disability, and the Multilevel Intersection of Reconciliation Rights*

Contents: 1. Introduction. 2. EU policies and legal framework on work-life balance: evolution. 3. The intersection between work-life balance and anti-discrimination law. 3.1. General approach. 3.2. Developments at the level of EU Law. 3.2.1. Reconciliation and discrimination on sex grounds. 3.2.2. A different perspective – reconciliation and discrimination on disability grounds: from *Coleman* to *Bervidi*. 3.2.2.1. The case – relevant facts and the Court's decision. 3.2.2.2. Observations on the Judgment. 3.2.2.2.1. The prior *acquis*: the obligation of reasonable accommodation; the concept of discrimination by association. 3.2.2.2.2. The apport of the Judgment. 3.3. Developments at national level. 3.3.1. The Portuguese case. 3.3.2. The Spanish case. 3.3.3. The Italian case. 4. Work-life balance rights: towards an autonomous protected characteristic?

1. *Introduction*

The legal architecture of work-life balance within the European Union (EU) has undergone a profound structural transformation over the last three decades. Originally conceived as a narrow set of protections confined to the biological condition of maternity, reconciliation policies have gradually moved beyond their initial clinical focus towards a sophisticated framework designed to foster a more equitable distribution of caregiving respon-

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sibilities between men and women. Within this context, Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June 2019, on work-life balance for parents and carers, represents a pivotal moment, formally decoupling reconciliation rights from their historical gendered foundations and reconfiguring them as essential instruments for achieving substantive equality in the modern labour market. However, this legislative progress raises a complex legal question: whether the exercise of these rights should now be established as an autonomous ground of discrimination, independent of the sex factor.

The article begins by providing an account of the evolution of policy instruments and legislative measures regarding work-life balance within the framework of EU law. It scrutinises the transition from *first-generation* measures – centred on female biological protection – to the contemporary *second-generation* instruments that emphasise co-responsibility and the individualisation of rights.

The subsequent part focuses on the intersection between work-life balance and anti-discrimination law, exploring the different dimensions on which these two topics interface. In particular, it analyzes a set of judgements of the Court of Justice (of the European Union) (CJEU), which suggest either framing discrimination related to conciliation rights as a form of indirect discrimination based on sex, and comprehending it as discrimination on grounds of disability – given, of course, a disabled person is at stake.

Further, the text provides a comparative legal study of the Portuguese, Spanish and Italian domestic systems, an approach that elucidates the varied legislative and judicial responses to the increasing demand for enhanced protection for working parents and carers.

Finally, drawing upon these empirical and theoretical foundations, the article contends that the recognition of the exercise of reconciliation rights as an autonomous ground of discrimination is warranted, based upon a three-fold argumentative framework.

2. *EU policies and legal framework on work-life balance: evolution*

Over the last three decades, the EU has developed an increasingly complex framework of policy instruments and legislative measures regarding work-life balance. This evolution has been marked by significant shifts

in its objectives, target beneficiaries, and the specific instruments designed to promote such reconciliation[1].

In an initial stage, work-life balance policies – termed "first-generation reconciliation policies"[2] – were centred exclusively on women. Recognizing that caregiving responsibilities, traditionally borne by women, could hinder their ability to prepare for, enter, or participate in the labour market, reconciliation measures emerged. These aimed to ensure that their entry into the labour market and subsequent professional activity did not pose risks to their health and safety (as well as that of the embryo, fetus, or newborn) during pregnancy, the postpartum period, and breastfeeding. Furthermore, these measures sought to ensure that the exercise of reconciliation rights did not negatively impact the stability of the employment relationship. It was within this context that the EU adopted Directive 92/85/EEC, of 19 October 1992, on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers. This Directive granted workers at least 14 weeks of maternity leave, the right to paid time off for antenatal examinations held during working hours, and prohibited the dismissal of workers during these periods, acknowledging that the risk of dismissal for reasons related to their condition could have detrimental effects on their physical and mental state.

However, recognizing that the disproportionate burden of caregiving responsibilities constitutes a fundamental barrier to women's meaningful participation in the labour market under equitable conditions, reconciliation policies since the mid-1990s have pivoted towards a systemic transformation of this paradigm. These policies sought to discourage women from

[1] For a general approach on this evolution, see Chieregato, *A work-life balance for all' Assessing the inclusiveness of EU Directive 2019/1158*, in *The International Journal of Comparative Law and Industrial Relations*, Wolters Kluver, 36, 1, 2020, pp. 59-80; Ramalho, *Conciliação equilibrada entre a vida profissional e familiar - uma condição para a igualdade entre mulheres e homens na União Europeia*, in *Estudos de Direito do Trabalho*, 1, Coimbra, Almedina, 2003, pp. 271-272; Gorelli Hernández, *Un análisis normativo de la evolución de las políticas de conciliación en la unión europea. De la maternidad a la corresponsabilidad*, in *Femeris*, 7, 2, 2022, pp. 10-43; and Vicente/ Gonçalves, *O exercício de direitos de conciliação como (potencial) factor de discriminação*, *Comemoração dos 50 anos da Constituição da República Portuguesa*, 1, Faculdade de Direito da Universidade de Coimbra, Coimbra, 2026, pp. 635-687.

[2] In accordance with Fernández Prieto's terminology, *Conciliación de responsabilidades de progenitores y cuidadores e igualdad de oportunidades en la Directiva (UE) 2019/1158*, in *RDSE*, 12, 2020, pp. 94-121.

assuming these responsibilities exclusively or predominantly or, in other words, to encourage men to participate in such tasks. To maternity-reconciliation policies were added those focused on parental-reconciliation, whose beneficiaries were no longer solely women, but parents of both sexes. Concurrently, there was a broadening of the means through which reconciliation could be achieved, encompassing mechanisms for flexible work organisation, allowing for an articulation that does not entail withdrawal from professional activity. The EU adopted two instruments in the field of reconciliation. Firstly, Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC, which provided for the granting of parental leave – distinct from maternity leave – as well as the right to time off from work on grounds of *force majeure* for urgent family reasons, focusing on the reconciliation of professional and family responsibilities for workers with children. Consequently, reconciliation rights emerged that are held by parents, whether male or female. Explicitly recognising the importance of measures designed to facilitate access to part-time work for both men and women to reconcile professional and family life, Directive 97/81/EC, of 15 December, concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC, prohibits discrimination between part-time and full-time workers. It also recommends that employers consider workers' requests to transfer from full-time to part-time work (and vice versa).

Furthermore, from the perspective of integrating working fathers into European reconciliation policies and fostering shared parental responsibility, Directive (EU) 2006/54/EC of the European Parliament and of the Council, of 5 July, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation is particularly noteworthy. This Directive extended protection against dismissal – previously reserved for mothers – to fathers eligible for paternity leave. This shift represents a further manifestation of the integration of fathers within European reconciliation frameworks, aligning with established strategic guidelines and the recommendations addressed to Member States to encourage shared parental responsibility. Similarly, Directive 2010/18/EU, of 8 March, implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, pursues the dual objective of enhancing the reconciliation of professional, private, and family life for working parents, while simultaneously promoting

equal opportunities between men and women. In addition to extending the duration of parental leave for each parent to a minimum of four months, the Directive introduces a mandatory non-transferable period of at least one month. Moreover, it establishes provisions allowing workers returning from parental leave to request changes to their working hours and/or patterns for a determined period.

More recently, the work-life balance agenda has gained renewed momentum. Coupled with the proclamation of the European Pillar of Social Rights, Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June, on work-life balance for parents and carers, reinforces mechanisms for the balanced sharing of family responsibilities between men and women. This aims, on one hand, to promote women's participation in the labour market and, on the other, to advance a novel perspective on reconciliation[3]. Within the primary objective, it introduces the long-awaited right to paternity leave and extends the minimum period of non-transferable parental leave from one to two months. Concurrently, a reconciliation policy is implemented that incorporates a new work-care model, severing the inexorable link between reconciliation and parenthood. Caregiving situations are no longer exclusively focused on parental childcare but extend to the complex and continuous care relationships that workers encounter throughout their lives – caring for dependents with disabilities or chronic illnesses, the elderly, and end-of-life care patients. This expansion is particularly acute in the introduction of the *carer* category, which is granted specific rights, such as carer's leave. Finally, it provides workers with enhanced opportunities and options to balance professional and caregiving responsibilities. This new reconciliation perspective encompasses the idea of parents and carers remaining active in the workforce by fostering access to flexible working arrangements, such as telework, flexible working hours, or reduced working hours.

[3] See Oliveira, De la Corte-Rodríguez, Lütz, *The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?,* in *ELR*, 3, 2020, pp. 295-323. For a more comprehensive analysis of the Directive, see Chieregato, "A work-life balance for all?", *cit.*, p. 8; Weldon-Johns, *EU work-family policies revisited: finally challenging caring roles?*, in *ELLJ*, 12/3, 2020, pp. 301-321; Cristóbal Roncero, *La conciliación de la vida familiar y profesional en la Unión Europea*, in *REJLSS,* 8, 2024, pp. 73-97; and Fernández Prieto, *Conciliación de responsabilidades de progenitores*, *cit.*

3. *The intersection between work-life balance and anti-discrimination law*

3.1. *General approach*

The intersection between work-life balance and anti-discrimination law represents a dilemma that has intensified, particularly given the evolution of reconciliation policies discussed in the previous section. This intersection has been both expanded and deepened by the jurisprudence of the CJEU as well as by legislative amendments and innovations within both EU secondary law and the domestic legal systems of Member States.

Initially, this connection was primarily established by questioning the compatibility of certain reconciliation measures – namely maternity leave and other child-related rights granted exclusively to mothers – with the principle of equal treatment, which prohibits any discrimination on grounds of sex. In a significant body of cases, the CJEU was tasked with determining the extent to which national legal solutions – those establishing differential treatment between female and male workers regarding certain reconciliation measures by failing to grant such rights to working fathers – violate the principle of equal treatment on grounds of sex, as enshrined in Directive 76/207/EEC of 27 November[4], on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions[5]. Alternatively, the Court considered whether such measures are justified under Article 2(3) of the aforementioned Directive, which permits the protection of women concerning pregnancy and maternity, or under Article 2(4), which allows for measures designed to rectify factual inequalities to promote equal opportunities between men and women. While the CJEU initially endorsed a broad interpretation of the first exception – underpinned by a comprehensive and perhaps antiquated conception of the functions of maternity leave, thereby legitimising differential treatment between female and male workers (*Hofmann*[6]) –, the Court's jurisprudence has since undergone a significant shift.

[4] Dir. 76/207/EEC was repealed and replaced by dir. 2006/54/EC of the European Parliament and of the Council of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation,

[5] De la Corte Rodriguez, *Maternity leave and discrimination against fathers: current case law of the Court of Justice of the European Union and the way forward*, in *ICJur*, 4, 1, 2018, pp. 27-41.

[6] C-184/83, 12 July 1984.

This evolution has trended both towards the recognition of equality between men and women in their roles as parents and a more restrictive interpretation of such exception (*Roca Álvarez*[7]; *Maistrellis v Ypourgos Dikaiosynis, Diafaneias kai Anthropinon Dikaiomaton*[8]; *Syndicat CFTC*[9]). Regarding the second exception, the CJEU has consistently aimed to distinguish between measures that grant rights exclusively to women which effectively serve to rectify *de facto* inequalities, and those which, by ultimately perpetuating gender stereotypes, produce the diametrically opposite effect[10].

In a second stage – and this is the central addressed here –, the intersection between reconciliation rights and anti-discrimination law has moved into a new perspective, or even a different level. The issue is whether any detriment or disadvantage suffered by those exercising reconciliation rights (be they men or women), compared to those who do not, should be regarded as a discriminatory practice. If so, we must identify which specific suspect category or criterion is at stake. As will be discussed in the following pages, linking the care of minors and family members to grounds of discrimination remains an open debate at both the EU and national levels, with no unanimous solution yet in sight. Furthermore, another question is open to debate, mainly after the *Bervidi* judgement[11]: is the mere omission of granting due conciliation rights a discriminatory act?

3.2. *Developments at the level of EU Law*

3.2.1. *Reconciliation and discrimination on sex grounds*

If we examine the jurisprudence of the CJEU, its judgements seem to establish a link between unfavourable treatment due to the exercise of reconciliation rights and sex discrimination, albeit only to a certain extent. The first case in which such connection was established was *Österreichis-*

[7] C-104/09, 30 September 2010. See Rubenstein, *Recent and Current Employment Discrimination Cases in the Court of Justice of the European Union*, in *EqLR*, 15, 2015, p. 57.

[8] C-222/14, 16 July 2015.

[9] C-463/19, 18 November 2020. Regarding this judgement, see De la Corte Rodriguez, *The first revision of the* Hofmann *case law on maternity leave and discrimination against fathers: caregiving as the pivot?*, *in ILJ*, 50, 2, 2021, pp. 306-323.

[10] *Lommers v. Minister van Landbouw*, C-476/99, 10 March 2002, and *Pedro Manuel Roca Álvarez v Sesa Start España ETT AS,* C-104/2009, 30 September 2010.

[11] C-38/24, 11 September 2025.

cher Gewerkschaftsbund[12], concerning a legal provision that recognised time spent in military or civil service for the calculation of redundancy pay, but failed to recognise seniority for periods of parental leave. Although the Court responded negatively to the question – on the basis that the situations were not comparable –, the judgment remains relevant because the Commission considered the hypothesis that, if parental leave were available only to women, the rule in question would constitute direct sex discrimination, occurring for reasons of reconciliation. It was, however, with *Riezniece*[13] and *Praxair MRC*[14] cases that the CJ more directly and decisively framed the disadvantage suffered due to the exercise of reconciliation rights as a form of indirect sex discrimination. This was based on the higher percentage of female workers taking parental leave, leaving it to national courts to verify this disproportionate impact on women. An analysis of these rulings demonstrates that while the Court, when addressing disadvantageous treatment arising from the exercise of reconciliation rights, has categorised such measures as discriminatory acts, it has stopped short of conceptualising reconciliation as a suspect category or a specific factor of discrimination. Even though the Court draws a comparison – most notably in *Riezniece* – between workers on parental leave and those remaining in active service, the legal framework applied to these cases consistently relies on the criterion of sex and the doctrine of indirect discrimination[15]. In both instances, the CJEU maintains that a situation of indirect sex discrimination may arise when a worker suffers a detriment or disadvantage as a result of exercising reconciliation rights.

With the adoption of Directive (EU) 2019/1158 of the European Parliament and of the Council, of 20 June 2019, on work-life balance for parents

[12] C-220/02, 8 June 2004.

[13] C-7/12, 20 June 2013.

[14] C-486/18, 8 May 2019.

[15] As noted by Ballester Pastor (*De los permisos parentales a la conciliación: expectativas creadas por la Directiva 2019/1158 y su transposición al ordenamiento español*, in *DRL*, 11, 2019, pp. 1109-1132, the scope of this case law is further constrained by the fact that the nexus is not automatic. It is imperative to demonstrate that the contested measure exerts a disproportionate impact on women; consequently, only measures of a general and abstract nature – such as a statutory norm, a collective bargaining provision, or an internal regulatory instrument – facilitate the identification of such gender-based disparity, thereby qualifying as indirect discrimination. Conversely, isolated or idiosyncratic instances of unfavorable treatment arising from the exercise of reconciliation rights do not constitute indirect discrimination.

and carers, there was an expectation that the matter would be clarified. As is well known, the aforementioned Directive introduced innovative features compared to its predecessors from various perspectives; specifically, for our purposes here, through the connection established between fostering a more equitable sharing of caregiving responsibilities between women and men, and gender equality in the labour market. Indeed, as previously highlighted, while the Directive creates rights for both male and female workers to facilitate the reconciliation of professional and private life – an equilibrium in which all workers have an interest –, it is also an instrument shaped by a gender perspective, conceived and designed to enhance equality between men and women in the labour market[16]. From this viewpoint, the objective of the Directive is more than reconciliation itself; it is the achievement of equality through the individualisation of reconciliation rights and flexible working arrangements to reach an equitable distribution of these responsibilities.

The point just raised might suggest that the Directive itself would provide some indication regarding the place of work-life balance within the context of European anti-discrimination law. However, despite the clear statement of the connection between the objective of promoting equality between men and women and the promotion of work-life balance[17], nowhere in the normative part of the Directive is the violation of reconciliation rights presented as a discriminatory act. In truth, not even retaliation against the exercise of such rights is linearly configured as such – whether based on sex – as might be expected, given the

[16] Oliveira, De Corte-Rodríguez, Lütz (*The New Directive on Work-Life Balance: Towards a New Paradigm of Family Care and Equality?*, cit., p. 317, noted that one of the most distinctive features of the Directive in question lies in the intersection it establishes between European social law and the law of equality and non-discrimination.

[17] Reference should be made, in particular, to Recitals 6 and 10. The former states that "work-life balance policies should (…) contribute to the achievement of gender equality by promoting the participation of women in the labour market, the equal sharing of caring responsibilities between women and men and the reduction of the gender income and pay gaps. The latter reveals the premise imposed by reality: that women tend to be more burdened by this challenge of reconciling the professional sphere with family demands (work-life balance remains a considerable challenge for many parents and workers with caring responsibilities, in particular because of the increasing prevalence of extended working hours and changing work schedules, which has a negative impact on female employment. (…) When they have children, women are likely to work fewer hours in paid employment and to spend more time fulfilling unpaid caring responsibilities. Having a sick or dependent relative has also been shown to have a negative impact on female employment, with some women leaving the labour market entirely)".

reasoning in the *Dekker* or *Webb* decisions[18], later codified in Directive 2006/54/EC (Article 2(2)(c), that discrimination based on pregnancy and maternity should be considered, *per se*, as direct sex discrimination[19] – or as discrimination on the grounds of a new and autonomous factor: reconciliation[20].

At first glance, and considering the title, one might be led to believe that Article 11 establishes anti-discriminatory protection for the exercise of reconciliation rights as an autonomous cause[21]. However, several arguments can be invoked to support the idea that the aforementioned article did not intend to go that far and deliberately left the question open, which, in fact, may be due to the fact that Article 19 of the Treaty on the Functioning of the European Union (TFEU) does not expressly mention reconciliation as a cause of discriminatory treatment, unlike sex, ethnicity, religion, belief, age, disability, and sexual orientation[22].

[18] C-32/93, 14 July 1994; C-179/88, 8 November 1990.

[19] See Cabeza Pereiro, *La directiva de conciliación de la vida familiar y profesional*, in *RDSoc*, 92, 2020, pp. 41-80, for whom the Directive "very deliberately" omits the answer to the question of the "place of reconciliation between family and professional life in the context of Anti-Discrimination Law", which corresponds to "hiding history", the social evolution of the roles of women and men, and the objectives behind fostering female co-responsibility; Castro Arguelles, *Conciliación de la vida familiar y laboral de progenitores y cuidadores: la transposición de la Directiva (UE) 2019/1158, por el Real Decreto-Ley 5/2023*, in *REDT*, 271, 2024, pp. 83-120; Ballester Pastor, *De los permisos*, cit., pp. 1112 ss. and Molina Navarrete, *La doctrina jurisprudencial por discriminación de género en el orden social*, Wolters Kluwer, 2020, pp. 248 ss. This Author emphasizes the concept of *multiple discrimination*: a female caregiver combines two conditions – being a woman and being a caregiver – which make her a primary target for discrimination; she would be at a disadvantage not only in relation to men who are not caregivers but also in comparison to women who are not caregivers and men who are caregivers.

[20] Suggesting, seemingly, the identification of this autonomous factor, viewed as a clear ground of vulnerability and with high discriminatory potential, Delgado Garrido, *Cuidar y trabajar sin ser discriminada: la STJUE C-38/24 Bervidi y la protección del cuidador informal en el Derecho antidiscriminatorio europeo y español*, in *RDSoc*, 112, 2025, pp. 119-144. Curiously, the most recent dir. 2023/970/EU appears, precisely, to take for granted that less favourable treatment due to the exercise of reconciliation rights constitutes discrimination on grounds of sex. Indeed, within the definition of the concept of discrimination for the purposes therein, the instrument clarifies, in art. 3 co. 2, that discrimination includes "any less favourable treatment, within the meaning of Directive (EU) 2019/1158 (…), based on sex, including with regard to paternity leave, parental leave or carers' leave".

[21] Igartua Miró, *Promoción de la igualdad de género a través de 'fórmulas de trabajo flexibles'. Reflexiones y propuestas a la luz de la Directiva (UE) 2019/1158*, in *Femeris*, 7, 2, 2022, pp. 86-114, and Fernández Prieto, *Conciliación de responsabilidades de progenitores*, cit., p. 6.

[22] It is true that other directives establish a prohibition of discrimination based on the nature of the employment contract – for instance, fixed-term work under dir. 1999/70/EC or

First, there is the fact that the body of the rule prohibits *less favourable treatment* rather than *discrimination* regarding the exercise of reconciliation rights, without any other provision in the Directive specifying that such treatment is considered discriminatory. Second, is the systematic element: the provision is situated between the rule guaranteeing workers' labour rights (Article 10) and the provision regarding protection against dismissal (Article 12). According to some literature, this reinforces the argument that Article 11 does not constitute a prohibition of discrimination, but rather a guarantee of the effectiveness of rights. Finally, the historical element is invoked. During the preparatory work, the Proposal for a Directive had given the heading *non-discrimination* to the provision in question, but the term *non* was removed in the final version of the text. This change was introduced by the European Parliament's legislative resolution of 4 April 2019, concerning the proposal for a Directive of the European Parliament and of the Council, on work-life balance for parents and carers and repealing Council Directive 2010/18/EU[23], without the document stating the reasons for the change[24].

The fact that, although the Directive aligns its purpose with the promotion of equal opportunities between women and men, placing reconciliation at the service of this objective, it does not explicitly qualify the less favourable treatment of a worker due to the exercise of reconciliation rights

part-time work under dir. 97/81/EC – factors that do not appear in art. 19 TFEU. However, it is manifest that these prohibitions differ from the subjective grounds of discrimination derived from art. 19 TFEU: neither part-time nor fixed-term work shares the subjective stigmatisation inherent in 'true' grounds of discrimination. The crux of the matter is that discrimination based on reconciliation, as conceptualised in the 2017 proposal for a directive, possesses the hallmarks of these subjective grounds; yet, it is neither expressly enshrined in art. 19 TFEU nor exclusively tethered to discrimination on grounds of sex – as it is underlined by Ballester Pastor, *La conciliación de responsabilidades: estado de la cuestión a la luz de la propuesta de Directiva de la Comisión Europea 1/de 26 de abril de 2017*, in *Lan Harremanak*, 38, 2017, pp. 67-92.

[23] COM(2017)0253, C8-0137/2017, 2017/0085(COD).

[24] Ambiguity is not confined to art. 11. Art. 15 of the EU instrument stipulates that, without prejudice to the competence of labour inspectorates or other bodies that enforce the rights of workers, including the social partners, Member States shall ensure that the body or bodies designated, pursuant to art. 20 of dir. 2006/54/EC, for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex, are competent with regard to issues relating to discrimination falling within the scope of this Directive. Thus, while the provision explicitly invokes bodies dedicated to equality and non-discrimination on grounds of sex, it simultaneously refers, in elusive terms, to matters relating to discrimination falling within the scope of this Directive – a phrasing that hints at a broader expansion of anti-discriminatory protection.

as sex discrimination, might perhaps stem from the dilemma of classifying such cases – especially when the victim is a man – as direct or indirect discrimination, or even as discrimination by association[25].

Ballester Pastor[26] shares this opinion. The author suggests that the decision not to configure disadvantageous acts related to the exercise of reconciliation rights as sex discrimination could result from the following: if a man intended to exercise such a right and were subject to disadvantageous treatment for that reason, there would be something spurious about qualifying such conduct as sex discrimination. Indeed, the appeal to this discriminatory ground in the field of reconciliation is admittedly based on the idea of the structural disadvantage of women compared to men; precisely, the promotion of reconciliation aims to suppress this disadvantageous position. The author, however, counters that, in the final analysis, if a man is prejudiced by the exercise of reconciliation rights, it still makes sense to speak of sex discrimination, as that discriminatory act will be associated with rights traditionally exercised by women and intrinsically linked to gender stereotypes. She adds that one only needs to consider the concept of indirect discrimination to understand that the fact that some men are also harmed by conduct tending to negatively affect women above all does not invalidate their qualification as discriminatory on the grounds of sex. This was, indeed, the reasoning adopted by the CJEU in the mentioned *Riezniece* and *Praxair MRC* cases.

3.2.2. *A different perspective - reconciliation and discrimination on disability grounds: from Coleman to Bervidi*

The interconnection between protecting disability and fostering work-life balance, albeit reflected by the *Coleman* judgement[27], became much more conspicuous in the recent *Bervidi* case. On this occasion, the CJEU sustained that discrimination by association can also be established

[25] Highlighting this concern, García Testal, *Conciliación entre la vida profesional y la vida familiar: un análisis de la no discriminación, la corresponsabilidad y la flexibilidad como elementos para la igualdad laboral de las mujeres en la Directiva (UE) 2019/1158 y en su transposición al ordenamiento español*, in *Lan Harremanak*, 51, 2024, pp. 151-178.

[26] *De los permisos parentales a la conciliación: expectativas creadas por la Directiva 2019/1158 y su transposición al ordenamiento español*, in *DRL*, 11, 2019, pp. 1109-1132.

[27] C-303/06, 17 July 2008.

when the conduct that embodies it constitutes *indirect discrimination* – as the omission of relevant reasonable accommodation measures due to a female employee caring for a child with a disability. This conclusion immediately raises a question: had the child in the employee's care not suffered from that condition, how would the Court have framed the issue? In that hypothesis, could Directive (EU) 2019/1158, concerning the promotion of work-life balance, have been invoked? Does the failure to apply work-life balance tools, when due, constitute discriminatory behavior? On the basis of which factor? Given the ambiguity of that Directive, mentioned above, as well as the absence of a clear CJEU position regarding these queries, the *Bervidi* decision allows one to wonder whether a system is being constructed in which the failure to comply with work-life balance measures is framed in significantly different ways depending on whether the person being cared for presents a condition qualifiable as a disability. That is the main reason why, on our view, this judgement is a true landmark of the CJEU case law.

3.2.2.1. *The case - relevant facts and the Court's decision*

The Judgment of the CJEU regarding the *Bervidi* case arose from a request for a preliminary ruling submitted by the *Corte Suprema di Cassazione*, the Italian Supreme Court, which was faced with an appeal lodged by a certain worker who had already received two unfavorable judicial decisions in the lower courts. G.L., an employee of *AB SpA* and, furthermore, the mother and caregiver of a child with a disability resulting in a medically certified total incapacity, requested that her employer adjust her working hours so that she could work on a fixed schedule, exclusively during the morning period. This would allow her to provide necessary assistance and care to her son in the afternoon, specifically accompanying him to various therapies suited to his condition. She even proposed her assignment to lower-level duties, by agreement, to facilitate the adaptation of her working conditions to her needs. Since the employer only offered a provisional solution, the employee initiated legal action, invoking discrimination – due to the omission of the requested measures and considering the different position adopted regarding other workers who, for health reasons, had been deemed unfit, temporarily or permanently, to perform their activities under normal conditions. She sought a court order for AB SpA to permanently assign her

to a fixed-schedule post between 8:30 and 15:00, or at least one compatible with her son's needs, as well as to adopt a plan to eliminate discrimination and to pay her compensation for damages.

In the first instance, G.L. was unsuccessful because the court held that she lacked standing to bring an action for employment discrimination, as she was not herself a person with a disability and thus not entitled to the relevant adjustment measures. On appeal, the *Corte d'Appello di Roma*, although invoking the CJEU's *Coleman* case-law and considering, based on the concept of discrimination by association, that the employee could indeed rely on the protective provisions against discrimination as a caregiver of someone with a disability, nonetheless stated that the employer had not engaged in any discriminatory conduct, having implemented some reasonable accommodations, albeit provisional ones.

G.L. appealed once more to the *Corte di Cassazione*, which decided to refer a set of questions to the CJEU. In summary, it became necessary to clarify the following: considering that the obligation for an employer to adapt working conditions to the situation of the employee concerned, up to the limit of not imposing a disproportionate burden, derives from the principle of prohibition of discrimination on the grounds of disability; and, on the other hand, that this principle can be said to be violated regarding an employee even if they are not the person with the disability, but rather someone *associated* with them, namely by being dependent on their care – considering these two premises, could one go further and affirm the potential occurrence of discrimination by association on the grounds of disability due to the omission of the relevant reasonable accommodation measures? It should be noted that such a conclusion implies that the disability of a third party, rather than the employee, is the *grounds* for that obligation of reasonable accommodation, but also, albeit indirectly, the *parameter* for defining its scope, given that the employee's specific needs will depend on the particularities of that associated third party. Identifying precisely the crucial point of the issue – to determine whether, since the *Coleman* Judgment aimed expressly and solely at direct discrimination, it would be conceivable to apply the concept of discrimination by association likewise to cases of indirect discrimination – the *Cassazione* addressed the following questions to the CJEU[28]:

[28] A third question was also referred, which will be disregarded as it is of little relevance to the analysis undertaken here. In any event, it was deemed inadmissible by the Court.

(i) Should European Law be interpreted – where applicable on the basis also of the [UN Convention] – as meaning that a family caregiver of a severely disabled child who claims to have suffered indirect discrimination in an employment context as a result of the care provided by that individual is entitled to rely on the anti-discrimination protection that would be afforded to that disabled person, if they were the worker, by [Directive 2000/78]? and (ii) If the answer to [the first question] is in the affirmative, should European Law be interpreted – where applicable on the basis also of the [UN Convention] – as meaning that it is incumbent on the employer of the aforementioned caregiver to make reasonable accommodation to guarantee compliance – also in favor of said caregiver – with the principle of equal treatment in relation to other, modelled on the provisions laid down in relation to persons with disabilities in Article 5 of [Directive 2000/78][29]?

As will be seen in more detail, the Court, following the Opinion of the Advocate General, affirmed that Articles 1, 2(1) and (2)(b) of Directive (EU) 2000/78 must be interpreted as meaning that "the prohibition of indirect discrimination on grounds of disability applies to an employee who does not himself or herself have a disability but who is subject to such discrimination because of the assistance that that person provides to his or her child who has a disability, which enables that child to receive the primary care required by virtue of his or her condition"[30]. In other words, the CJEU judges considered that the omission of the required reasonable accommodation measures – which is unequivocally stated to constitute indirect discrimination – can occur not only when justified by the employee's disability but also when its origin lies in another person with that condition who is associated with them, specifically a child in their care. Therefore, the Court adds, to avoid indirect discrimination, the employer is required "to make reasonable accommodation, within the meaning of Article 5 of that directive, in respect of an employee who does not himself or herself have a disability but who provides, to his or her child who has a disability, the assistance which enables that child to receive the primary care required by virtue of his or her condition, provided that that accommodation does not impose an unreasonable burden"[31].

See §§ 20 ss. (in particular, § 22) of the Opinion of Advocate General Athanasios Rantos, delivered on 13 March 2025.

[29] Regarding the case in Italian case-law, see Biondo, *Caregiver, chi era costui? Il modello italiano avanti alla Corte di Giustizia*, in *EQUAL*, 2, 2024, pp. 240-258.

[30] § 66.

[31] § 80.

It is important to emphasize that, throughout the reasoning provided to support these conclusions, the CJEU relied not only on the Directive but also on Article 21 of the Charter of Fundamental Rights of the European Union (CFREU), as well as Articles 24 and 26 on the protection of children, and also on the United Nations Convention on the Rights of Persons with Disabilities. The latter, approved by the EU in 2009[32], pays special attention to the protection of children with disabilities – such as the employee's son – and its Article 2(3) states that discrimination on the basis of disability includes all forms of discrimination, *including the denial of reasonable accommodation*.

3.2.2.2. *Observations on the Judgment*

3.2.2.2.1. *The prior acquis: the obligation of reasonable accommodation; the concept of discrimination by association*

The key idea emerging from the prohibition of discrimination on grounds of disability is, evidently, that no one should be subject to disadvantageous treatment due to that condition. This is the core imperative arising from the aforementioned Directive (EU) 2000/78, which, as is well known, prohibits all forms of discrimination, notably direct and indirect: pursuant to Article 2, direct discrimination is prohibited – that is, any act of less favourable treatment of one person compared to another in a comparable situation on the grounds of disability – as is indirect discrimination, which results from a provision, criterion, or practice that, although apparently neutral, is liable to put persons with a disability at a particular disadvantage compared with other persons.

At the same time, however, it is important to highlight the provisions of Article 5, which require Member States to ensure that employers take "appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer".

This provision is linked, as evident from its wording, to the very concept of discrimination – namely indirect discrimination – or, more precisely, to the terms under which the qualification of a discriminatory act as such may be neutralized or justified. Article 4(1) of the Directive allows Member

[32] Council Decision 2010/48/EC of 26 November 2009.

States to provide that a difference of treatment based on one of the aforementioned grounds, including disability, shall not constitute discrimination where, "by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate". This refers to the frequently mentioned "occupational requirement" criterion.

Regarding indirect discrimination, on the other hand, Article 2(2)(b)(i) provides that it shall not be deemed as such if the provision, criterion, or practice in question is objectively justified by a legitimate aim and the means of achieving that aim is appropriate and necessary. However, Article 2(2) provides for a distinct possibility of justification applicable only to indirect discrimination specifically on the grounds of disability. According to point (b)(ii), it is justified if the employer (or any person or organisation to whom the Directive applies) is obliged, under national legislation, to take appropriate measures in line with the principles set out in Article 5, in order to eliminate the disadvantages entailed by a potentially discriminatory provision, criterion, or practice. As can be seen, therefore, the imperative to adopt reasonable measures to adjust working conditions to the specific needs of a person with a disability is closely related to the very concept of indirect discrimination; one of the ways – a specific way for this particular ground of discrimination – to neutralize the discriminatory nature of an act is, precisely, the fulfilment of such an obligation.

Legal literature has emphasized the particular importance of this form of justification within the scope of discrimination on grounds of disability. Indeed, as Fredman[33] points out, even when invoking the first segment of Article 2(2)(b) – namely sub-paragraph (i) – the employer must demonstrate not only the legitimacy of the objective to be achieved but also the appropriateness and necessity of the means used to achieve it. This would, naturally, entail proving the unsuitability, unfeasibility, or the lack of reasonable expectation (*inexigibility*) of measures to adapt working conditions to the individual with a disability. Moreover, identical considerations would also apply to the aforementioned occupational requirement as a means of justifying direct discrimination on grounds of disability; the fulfilment of the requirements regarding the legitimacy of the objective pursued and the

[33] *Discrimination Law*, Oxford University Press, 2022, pp. 42-43 and 305-306.

proportionality of the potentially discriminatory measure adopted must be carefully assessed.

Indeed, in the case of disability, the crucial importance of the imperative to adopt measures to adjust external conditions to the situation of the employee concerned is easily understood, in pursuit of the objective of substantive equality[34] – an imperative that, despite emerging relatively late in the European Union, was already established in legal systems such as the American, Canadian, or the British[35]. The fact is that, given identical conditions for a worker with a disability and a worker without any limitations, the latter will more easily demonstrate greater efficiency and productivity. In this regard, the formulation by Hepple[36] is particularly expressive: "The differences between men and women (…), Black and White people, persons with different sexual orientations, or of different faiths or age groups are generally treated as irrelevant. But the law does not expect disabled people to be treated in exactly the same way as those who are not disabled. The reason for this is that formal equality, comparing a disabled person with others, would not result in genuinely equal treatment (…)".

Consequently, the conclusion has prevailed that any disadvantageous act targeting an employee with a disability must, at the risk of being considered discriminatory, be preceded by the adoption of appropriate reasonable accommodation measures. Indeed, despite the narrowness of the concept of disability adopted in the *Chacón Navas* case[37], the CJEU took that opportunity to clarify that "the prohibition, as regards dismissal, of discrimination on grounds of disability contained in Articles 2(1) and 3(1)(c) of Directive 2000/78 precludes dismissal on grounds of disability which, in the light of the obligation to provide reasonable accommodation for people with disabilities, is not justified by the fact that the person concerned is not competent, capable and available to perform the essential functions of his post"[38].

[34] See, for example, Palacios, *El derecho a la igualdad de las personas con discapacidad y la obligación de realizar ajustes razonables*, in *Los derechos de las personas con discapacidad: perspectivas sociales, políticas, jurídicas y filosóficas*, Dykinson 2004, pp.187-203.

[35] Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law*, Hart Publishing, 2007, p. 630.

[36] *Equality - the legal framework*, Hart Publishing, 2014, p. 91. See, also, Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 631 ss.

[37] C-13/05, 11 July 2006.

[38] § 52.

In the landmark case *HK Danmark*[39] – of pivotal importance for this purpose, though not exclusively –, the Court addressed whether an employer could legitimately dismiss the workers concerned even if it were demonstrated that their absences resulted from the failure to adopt proper measures to enable their performance, given their disabilities. The Court ruled that such a procedure would violate the Directive. The Judgment states: "the circumstance that an employer has failed to take those measures may have the consequence, *having regard to the obligation under Article 5 of Directive 2000/78*, that the absences of a worker with a disability are attributable to the employer's failure to act, not to the worker's disability". Thus, "should the national court find that the absences of the workers are attributable, in the present cases, to the employer's failure to adopt appropriate accommodation measures, Directive 2000/78 would preclude the application of a provision of national law such as that at issue in the main proceedings" [40].

Furthermore, the Court answered in the affirmative regarding whether such a provision, when applied to workers whose absences were caused by a condition qualifying as a disability, would violate the Directive[41]. It would be considered indirectly discriminatory – "it is thus apparent that the 120-day rule in that provision is liable to place disabled workers at a disadvantage and so to bring about a difference of treatment indirectly based on disability within the meaning of Article 2(2)(b) of Directive 2000/78" – unless it could be considered justified by legitimate aims and limited to what is indispensable to achieve them (an assessment which it referred to the referring court)[42].

The relationship between the (non-)fulfilment of the obligation of reasonable accommodation and the occurrence of discrimination was also clearly demonstrated in the *Nobel Plastiques Ibérica* case[43]. Pertaining to the Spanish legal system, the case concerned an employee with a condition qualifying as a disability who was dismissed for "objective reasons" – specifically due to

[39] C-335/11 and C-337/11, 11 April 2013.

[40] Emphasis added.

[41] §§ 69 ss.

[42] The Danish Government argued that the legal framework in question was suitable for promoting the recruitment and retention of individuals liable to incur such absences. The companies involved alleged that this regime allowed them to maintain the employment relationship for a longer period with workers who incurred such absences.

[43] C-397/18, 11 September 2019.

levels of productivity, attendance, and versatility below the desired standard, according to the employer's criteria. The CJEU declared that: "Article 2(2)(b)(ii) of Directive 2000/78 must be interpreted as meaning that the dismissal for "objective reasons" of a worker with a disability, on the ground that he or she meets the selection criteria taken into account to determine the persons to be dismissed, namely having a productivity rate below a certain level, less versatility in the company's workstations and a high rate of absenteeism, *constitutes indirect discrimination on grounds of disability, within the meaning of that provision, unless the employer has previously provided reasonable accommodation, within the meaning of Article 5 of that directive*, in respect of that worker, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, which it is for the national court to verify"[44].

In this regard, reference should finally be made to the *Tartu Vangla* case[45], in which the CJEU stated that the Directive precluded a regime that established an absolute impossibility for a worker to perform a certain function due to their disability, without allowing for a verification of whether the worker would be able to perform those functions once the relevant reasonable accommodation measures had been adopted. At issue was a prison guard with auditory acuity below the level set by Estonian legislation, which provided that, in such a case, it was absolutely impossible to maintain the worker in their post. A similar decision was reached in the *Komisia* case[46], regarding which the CJEU ruled that the Directive is incompatible with the denial of a blind person's right to serve as a juror in criminal proceedings solely on the basis of their blindness[47].

The case law of this Court is further relevant as it provides remarkable assistance in determining which measures may be considered included in the general obligation of reasonable accommodation – a concept that is, evidently, indeterminate[48]. Its concretization depends on an analysis of the appropriateness of the measure in light of the intended purpose, which, in turn, results from

[44] § 75.

[45] C-795/19, 15 July 2021.

[46] C-824/19, 21 October 2021.

[47] An analysis of these judgments can be found in Gyulavári, *Recent CJEU case law on 'reasonable accommodation' at work: towards the recognition of a new discrimination form*, ERA Forum, 2023 (https://link.springer.com/article/10.1007/s12027-023-00772-7#citeas), pp. 1-17.

[48] For example, Cinelli, *Insufficiente per la Corte di Giustizia la tutela che l'Italia assicura ai lavoratori disabli: una condanna realmente meritata?*, in *RIDL*, 2013, pp. 935-938.

the limitation presented by the worker in correlation with the characteristics of their professional activity. However, it also depends on factors such as the respective effect on the business organization and other workers, as well as the impact on the employer, particularly from an economic perspective. As stated in the *HK Danmark* judgment[49], it is a broad concept, to be understood "as referring to the elimination of the barriers to full and effective participation of persons with disabilities in professional life on an equal basis with other workers". The ruling made it clear, in particular, that measures involving the readjustment of working hours are included within that open-ended concept – which, moreover, could already be inferred from Recital 20 of Directive (EU) 2000/78[50].

Other potential measures would include adaptations to the workstation and work tools, the provision of vocational training, transfer to a different place of work[51], transitioning to a remote work model[52], the guarantee of a parking space close to the workplace[53], the redistribution of tasks, or even reassignment to a different post[54].

[49] § 53, which refers to the United Nations Convention, and § 54.

[50] § 64.

[51] Vicente (*V – Igualdade e não discriminação nas relações laborais*, in aa.vv., *Direito do Trabalho – Relação Individual*, Almedina, 2023, p. 340, notes a decision of 27 July 2022 by the Supreme Court of the Czech Republic, which held that a request for a transfer of the workplace constituted a reasonable accommodation measure. The case involved a prison service employee with a physical disability who requested a transfer to a prison facility closer to his residence to avoid traveling 300 kilometers per week; the request was refused, leading the worker to resign. The court considered the rejection of the transfer request to be an unjustified refusal to provide reasonable accommodation.

The decision is further significant for asserting that a worker's request for their working conditions to be adjusted does not necessarily presuppose the presentation of a corresponding medical certificate.

Referring to an Italian case, decided by the Court of Pistoia on 30 September 2005, which held that the employer had breached the duty of reasonable accommodation by failing to keep the worker at her usual location and transferring her to another, less suited to her situation, Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., p. 692.

[52] In the Italian legal system, provision is made for *lavoro agile* (smart working) for workers with disabilities, although legal scholarship notes that such a solution could always be derived from the general obligation of reasonable accommodation. Peruzzi, *La protezione dei lavoratori disabili nel contratto di lavoro*, in *VTDL*, 4, 2020, pp. 945-965. See also, West, Anderson, *Telework and employees with disabilities: accommodation and funding options*, in *Journal of Vocational Rehabilitation*, 23, 2005, pp. 115-122.

[53] In Schiek, Waddington, Bell (coord. Droshout), *Cases, Material*, cit., p. 638, reference is made to an Irish case, dated 23 January 2002, in which the court held that such a measure was required, alongside a change in the tasks assigned to the worker.

[54] Interesting examples may be found in Hepple, *Equality…*, cit., pp. 94-95.

Regarding this latter point, the aforementioned *HR Rail* case[55] must be highlighted. Although some legal scholars[56] already argued that the reassignment of the employee should be considered a possible reasonable accommodation measure – and even that the alternative post should be adjusted to the employee's condition before being offered to them –, the ruling of the CJEU in this case was decisive. At issue was a worker who had been fitted with a pacemaker. Since the device was sensitive to electromagnetic fields, such as those emitted by the railway tracks with which the employee came into contact in the exercise of his usual duties, it was concluded that he could no longer perform them and that: "Article 5 of Directive 2000/78 must be interpreted as meaning that the concept of "reasonable accommodation" for disabled persons, within the meaning of that article requires that a worker, including someone undertaking a traineeship following his or her recruitment, who, owing to his or her disability, has been declared incapable of performing the essential functions of the post that he or she occupies, be assigned to another position for which he or she has the necessary competence, capability and availability, unless that measure imposes a disproportionate burden on the employer"[57].

It also follows from the Directive that such measures are only required if they do not impose a disproportionate burden on the employer, provided that, where State support exists for their adoption, they should not be considered as imposing such an excessive burden. Although the latter is also an

[55] C-485/20, 10 February 2022. See Tamás Gyulavári, "Recent CJEU", cit., p. 12.

[56] Regarding the French legal system, see Miné, Marchand, *Le Droit du Travail en pratique*, Eyrolles, 2014, p. 238. According to the authors, "when the employee is recognized as a disabled worker, the proposal for reassignment must take into account the requirement of 'reasonable accommodation' of a workstation to enable the maintenance of employment".

A coincident opinion is held, within the Italian legal order, by Giubonni, *Sopravvenuta inidoneità alla mansione e licenziamento. Note per una interpretazione 'adeguatrice'*, in *RIDL*, 2, 2012, pp. 289-309 and by Casale, *Malattia, inidoneità psicofisica e handicap nella novella del 2012 sui licenziamenti*, in *ADL*, 19, 2, 2014, pp. 401-423, for whom, since the failure to adopt accommodation measures is in itself a discriminatory act, denying a worker with a disability the possibility of reassignment should lead, in judicial proceedings, to the conclusion that the alleged incapacity for work was not, after all, the real cause for the termination of the contract, which would Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 687 ss.

[57] § 49.

indeterminate and permeable concept, subject to different interpretations[58], we would highlight the following aspects: first, the fact that there is no public support for the adoption of a specific accommodation measure does not lead, directly and necessarily, to the conclusion that it is not required for imposing a disproportionate burden; second, as follows from the regime of the burden of proof in discrimination matters, it is the employer who must demonstrate that the omitted measures would have imposed a disproportionate burden; third, as Vanessa Cordero Gordillo[59] points out, the invocation of the excessive cost of the measure can only be seen as an exceptional possibility, otherwise the duty in question – the true cornerstone of the protection owed to workers with disabilities – would ultimately prove to be very timid, as if requiring no more than minor adjustments; it is crucial to ensure that the duty of reasonable accommodation does not turn into a mere programmatic principle[60]...

Notwithstanding the remarkable contribution of the CJEU to defining the relationship between the obligation of reasonable accommodation and the principle of the prohibition of discrimination on grounds of disability – given that the wording of Article 2(2)(b)(ii) of the Directive is not particularly clear – its case law prior to the *Bervidi* judgment does not seem to contain an unequivocal statement that the mere omission of the measures required by that obligation constitutes, in itself, discriminatory behaviour.

[58] For a comparative law overview, see Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 629 ss.

[59] *Igualdad y no discriminación de las personas con discapacidad en el mercado de trabajo*, Tirant lo Blanch, 2011, pp. 150-151.

[60] In a similar vein, see Alonso Bravo, *Integración laboral de las personas con discapacidad y crisis económica*, in *RUCT*, 15, 2014.

In Denmark, it has already been ruled that an employer failed to provide proof of a disproportionate burden in the case of a social worker employed in a prison facility. Having suffered from post-traumatic stress disorder following a violent assault, the worker began performing duties within the community service team. However, due to a reorganization of services, she was reassigned to work with inmates, including those with psychiatric disorders. Following the refusal of the worker – who had, in the meantime, requested assignment to a different type of duty – the employer terminated the employment relationship. The body responsible for equality and non-discrimination, in a decision dated 11 August 2020, concluded that the employer could have assigned the worker duties that did not involve contact with mentally ill inmates, as it had previously done with another social worker; it also stated that there was no evidence of the worker's inability to perform the essential functions of her post. This case is noted by Vicente, *Igualdade e não discriminação nas relações laborais*, cit., pp. 342-343.

Evidently, there was also no discernible answer to the question of whether such omissive conduct would constitute direct or indirect discrimination. It must be emphasized, in any case, that at least since the ratification of the aforementioned United Nations Convention by the European Union, the Court should have been bound to recognize such a failure as a form of discrimination on the grounds of disability. Indeed, it should be reiterated that, according to Article 2, paragraph 3, of that Convention, discrimination includes the denial of reasonable accommodation. As will be further discussed, the *Bervidi* decision took this step forward in clarifying the legal significance of the failure to comply with the obligation of reasonable accommodation within the framework of equality and non-discrimination on grounds of disability.

Although not expressly recognized in the Directives – we refer to the triad of core Directives in this field: 2000/43; 2000/78; 2006/54 –, discrimination by association must be mentioned as an integral part of the *acquis* of European Union anti-discrimination law. According to Maneiro Vázquez[61], the recognition of this concept by the CJEU illustrates the role of this jurisdictional body in ensuring an increasingly extensive and versatile anti-discriminatory protection, capable of fulfilling its protective purpose despite a certain restrictive nature of the Directives.

This concept was recognized beyond any doubt in the aforementioned *Coleman* case, concerning discrimination on grounds of disability[62]. In this

[61] *La discriminación por asociación: desafíos sustantivos y procesales*, Aranzadi, 2021, pp. 23 and 37.

[62] Nevertheless, we would argue that the concept is applicable in other domains. By virtue of the principle of conforming interpretation, national legal practitioners must recognize this type of discrimination regarding disability, as well as all other grounds to which the set of considerations put forward in that judgment are applicable, *mutatis mutandis*. Moreover, as will be seen below, the CJEU has applied similar reasoning in other cases concerning different discriminatory grounds. Regarding the Spanish legal system, Molina Navarrete (*La doctrina*, cit., pp. 261 ss.) notes a case where the concept was applied to a situation not based on disability: the decision of the Trib. Superior de Justicia de Galicia of 13 April 2018 appealed to this concept in a situation involving the workplace bullying (*mobbing*) of the husband of a worker who had previously been a victim of sexual harassment within the company; the court considered the conduct directed at the husband as discriminatory on grounds of sex, by association. He further refers to the decision of the Trib. Superior de Justicia de Las Palmas of 29 August 2019, which reportedly considered the dismissal of a worker – allegedly due to a decrease in performance – to be discriminatory by association, as she was in a relationship with a trade unionist worker and the dismissal followed a series of demands he had submitted to the employer in that capacity.

case, a worker agreed to the termination of her contract by mutual agreement following a proposal from the employer. She later claimed to have been the victim of discrimination in the form of harassment, arguing that the termination of the contract should be attributed to the employer. She invoked discrimination on grounds of disability, not because she herself had a condition qualifying as such, but because she was the primary caregiver for a young son who suffered from apnea attacks, as well as congenital laryngomalacia and bronchomalacia. The child's pathologies were framed within the concept of disability, and the Court ruled that, although the employee herself did not suffer from these pathologies, she had indeed been discriminated against on grounds of disability – that of the son in her care, with whom she was, *hoc sensu*, *associated*[63].

The CJEU further confirmed the concept of discrimination by association in the later *Chez* case[64], concerning racial/ethnic discrimination. In this case – regarding which Advocate General Kokott, unlike the judges of the Court, repeatedly and expressly referred to the concept of discrimination by association –, Ms. Nikolova, the owner of a small business in a

[63] On this, Mestre, *Discrimination by association: protected by EU Law but limiting the scope of Mangold*, in *ELRep*, 2008, pp. 300-305.

[64] C-83/14, 16 July 2015. According to Maneiro Vázquez, *La discriminación por asociación*, cit., pp. 24, pp. 68 ss. and 83 ss., this was also confirmed in the *Hakelbracht* case, concerning discrimination on grounds of sex (C-404/18, 20 June 2019). In *Hakelbracht*, the idea of association, although not phrased in those exact terms, resulted from an act of retaliation – considered discrimination under dir. 2006/54/EU – directed at a person other than the one who was originally discriminated against on grounds of sex (due to pregnancy) and who had taken legal action. The retaliation was exercised against a worker who had provided informal support to the victim on several occasions, namely within the context of the legal proceedings. In this regard, the CJEU stated that "the effectiveness of the protection required by dir. 2006/54/EU against discrimination on grounds of sex would not be assured if that protection did not cover measures which an employer might be led to take against employees who have, formally or informally, defended the protected person or testified in his or her favour. Indeed, those employees, who are ideally placed to support that person and to be aware of cases of discrimination committed by their employer, might then be discouraged from acting in that person's interest for fear of being deprived of protection if they do not meet certain formal requirements, such as those at issue in the main proceedings, which could seriously compromise the objective pursued by dir. 2006/54/EU by reducing the likelihood that cases of discrimination on grounds of sex will be detected and resolved". Therefore, art. 24 must be interpreted "as meaning that the employees referred to (…) other than the person who has been the victim of discrimination on grounds of sex, must be protected in so far as they may be disadvantaged by their employer because of the support they have, formally or informally, given to the person who has been the victim of that discrimination" (§§ 34 and 35).

district where the majority of the population was of Roma origin, invoked ethnic discrimination despite not belonging to that group herself. This was due to the fact that the company responsible for installing electricity meters placed them in that district at an inaccessible height, making it impossible to consult them, a practice not found in areas not predominantly inhabited by Roma people. The Court concluded that Directive 2000/43/EC applied, as its scope should be defined according to the discriminatory ground in question rather than depending on the actual membership of the alleged victim in the corresponding category. Ms. Nikolova had suffered discriminatory treatment based on ethnicity (of the majority of the district's inhabitants)[65] and the effects of their stigmatization. Although in less crystal-clear terms, the Judgment clarified in this context, in line with the position of Advocate General Kokott[66], that indirect discrimination, and not only direct discrimination, can take the form of discrimination by association[67]. Indeed, in his Opinion, Advocate General Athanasios Rantos recalls precisely this to support an identical conclusion regarding the *Bervidi* case[68]. The Court, which, as we shall see, confirmed this, also recalled the *Chez* decision[69].

3.2.2.2.2. *The apport of the Judgment*

As previously mentioned, the CJEU had not yet stated, expressly and unequivocally, that the mere omission of appropriate reasonable accommodation measures would constitute discriminatory treatment. In fact, until the *Bervidi* case was brought up before it, the Court had never been directly called upon to address such a question. However, not only does this result from the broad scope of the concept of discrimination set out in the United Nations Convention, ratified by the Union, but it can also be said to be a natural corollary of the Directive itself. The latter aims to establish a general framework for ensuring equal treatment in employment and occupation for all persons and, specifically, of Article 5, which – before clarifying the meaning of the reasonable accommodation imperative – stipulates that, "in order to guarantee compliance with the principle of equal treatment in relation

[65] §§ 59 and 60 of the Opinion.
[66] §§ 102 ss. of the Opinion.
[67] Maneiro Vázquez, *La discriminación por asociación*, cit., pp. 79 ss.
[68] §§ 36 ss. of the Opinion.
[69] § 56.

to persons with disabilities, reasonable accommodation shall be provided". In other words, the adoption of these measures is both an expression and a requirement of the principle of equality. Recall the evocative words of Bob Hepple, reproduced *supra*.

In any case, we believe it can be affirmed that, following the *Bervidi* decision, it has become clear within the Court's case law that the failure to observe required measures for adjusting working conditions in light of a disability situation constitutes discrimination on that ground. Indeed, the Court seems to have taken this as self-evident – and not only that, but also that such omissive conduct constitutes *indirect* discrimination.

On this last point, however, Advocate General Athanasios Rantos explored the matter in greater depth. After recalling the concept of indirect discrimination, he explains, with the present case in mind: "In my view, the typical example of such discrimination is the introduction by the employer, in a general manner, of inflexible patterns of working time. That rule is formulated in neutral terms in that it applies to all employees but it is particularly disadvantageous for family caregivers of disabled children, who need more flexible working hours in order to be able to provide the care and assistance which such children require in view of their health status"[70]. He further adds that "the provision of reasonable accommodation makes it possible to remedy a situation of indirect discrimination"[71]. We would argue that he is correct. In fact, the omission of accommodation measures appropriate to the situation of the person concerned can be viewed as the application of standard working conditions to that person, which are designed in a neutral manner; however, despite their apparent neutrality and their *a priori* harmlessness, they have a particularly unfavorable impact on a specific category of workers – those who, on grounds of disability, require accommodations. It may be argued that classifying this omissive conduct as indirect discrimination opens the door to a potentially overbroad possibility of justification, which would not occur within the framework of direct discrimination. But the truth is that, since the essential parameter for the justification of indirect discrimination is the principle of proportionality, it

[70] § 46 of the Opinion.
[71] § 52 of the Opinion.

is already inherent in the very formulation of the obligation of reasonable accommodation[72]…

The aspect to which the Court devotes the greatest attention is, undoubtedly, the question of whether indirect discrimination – or, at least, this form of indirect discrimination – can be accepted as occurring *by association*[73]. On this point, although the Judgment reveals a carefully reasoned and relatively dense foundation, the Court's conclusion is almost syllogistic: *if* the Directive precludes discriminatory practices in both direct and indirect forms, *and* if "the principle of equal (…) applies not to a particular category of person but by reference to the grounds mentioned in Article 1 thereof, so that that principle is intended to benefit also persons who, although not themselves a member of the race or ethnic group concerned, nevertheless are subject to less favourable treatment or a particular disadvantage on one of those grounds"[74], then "the principle of non-discrimination laid down in Article 21(1) of the Charter and given concrete expression by Directive 2000/78 also covers indirect discrimination "by association" on grounds of disability"[75].

Following the considerations already put forward by the Advocate General, the Court invokes in favor of this interpretation, in addition to the instruments already mentioned, the decision of the European Court of Human Rights in the case of *Guberina v. Croatia* (22 March 2016). In that case, the Court precisely held that the unfavorable treatment of a person on account of the disability of a child for whom they provide care constitutes discrimination on grounds of disability for the purposes of Article 14 of the European Convention on Human Rights, regardless of whether it is characterized as direct or indirect discrimination[76]. In the present case, the applicant had invoked the non-application of a protective tax regime in light of the dependent's disability.

On the other hand, and once again in agreement with the Advocate

[72] With interest, regarding the criteria for delimiting the required measures and the relevance, in this respect, of the proportionality parameter, see Schiek, Waddington, Bell (coord. Droshout), *Cases, Materials*, cit., pp. 635 ss., pp. 665 and 666.

[73] Highlighting this aspect as well, see Impicciatore, *La discriminazione per associazione del prestatore di cura nel recente dialogo 'creativo' tra le Corti*, in *DSL*, 2, 2025, pp. 35-47.

[74] § 56.

[75] § 65.

[76] § 60. See § 42 of the Advocate General's Opinion.

General, it refers to the position already conveyed by the Committee on the Rights of Persons with Disabilities, established within the United Nations and created by the Optional Protocol to the United Nations Convention. In its General Comment No. 6 of 26 April 2018, the Committee stated that the prohibition of discrimination on this ground aims to protect persons presenting that condition as well as those in their immediate circle, starting with parents; it employed the term "discrimination by association" and did not distinguish, in this context, between direct and indirect discrimination[77].

In the subsequent part of the ruling, regarding the second question raised, the Court takes the conclusion of the aforementioned syllogism as a premise for analysis and, coupling it with another assumption, induces a new logical assertion: *if* the principle of non-discrimination enshrined in Article 21(1) of the Charter and given concrete expression in Directive 2000/78 also covers indirect discrimination "by association" on grounds of disability, *and* if "under Article 5 of Directive 2000/78, in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided"[78], then "the employer is obliged to provide reasonable accommodation (…), as regards such an employee [who has a child with a disability in their care][79].

To support this conclusion, the CJEU invokes, in addition to Article 2, Article 7 of the United Nations Convention, which refers to the imperative of protecting children with disabilities, and similarly, Articles 24 and 26 of the CFREU as crucial interpretive references for the Directive. Significantly, it recognizes that if this were not the case, "the prohibition of indirect discrimination "by association" of a worker who provides assistance to his or her child with a disability (…) would be deprived of a significant part of its useful effect"[80]. Once again, the Court's line of reasoning coincides with that traced by Advocate General Rantos, according to whose Opinion the

[77] § 64. See §§ 38 e 39 of the Advocate General's Opinion. Rantos points out that the Committee's position was reiterated in 2022 (Communication n. 51/2018 of 26 August 2022) regarding the Italian legal system, which, by failing to adequately protect caregivers of persons with disabilities, would expose them to discriminatory conduct by association.

[78] § 75.

[79] § 75.

[80] § 74.

Directive "means that the family caregiver of a disabled child is entitled to rely in legal proceedings, under the prohibition of indirect discrimination by association, on the protection against discrimination which would be afforded to the disabled person himself if that person were the worker, if that directive is not to be deprived of part of its effectiveness"[81].

It should be observed that, from the moment the obligation of reasonable accommodation is conceived by reference not to the worker's own disability but to the needs experienced by the worker due to the condition of a dependent, a reconfiguration of its object tends to occur. This is despite the fact that some of its potential manifestations (redefinition of working hours, transition to telework, change of workplace, etc.) may make sense in either scenario – that is, whether the person with a disability is the worker themselves or whether it is another person under their care. Consequently, the adjustments are no longer intended to tailor working conditions to the physical, psychological, or similar limitations of the person performing the work, but rather to adjust them to the needs of reconciling professional obligations with the duties of care toward their dependent. In the words of the Advocate General[82], the employer's obligation will emerge "in the form of accommodation provided to the worker as a caregiver".

What has just been said brings us closer to a conclusion that, in light of this Judgment, seems inescapable. Although the Court does not mention the word "reconciliation" at any point, the connection between the parameters within which it operates and the field of work-family reconciliation is unequivocal[83]. Moreover, symptomatically, the word *caregiver*, applied to the worker, is used in thirteen passages of the ruling and over forty times in the Advocate General's Opinion[84]. We would tend to suggest that the sense of both this Opinion and the decision would remain identical if, instead of G. L.'s status [as a caregiver], her status as the *mother* of the child with a disability were highlighted, since, in this case, the employee held both.

As is well known, the protection of work-family reconciliation within the European Union framework has evolved in the relatively recent past

[81] § 43 of the Opinion. See also §§ 53 and 60.

[82] § 53 of the Opinion.

[83] Also establishing this dialogue, Impicciatore, *La discriminazione*, cit., pp. 42-43.

[84] In the *Coleman* decision, this specific term does not appear; however, various similar expressions are employed, consistently viewing the mother as the person providing care to her son with a disability.

to cover not only the worker's children but also other persons under their care. With Directive (EU) 2019/1158, reconciliation rights are now held not only by parents (of children up to a certain age or with health conditions representing greater dependency) but also by those who assume the status of a caregiver – that is, those providing "personal care or support to a relative, or to a person who lives in the same household (...) and who is in need of significant care or support for a serious medical reason, as defined by each Member State" (Article 3(1)(d)). Furthermore, as Maneiro Vázquez[85] points out, while in precursor Directives the protective measures were based on the idea that workers were either working or absent while providing family care, those that stand out in the 2019 Directive reflect models for combining such care with professional life. Indeed, this instrument provides not only for the right to periods of absence – parental leave, carers' leave, time off from work on grounds of *force majeure* for urgent family reasons – but also for the use of flexible working arrangements (Article 9); that is, models suitable for enabling workers to adapt their working patterns, namely through the use of remote working arrangements, flexible working schedules, or a reduction in working hours (Article 3(1)(f)). Member States are thus obliged to provide reconciliation tools – these and/or others, provided they fulfil the described purpose – aimed at working parents and also at caregivers.

It seems to us, however, that no violation of the Directive occurs if these reconciliation mechanisms, provided for in national legal systems, take the form of a specific set of tools – flexible time slots, part-time work, compressed hours, continuous workdays, remote work, etc. – with defined contours. In contrast, the obligation of reasonable accommodation, as a projection of the principle of equality and non-discrimination on grounds of disability, is characterized – and it could not be otherwise, given the diversity of situations falling under that concept – by its openness, indeterminacy, and inevitable case-by-case analysis. The obligation is configured as a general clause that will have as many manifestations or concretizations as there are nuances in the situation of need. It may happen that a given measure to adapt to the worker's needs is conceivable within the framework of reconciliation mechanisms, but also as a reflection of the obligation of

[85] *Cuidadores, igualdad y no discriminación y corresponsabilidad: la (r)evolución de los derechos de conciliación de la mano de la Directiva (UE) 2019/1158*, Editorial Bomarzo, 2023, pp. 25 ss.

reasonable accommodation. However, while in the context of the former, the legal system tends to offer only a circumscribed set of solutions, within the scope of the latter, there is an elasticity that is only limited by the parameter of disproportionate burden referred to in Article 5 of Directive 2000/78/EC. In this sense, a worker who provides care to a dependent whose condition qualifies as a disability holds a right to have the employer adjust their working conditions by adopting measures that, in essence, fulfil a reconciliation purpose, but which – because they simultaneously fall within the framework of disability protection and the inherent obligation of reasonable accommodation – may go beyond those that would be due to a different worker caring for a child or another dependent person who does not have a disability. The *Bervidi* judgment thus allows us to affirm that there are two distinct universes of reconciliation measures: one inhabited by workers who are parents or caregivers of dependents – dependents *per se*, without further epithet – and another where workers caring for dependents with a disability operate. In this second universe, the employer's obligation assumes a significant breadth, arising from the ductility characteristic of reasonable accommodation, which, in the first universe, will not generally exist (although, in the abstract, nothing prevents Member State legislators from designing reconciliation mechanisms applicable outside the domain of disability with the same degree of openness).

At the light of what has been said, one may conclude that there is yet another aspect in which the position of a worker providing assistance to someone with a disability and that of a parent or caregiver of a third party who does not present such a condition differ. Indeed, while in the former case the omission of proper accommodation measures is considered indirect discrimination on grounds of disability, in the latter, it is highly questionable whether discrimination can be affirmed at all, and the identification of the grounds on which it would rest is even more dubious. The point relates, of course, to the aforementioned doubts posed by Directive (EU) 2019/1158: nowhere in the normative part of the Directive is the violation of reconciliation rights – not even retaliation against their exercise – presented as a discriminatory act, whether grounded on sex or on reconciliation.

In this regard, Maneiro Vázquez[86] stresses that the CJEU had already

[86] *Cuidadores*, cit., pp. 49 ff. and 56 ff.

had the opportunity to establish the link between the exercise of reconciliation rights and the principle of non-discrimination on grounds of sex – and, specifically, to attempt to qualify disadvantageous conduct due to the exercise of those rights as discriminatory on that ground. According to the author, regarding the *Coleman* case, as an alternative to framing the problem within the scope of disability discrimination, it could have been viewed as sex discrimination; it could certainly have been concluded that acts of belittling resulting from the individual providing care to someone with the characteristics of the worker's son are likely to fall, in the great majority, upon female workers, those who almost always fulfil family care roles.

Now, it seems to us that, with the *Bervidi* decision, the CJEU may have deepened the cluster of doubts we have just enunciated. Given the specific contours of the situation, it was possible to appeal to disability as a discriminatory ground and, given that framework, the Court assumed that the omission of pertinent reasonable accommodation measures constituted indirect discrimination – in this case, of the worker caring for the person with a disability. But would the sense of the decision have been identical if the situation had been viewed through the lens of Directive (EU) 2019/1158 – *rectius*, if the child did not suffer from any condition qualifying as a disability and it were therefore unfeasible to frame the case within that domain? In a word: if the measures required of the employer were an expression not of the obligation of reasonable accommodation, as conceived by Article 5 of Directive (EU) 2000/78, but of the obligation to protect reconciliation under Directive (EU) 2019/1158, would their non-observance have been considered an (indirectly) discriminatory act? And if it were, based on what ground? Once again – symptomatically, as in the *Coleman* case –, the person who claimed the adoption of adjustment measures was female. But it is, evidently, plausible to think that the father could have been in the mother's place. Then, even if the omission of those adaptations was deemed as a discriminatory conduct, basing it on sex would represent a less obvious logical step, although – as Amparo Ballester Pastor highlights – the circumstance that, in a given case, the holder of reconciliation rights is male does not obliterate the fact that, historically, traditionally, and predominantly, the lack of protection for this legal interest primarily harms women.

3.3. *Developments at national level*

In the absence of guidance or a clear direction at the supranational level, the failure to grant conciliation rights has given rise to widely diversified frameworks among Member States[87], as exemplified by the Portuguese, Spanish, and Italian cases.

3.3.1. *The Portuguese case*

Until 2019, the exercise of rights related to parenthood and/or work-life balance was not expressly included in the Portuguese Labour Code as a protected risk category for the purposes of anti-discrimination law. The list of discriminatory factors, contained in Articles 24(1) and 25(1), did not include an express reference to pregnancy, maternity, or, more broadly, parenthood or work-life balance – as, indeed, it still does not. It is true that this is a non-exhaustive, illustrative list (using the term "grounds such as"), which allows for the classification of treatments as discriminatory based on other illegitimate grounds. The same applies to Article 13(2) of the Portuguese Constitution, which contains a prohibition of discrimination based on an open – rather than exhaustive – list of grounds[88]. This approach gives judges some discretion to extend the list according to a set of judicially generated principles, and, as such, allows for the consideration of atypical causes or categories of discrimination.

However, the 2019 reform (Law No. 90/2019, of 4 September) introduced changes, specifically the new Article 35-A of the Portuguese Labour Code. Under this provision, any form of discrimination based on the workers' exercise of 'maternity and paternity rights' is prohibited. It expressly rec-

[87] According to the report *The transposition of the Work-Life Balance Directive in EU Member States (II): Considerable work to be done*, based on data provided by Member States in 2023, it is noted that seventeen of them fully comply with the provisions of art. 11 of the Directive, although the specific modalities of such compliance remain unspecified. Nonetheless, the Report observes that within the group of countries failing to grant the protection envisaged in the aforementioned provision – due to a lack of specific safeguards for workers who have requested or exercised the relevant reconciliation rights –, some maintained that such protection was ensured provided a nexus could be established between the unfavourable treatment and other discriminatory factors, such as sex or family status, etc.

[88] See, Canotilho, Moreira, *Constituição da República Portuguesa Anotada*, Coimbra Editora, 2014, p. 340; Miranda, Medeiros, *Constituição Portuguesa Anotada,* I , Coimbra Editora, 2005, p. 112.

ognises as a form of such discrimination differences in remuneration related to the awarding of attendance and productivity bonuses, as well as adverse effects regarding career progression.

Two aspects of the current Portuguese regulatory framework should be underlined.

Regarding the scope of protection, the provision in question prohibits any form of discrimination based on the workers' exercise of their *maternity and paternity rights*, rather than the exercise of *reconciliation* rights. However, these are not equivalent formulas, the former being arguably narrower than the latter. It encompasses all parental leaves and other rights of absence from work (absences and time off), as well as flexible work arrangements – such as part-time work and flexible hours, for reasons related to the fulfilment of parental responsibilities. Nevertheless, it appears that other rights provided within the framework of reconciling professional, family, and personal life, as well as rights established for carers, may fall outside the scope of that provision, unless extensively interpreted.

Secondly, considering the wording of the provision, it appears that the intention was to recognize the exercise of rights related to maternity and paternity as a new and autonomous factor of discrimination or risk, distinct from the sex/gender factor. This interpretation is supported by the systematic placement of the provision within the 'Parenthood' subsection, rather than, for example, the division pertaining to equality and non-discrimination based on sex.

Despite this legal basis for supporting the autonomy of exercising reconciliation rights as a discriminatory factor, certain ambiguities remain. On the one hand, the absence of this category from the list stipulated in Article 24 of the Portuguese Labour Code may be invoked as an argument against its autonomization – notwithstanding the fact that, as previously demonstrated, Article 24 adopts a non-exhaustive model. On the other hand, more recently, another provision of the Portuguese Labour Code – Article 25(6), following the reform introduced by Law 13/2023, of 3 April – extended the rule regarding the reversal of the burden of proof to any instance where a discriminatory practice is invoked on the grounds of the exercise of parental rights, other rights provided for within the scope of work-life balance, or the rights established for working carers. Despite this, Article 25(6)[89] does not expressly state that the exercise of

[89] For further developments on the amendments introduced by l. 3 April 2023 n. 13

reconciliation rights is an autonomous factor of discrimination, merely stipulating that discriminatory practices shall, in any event, benefit from the rule on the distribution of the burden of proof established, including instances where such practices have occurred by reason of the exercise of the work-life balance rights enumerated therein[90]. In short, it remains unsettled whether the exercise of reconciliation rights constitutes an independent discriminatory ground under current law.

3.3.2. *The Spanish case*

In Spain, until the entry into force of Royal Decree-Law 5/2023, of 28 June – a legislative act intended to transpose Directive 2019/1158 into the Spanish system[91] –, the matter was unclear at both the statutory and jurisprudential level. Organic Law 3/2007, of 22 March, merely stated that "rights to reconcile personal, family, and working life are recognised for male and female workers in a manner that promotes a balanced assumption of family responsibilities, avoiding all discrimination based on their exercise". This left the door open to the configuration of grounds for discrimination beyond

(*Agenda do Trabalho Digno*) to the Portuguese Labour Code for parenthood protection, see Gonçalves, *A proteção social da parentalidade*, in *Reforma da legislação laboral: trabalho digno, conciliação entre vida profissional e familiar*, APODIT 11, AAFDL, 2023, pp. 285-303; Carvalho, *A proteção da parentalidade e da conciliação no âmbito da designada Agenda do Trabalho Digno (Lei n.º 13/2023, de 3 de Abril)*, in *Reforma da legislação laboral: trabalho digno, conciliação entre vida profissional e familiar*, APODIT 11, AAFDL, 2023, pp. 193-216; Carvalho, *Reconciling professional and family life for promoting gender equality in Portugal: some considerations and prospects in the light of the new Directive 2019/1158 on work-life balance for parents and carers*, in *RDCTSS*, 4, 2020, pp. 97-1017; and Vicente, *A Directiva (UE) 2019/1158 do Parlamento Europeu e do Conselho, de 20 de Junho de 2019, relativa à conciliação entre a vida profissional e a vida familiar dos progenitores e cuidadores e o seu impacto no ordenamento jurídico nacional*, in *Reforma da legislação laboral: trabalho digno, conciliação entre a vida profissional e familiar*, APODIT 11, AAFDL, 2023, pp. 217-236.

[90] This ambiguity gives rise to judicial hesitancy. For instance, in the ruling of the App. Coimbra 12 January 2024 (available at www.dgsi.pt), the Court held that the differential treatment of a female worker for reasons linked to the exercise of maternity-related rights is to be classified as conduct amounting to sex-based discrimination. More recently, the same court, on 14 March 2025, ruled that the loss of an attendance bonus resulting from the exercise of the rights to nursing breaks or prenatal appointments constituted discrimination based on the exercise of parental rights.

[91] On the transposition of dir. 2019/1158/EU into the Spanish legal system, Cabeza Pereiro, *De la conciliación a la corresponsabilidad, en un viaje muy circunstancial*, in *RJT*, 2025, pp. 67-85. Regarding the state of affairs preceding the entry into force of the Royal Decree-Law 5/2023, Castro Arguelles, *Conciliación*, cit., p. 89.

that of sex. Meanwhile, in the judicial sphere, litigation surrounding the exercise of reconciliation rights by male workers illustrated the difficulties of framing such rights within anti-discrimination law. In the leading judgment of the Constitutional Court No. 26/2011[92], of 14 March, the collective of judges held that the refusal of a worker's request for night shift assignment constituted discrimination on family grounds. Without further elaboration, the Court thus associated the exercise of reconciliation rights by men with a new cause of discrimination related to family circumstances under Article 14 of the Spanish Constitution, after rejecting the claim that the appellant had been a victim of sex-based discrimination. According to the Constitutional Court, the individual had not suffered direct discrimination on grounds of sex, as their sex had not influenced, either overtly or covertly, the refusal of the request for schedule adaptation. Nor was there indirect discrimination, despite the fact that the employer's refusal to recognise the right to schedule adaptation might ultimately disadvantage the mother of his child, because the worker could not claim indirect discrimination that he himself had not personally suffered. This focus on a new ground of discrimination was not without academic criticism, primarily because it disregarded the exhaustive nature of the list of discrimination factors provided for in Article 14 of the Spanish Constitution, which is based on particularly reprehensible grounds of discrimination socially constructed over time[93].

Subsequently, the Royal Decree-Law 5/2023 introduced a significant amendment to Article 4.2(c) of the *Estatuto de los Trabajadores*, setting forth that any unfavourable treatment given to women or men for the "exercise of their rights to reconciliation or co-responsibility of family and work life" constitutes discrimination on grounds of sex. This incorporates, in the words of Castro Argüelles[94], a gender perspective into the anti-discriminatory protection of these rights, based on the close relationship that has always existed between equality, non-discrimination on grounds of sex, and the reconciliation of professional and family life. In the author's view, this option dispels any doubt regarding the constitutional dimension of work-life balance measures, whether used by male or female workers. However,

[92] Available at https://hj.tribunalconstitucional.es/es-ES/Resolucion/Show/6808.

[93] In this regard, Sanz de Galdeano, *La conciliación de la vida laboral y familiar como causa de discriminación por razón de género y la incentivación de las medidas de corresponsabilidad*, *Notícias CIELO,* 4, 2019, pp. 1-3.

[94] *Conciliación*, cit., p. 92.

it also appears to preclude the extension of anti-discriminatory protection to men outside the scope or channel provided by discrimination based on sex or gender.

Therefore, the extension of anti-discriminatory protection to men beyond the scope or channel provided by indirect discrimination on grounds of sex or gender is rejected – at least as long as reconciliation or shared responsibility does not have the same impact on the work of both women and men. According to this perspective, when a man suffers a detriment for having exercised reconciliation rights traditionally exercised by women, and which are associated with gender stereotypes, he is a victim of sex-based discrimination, 'since he would be discriminated against for assuming caregiving roles considered feminine'. From a systematic standpoint, this choice by the Spanish legislator has implications at two levels. On one hand, since discrimination for the exercise of reconciliation rights is framed as a form of sex-based discrimination – a factor provided for in Article 14 of the Spanish Constitution – there was no need to expand the constitutional list of suspect categories. On the other hand, given that the objective is not to broaden the grounds of discrimination, but rather to specify the situations that may constitute sex-based discrimination, Article 17 of *Estatuto de los Trabajadores*, concerning non-discrimination in labour relations, also remains unchanged[95].

3.3.3. *The Italian case*

Since 2010, Article 3 of Decree-Law 151/2001, of 26 March 2001 (*Testo unico delle disposizioni legislative in materia di tutela e sostegno della maternità e della paternità*), has prohibited any discrimination on grounds of sex, with particular reference to any less favourable treatment due to pregnancy, maternity, or paternity – including adoptive – or due to the entitlement to and exercise of the corresponding rights. Based on this provision, unfavourable treatment suffered either for reasons related to pregnancy, maternity, and paternity, or due to the exercise of rights related to these statuses, is prohibited. In either case, the practice is considered discriminatory on the grounds of sex. Concurrently, in a series of decisions, Italian courts had been qualifying certain employer organisational practices – namely regarding working

[95] *Ibidem*.

time arrangements – as indirect sex discrimination. By treating all workers indistinctly – both those caring for minor children and those without such responsibilities – these seemingly neutral practices were found to disadvantage employees with children (to a large extent, working mothers). This occurred in the case heard by the Court of Ferrara of 25 March 2019, concerning a worker employed by a large–scale retail company. Upon returning to work following maternity leave and extraordinary leave to care for her minor daughter with a disability, she was assigned to fragmented and night shifts, with the continuous allocation of so-called 'closing shifts'[96]. Reference should be also be made to the decision of the *Tribunale di Firenze* of 22 October 2019, in which the *Ispettorato Territoriale del Lavoro* was condemned for indirect sex discrimination for having established, in two service orders, particularly demanding penalties and procedural requirements for minor violations of the duty of punctuality by workers (for delays of up to fifteen minutes)[97].

Currently, Law No. 162/2021, of 5 November 2021, by adding a new paragraph 2-bis to Article 25 of the *Equal Opportunities Code (Codice delle Pari Opportunità)*, has disrupted – or at least introduced ambiguity into – the framework previously described. According to the aforementioned provision, 'It constitutes discrimination, within the meaning of this title, any treatment or modification of the organisation of working conditions and hours which, by reason of sex, chronological age, personal or family care needs, pregnancy, or maternity or paternity – including adoptive – or by reason of the entitlement to and exercise of the corresponding rights, places or may place the worker in at least one of the following conditions: a) a position of disadvantage relative to the generality of other workers; b) limitation of opportunities for participation in corporate life or deci-

[96] The Court underscored that "to treat a person in a position of hardship, who is doubly protected by the legal system – both on grounds of maternity and on grounds of the child's disability – identically to other workers in terms of working hours and shifts, constitutes indirect discrimination. This is because an employer's decision, which is ostensibly neutral and purportedly applies to all, places the female worker at a particular disadvantage... It is therefore held that the company's refusal to reach an agreement regarding work schedules is a manifestation of indirect discrimination; even if a schedule was accepted by the worker prior to the event – making it an apparently neutral act – it places the mother of a child with a disability in a particularly disadvantageous position in relation to [others]."

[97] Regarding this decision, see Izzi, *Discriminazioni verso i genitori e risarcimento dei danni in funzione sanzionatoria*, in *RIDL*, 2, 2020, pp. 665-672.

sion-making; c) limitation of access to mechanisms for career advancement and progression.' Comparing the referred provision, there are two perspectives through which an expansion or extension of risk factors or categories may be established[98].

First, risk factors such as maternity and paternity – already protected under Decree-Law No. 151/2001, of 26 March 2001, within the framework of sex-based discrimination – now appear listed in the new Article 25 (2) (bis), without a specific link to sex[99]. This effectively raises the question of whether the legislator intended precisely to grant parenthood autonomy as a factor independent of gender[100]. As Marco Peruzzi[101] observes, this inter-

[98] This was not the sole amendment introduced to art. 25 of the *Equal Opportunities Code* by l. n. 162/2021. Paragraphs 1 and 2 of the aforementioned provision also underwent modifications, although legal doctrine has generally characterised such additions as redundant or merely clarificatory. Regarding art. 25, it was explicitly established that anti-discriminatory protection extends to the recruitment and selection phase. For its part, paragraph 2 now stipulates that organisational changes affecting working hours may give rise to instances of indirect discrimination. On the limited substantive nature of these amendments, see Garofalo, *Il problematico allargamento della nozione di discriminazione nel codice delle pari opportunità*, in *LDE*, 1, 2023, pp. 1-11.

[99] A further ambiguity in art. 25 co. 2 bis stems from its allusion to protected characteristics – notably sex and age – which are already subsumed under existing statutory frameworks. Highlighting this inconsistency, Voza, *Eguaglianza e discriminazione nel Diritto del Lavoro. Un profilo teorico* (at https://aidlass.it/wp-content/uploads/2024/05/Relazione-VOZA.pdf); and Borelli, *Sguardi sul diritto antodiscriminatorio e sulle recenti politiche di genere*, in *LD*, 36, 3, 2022, pp. 502-507. Borelli further contends that jurisprudence is unlikely to accord significant weight to this legislative shift. Instead, it is anticipated that courts will persist in invoking art. 25, co. 1 and 2, d.lgs. 11 April 2006 n. 198 for sex-based discrimination, and d.lgs. 9 July 2003 n. 216 for age-based grievances. By the same token, regarding disability-based discrimination, it is plausible that the judiciary will favour specific legislation […] over the prohibition predicated on personal care needs.

[100] In this sense, Peruzzi, *Orario di lavoro e discriminazione per genitorialità: la soluzione giurisprudenziale prima della L N. 162/2021*, in *RIDL*, 2022, II, p. 267. Other scholars, however, contend that the statutory protection of parenthood is currently predicated upon two distinct factors: sex and family caregiving requirements. See Garofalo, *Il problematico allargamento della nozione di discriminazione,* cit., p. 7.

[101] Peruzzi, *Orario di Lavoro*, cit. The author relates to Trib. Bologna 31 December 2021, that qualified as discriminatory a company practice that imposed a new two-shift work schedule on its employees, particularly female workers with minor children, and ordered the employer to pay compensation for both pecuniary and non-pecuniary damages. The Author observes that certain passages of the ruling provide a genuine qualification of the conduct as discrimination on grounds of parenthood. Conversely, in other instances, the legal construction of the case appears to be merely borrowed from the gender-based definition. More recently, however, attention should be drawn to App. Firenze 25 February 2025. In a dispute with similar

pretative perspective allows for the verification of discrimination related to childcare responsibilities – such as those occurring, for example, when the distribution of productivity bonuses is based on attendance criteria – to be freed from the requirement of proving a differentiated impact to the detriment of women, including through statistical evidence. When parenthood becomes the risk factor, the disparity must be considered discriminatory, not so much because women are the vast majority of those suffering it, but because those subject to such treatment are working parents with parental responsibilities. According to the author, the necessity of this interpretation becomes even more evident in the context of same-sex couples, where the protection of a parent exercising leave to care for children can also entirely transcend the issue of gender difference, potentially linking to the issue of discrimination based on sexual orientation. Furthermore, in the author's view, the fact that the instrument's scope is equal treatment between men and women does not preclude this conclusion[102].

Irrespective of this point, evidence suggests that the provision in question intended to go further – that is, beyond the protection of parenthood – by referring to the category of *family care needs*. This is a provision that essentially aims to promote a broader and more modern conception of the balance between personal and professional life, in harmony with Directive (EU) 2019/1158. Through this Directive, the European legislator demonstrates a rupture with the inexorable link between reconciliation and parenthood, extending it to other dimensions of care[103]. For some authors, this reference is highly significant, as it reveals the intention to codify a new criterion to identify a social group considered, in the current context, in need of protection. Since the new rule represses disparities based on one's status as a career, in the future, there will no longer be obstacles to characterising such differences in treatment as (direct or indirect) discrimination

characteristics, this court recognises parenthood as an autonomous risk factor independent of gender, in line with the normative development of art. 2-bis of the *Equal Opportunities Code*. On this latter decision, see Lamberti, *Genitorialità e orario di lavoro nella prospettiva della discriminazione indiretta: autonomia della fattispecie, tutela collettiva e funzione dissuasiva del risarcimento*, in *EQUAL*, 5, 2025, p. 451.

[102] Peruzzi, *Orario di Lavoro*, cit., p. 268.

[103] According to Garofalo (*Il problematico allargamento della nozione di discriminazione*, cit., p. 7), included among family caregiving needs are not only all forms of leave granted under the work-life balance directive but also, more generally, requests for flexible working schedules for care-related reasons that do not stem from the exercise of a specific legal right.

based on this factor. Consequently, it will no longer be necessary, as has been the case until now, to resort to the prohibition of indirect sex-based discrimination[104].

4. *Work-life balance rights: towards an autonomous protected characteristic?*

The analysis undertaken in the preceding sections underscores the hesitations and complexities experienced at both the EU and Member State level, regarding the legal framework for the less favourable treatment of workers arising from the exercise of reconciliation rights. We now seek to reflect upon the merit of establishing the exercise of these rights as an autonomous ground of discrimination, independent of sex.

It should be noted that this reflection does not intend to challenge the settled classification of certain disadvantageous treatments as sex-based discrimination. Regarding the less favourable treatment of a woman resulting from the exercise of *first-generation* reconciliation measures – specifically maternity-reconciliation, which pertains exclusively to women to protect their biological condition – such treatment must fundamentally be categorised as sex discrimination. Indeed, as these measures are inseparable from the female sex, any less favourable treatment in this context inexorably results in a detriment to women. The central question, however, is whether other forms of disadvantageous treatment – notably those related to *second-generation* reconciliation measures – attain the normative status required for establishment as an autonomous ground of discrimination.

Indeed, it is argued that there are compelling grounds to classify unfavourable treatment arising from reconciliation needs as a form of sex-based discrimination. Proponents of this view contend that decoupling reconciliation frameworks from the principle of sex-based non-discrimination represents an attempt to obscure the historical evolution and current state of gender relations[105]. The theoretical frameworks surrounding the sex factor are multifaceted. The most salient construction involves framing unfavourable

[104] De Castro, *Discriminazione diretta e indiretta: una distinzione da ripensare?*, in *LD*, 36, 3, 2022, pp. 507-512. In the Author's view, the introduction of this category, alongside existing ones such as pregnancy and childcare for minors, will prove problematic; in the case of caregiving status, it is particularly challenging to identify a gender-linked characteristic.

[105] Cabeza Pereiro, *La directiva*, cit., p. 78, and Cristóbal Roncero, *La conciliación*, cit., pp. 92-93.

treatment for reconciliation reasons as indirect sex discrimination, given that statistical evidence demonstrates that caregiving duties remain predominantly female-dominated; thus, its classification as sex discrimination stems from the disproportionate female assumption of these tasks[106]. Others go further, positing that such instances may constitute direct sex discrimination, as unfavourable treatment – regardless of whether it affects women or men – serves to reinforce entrenched gender stereotypes[2]. It is further argued that the male gender of the victim should not be viewed as an insurmountable barrier to this classification, particularly since the CJEU, in *Roca Álvarez*, recognised direct sex discrimination in reconciliation matters even where the victim was a man (notwithstanding that the case specifically concerned the deprivation of rights rather than their exercise). Finally, some scholars contemplate the recourse to discrimination by association[107], applicable when an unequivocal nexus exists between the caregiver suffering the detriment and a third party who is the primary subject of the discriminatory ground.

The fact remains that, despite the umbilical connection between reconciliation and the female sex inherent in this framework, further data must be scrutinized. It is pertinent to examine the merits of establishing work-life reconciliation as an autonomous ground of discrimination, independent of sex. Three principal justifications are advanced for this approach.

Firstly, the evolution of the reconciliation policies. Recent decades have witnessed a significant evolution in reconciliation policies. These have shifted from targeting only pregnant workers, or those who have recently given birth or are breastfeeding, to encompassing all working parents – both men and women – and, subsequently, workers with family responsibilities in their capacity as carers. While achieving equal opportunities for men and women in the labour market remains a pressing concern of reconciliation policies – an objective that is still far from being realized – it is no longer their sole impetus. Reconciliation policies, and the measures they comprise, also aim, independently of that primary effect, to protect the male worker by enabling him to balance his professional life with his family life.

Viewed through this prism, one must ask whether the less favourable

[106] Cabeza Pereiro, *La directiva*, cit., p. 77.

[107] Sanz de Galdeano, *La perspectiva de género en la interpretación judicial: entre un necesario replanteamiento del alcance de la corresponsabilidad y una contención de la doctrina del varón discriminado*, in *ELRLPS*, 19, 2025, pp. 45-66.

treatment of a worker (male or female) resulting from the exercise of reconciliation rights should continue to be viewed as being based on sex, or whether it can, and should, be detached from this factor, thereby becoming autonomous. Should we continue to assume that when a man is the victim of disadvantageous treatment following the exercise of reconciliation rights, it is because he is performing typically female tasks, and that this is the true rationale for his unfavourable treatment? Moreover, even when the victim is a woman, given the evolution of reconciliation policies, does it not make sense to consider that if she suffers unfavourable treatment for exercising reconciliation rights, the factor governing such differential treatment is the exercise of those very rights? This is without prejudice to the possibility, in certain cases, of envisaging a scenario where the unfavourable treatment of a woman, associated with the exercise of a reconciliation right, may be based on more than one discriminatory factor – namely, sex and the exercise of reconciliation rights[108].

Secondly, the benefit of clarity. Relying on 'indirect sex discrimination requires complex statistical evidence to prove a disproportionate impact on women. But what happens when the victim is a man? Or a member of a same-sex couple? Or a carer for an elderly relative? Establishing an autonomous ground simplifies the legal framework. without the need for a gender *proxy*. Article 21 of the RFREU could provide the necessary legal basis for this construction, especially when read in conjunction with Article 11 of the Directive.

Finally, it could, indeed, be questioned whether the category whose autonomisation is discussed herein possesses the essential attributes for recognition as a prohibited or inadmissible ground of discrimination. In fact, the introduction of any new *suspect category* – whether this individualisation or categorisation is a legislative choice or rather the result of jurisprudential work – will always confront the legal scholar with a more general question:

[108] Raising the issue of multiple or intersectional discrimination, and positing the possibility of discrimination based on several factors in situations of adverse treatment arising from the exercise of reconciliation rights, albeit from a distinct perspective (combining discrimination based on reconciliation with sex-based discrimination by association), see Fernández Prieto, *Conciliación de responsabilidades de progenitores*, cit., pp. 117-119. See also Xenidis, *From Critical Theory to Litigation Strategy: Can Intersectionality Transform EU Equality Law?*, in *EULJ*, 1-2, 31, 2025, pp. 22-44, and, albeit focusing on remuneration issues, Izzi, *Intersectional discrimination under EU Directive 2023/970 and beyond: challenges and new perspectives for European Equality Law*, in this journal, 2025, 1, pp. 383-412.

namely, that of the requirements or necessary conditions for the recognition of a category as a prohibited/inadmissible factor of discrimination[109]. This is a crucial question, not only to ensure a coherent understanding of established discrimination factors but also to provide a theoretical framework capable of supporting the consolidation of new categories[110]. In the absence of a definitive and unified response within the doctrinal and jurisprudential landscape, various factors have been proposed to delineate a protected group, such as the immutability of the characteristic (either innate or constructed)[111], political marginalisation[112], dignity[113], the social relevance of the characteristic[114], or even a history of disadvantage[115]. Regarding conciliation rights, at first glance, some of these attributes might raise doubts regarding the validity of a category such as the one under discussion. Consider, for instance, the concept of history of disadvantage. Nevertheless, the particularity lies in the fact that we are not truly facing a new factor, but rather a process of autonomising a personal characteristic that until now was embedded within another: sex. If we separate discrimination based on the exercise of reconciliation rights from sex-based discrimination, we are merely extracting from the *sex capsule*[116] a long-recognized factor of discrimination, which

[109] Fredman, *Discrimination Law*, cit., p. 205.

[110] Foran, *Grounding unlawful discrimination*, in *Legal Theory,* 28, 2022, pp. 3-34.

[111] According to this view, the pivotal element lies in the immutability of the personal characteristic – specifically, the fact that it constitutes an innate personal trait that the individual cannot alter (strict immutability) or which they should not be required to relinquish, being rooted in fundamental choices (constructed immutability) or integral to their core identity. The doctrine of immutability was fundamentally refined within the American legal landscape, where jurisprudence functions through a non-exhaustive catalogue of protected grounds. Over the past quarter-century, however, this conceptual framework has been subject to persistent scrutiny regarding its efficacy in delineating why specific personal traits warrant legal protection while others are excluded. Most notably, the concept has been impugned for being simultaneously "overinclusive and underinclusive", Clarke, *Against Immutability*, in *YLJ*, 125, 2015, pp. 1-102.

[112] In U.S. case law, this element has been employed to exempt certain characteristics, such as age, from the most rigorous level of scrutiny under anti-discrimination law. See, on this point, Sandra Fredman, *Discrimination Law,* cit., p. 213.

[113] Freedman, *Discrimination Law*, cit., p. 214. Regarding this criterion within the jurisprudence of the European Court of Human Rights, Lopes, *A jurisprudência do Tribunal Europeu dos Direitos do Homem vista à luz do princípio da não discriminação*, in *Julgar*, 14, 2011, pp. 47-75.

[114] Foran, *Grounding unlawful discrimination*, cit., pp. 11 ss.

[115] Concerning the doctrinal weight of this criterion in Anglo-American case law, see Freedman, *Discrimination Law*, cit., p. 217.

[116] Focusing on this idea, Vicente, Gonçalves, *O exercício de direitos de conciliação como*

until now was impregnated within it: the assumption of family responsibilities. And if this is the case, it is not difficult to conclude that we are, after all, facing a characteristic that historically exerts a negative impact on social interactions, insofar as it tends to express sentiments or attitudes fraught with inequality and, as such, warrants enhanced protection. In essence, recognizing reconciliation as an autonomous ground of discrimination does not mean challenging the established protection of gender equality. On the contrary, it completes it. It allows us to protect the *second generation* of rights through a system/framework that finally puts work life balance at its core.

(potencial) factor de discriminação, cit., p. 687.

Abstract

Over the last three decades, the European Union has established an increasingly complex framework regarding work-life balance. This evolution reflects a paradigmatic shift away from the traditional *maternity-protection model* towards a sophisticated system designed to foster an equitable distribution of caregiving responsibilities between men and women. Nevertheless, the status of work-life balance within anti-discrimination law remains uncertain. This paper explores the evolving legal status of work-life balance rights and their intersection with anti-discrimination law within the European Union framework. At a first level, by exploring this intersection with sex, as a ground of discrimination and, at a second level, with the category of disability. It also includes a study of legislative and jurisprudential developments in domestic systems – specifically the Portuguese, Spanish, and Italian models. Finally, the paper contends that the recognition of the exercise of reconciliation rights as an autonomous ground of discrimination is warranted, based upon a threefold argumentative framework.

Keywords

Work-life conciliation, Sex, Disability, Direct and indirect discrimination, Discrimination by association.

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Towards Fair and Inclusive Employment Relations: Business as an Agent of Social Change Through Corporate Social Responsibility, Integrated Corporate Welfare, and Workplace Safety at Work

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1. *Corporate Social Responsibility as an operational tool to address EDI challenges*

Corporate Social Responsibility today represents an operational paradigm through which organizations can concretely address the challeng-

es of Equality, Diversity, and Inclusion (EDI)[1]. Historically understood as a response to external pressures or compliance with regulatory standards, CSR has gradually evolved towards a more conscious and systemic vision of corporate responsibility, where businesses are no longer considered isolated economic entities, but rather significant players within a complex social ecosystem[2]. Contemporary businesses possess the capacity and, increasingly, the conscious responsibility to become active players in combating inequality and promoting inclusive work environments. This transformation can be interpreted as a strategic choice based on the awareness that structural inequalities – gender, ethnicity, age, disability, sexual orientation – represent not only a social justice issue, but also an economic inefficiency that leads to a loss of talent, reduced productivity, and weakened organizational resilience[3].

1.1. *The company as an agent of social change*

A company that deliberately invests in CSR policies transforms itself into a conscious agent of social change, capable of exerting a positive influence on the local area, the community, internal labor relations, and, more generally, society as a whole[4]. This transformation involves a profound reinterpretation of the traditional business model, where profit is no longer the sole guiding value, but rather one of how the company also pursues a social purpose.

From this perspective, CSR is a conceptual and operational framework through which organizations define their policies for promoting equality in the workplace and protecting rights[5]. These are not simply episodic actions or greenwashing communications, but rather systemic, measurable, and monitorable interventions over time, integrated into corporate governance and the organization's overall strategy[6].

[1] Freeman, *Strategic Management: A Stakeholder Approach*, Cambridge University Press, 2010.

[2] Porter, Kramer, *Creating Shared Value*, in *HBR*, 2011.

[3] Aa.Vv., *Diversity Wins: How Inclusion Matters*, McKinsey & Company Report, 2020.

[4] Donaldson, Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, in *AMR*, 1995.

[5] Ballucchi, Furlotti, *La responsabilità sociale delle imprese. Un percorso verso lo sviluppo sostenibile. Profili di governance e accountability*, Giappichelli, 2024.

[6] Visser, *The Age of Responsibility: CSR 2.0 and the New DNA of Business*, John Wiley &

1.2. *The role of the company's employee stakeholder*

A central element in the contemporary redefinition of CSR is the recognition of the employee not just as a productive resource, but as a primary stakeholder in the organization. Stakeholder Theory suggests that a company's lasting success depends on its ability to create value not only for capital owners, but for a variety of stakeholders, including employees, suppliers, customers, local communities, and the environment[7]. In this framework, employees represent a primary stakeholder not only because they are contractually obligated to receive a salary, but also because they are the custodians of fundamental rights: the right to safe and dignified working conditions, the right to non-discrimination, the right to reconcile work and personal responsibilities, the right to professional and personal development, and the right to respect for their dignity and uniqueness. Considering the employee as a central stakeholder means that company policies can be designed and implemented with the informed participation of workers themselves, through constructive dialogue.

2. *Integrated corporate welfare as a tool for equality and inclusion*

Corporate welfare can be defined as an integrated, multidimensional system of services, benefits, and policies designed to support work-life balance, promote gender equality, facilitate shared and equal parenting, and ensure the inclusion of all workers[8]. It's not just a heterogeneous collection of financial benefits (meal vouchers, supplemental insurance, vouchers), but a holistic approach to employee well-being that recognizes the different dimensions of human life and the need for integration between work and personal life.

The integrated corporate welfare system operates on multiple levels.

Sons, 2011.

[7] Mitchell, Agle, Wood, *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, in *AMR*, 1997.

[8] Treu, *Welfare aziendale. Welfare territoriale e multi-employer, post-pandemia e smart-working*, Wolters Kluwer, 2023.

First, it recognizes how workers' quality of life outside of the production environment directly influences their ability to contribute effectively to their work. It also makes organizations aware that attracting and retaining top talent depends not only on monetary compensation, but also on opportunities for personal and professional development, the quality of the work environment, trust in leadership, and the recognition of human dignity within the organization.

2.1. *Integrated welfare as a response to demographic and social challenges*

Integrated welfare represents a concrete and informed response to the contemporary demographic and social challenges facing European and Italian societies. The aging population, the structural decline in birth rates, the increasing complexity of care responsibilities (elderly care, childcare, and assistance for family members with disabilities), and the evolution of family structures (single-parent families, same-sex couples, and blended families) require companies to profoundly rethink their employee support systems[9].

In Italy, despite legislative progress in recent decades, a significant gender gap persists in terms of labor market participation, access to managerial positions, and, above all, reconciling professional and family responsibilities.

The female employment rate in Italy remains among the lowest in the European Union, standing at around 52%, while the burden of domestic and care work still falls overwhelmingly on women. In this context, tools such as paternity leave, care services, flexible working hours, structured smart working, and healthcare support are not simply corporate benefits, but strategic tools that redefine gender norms in the workplace and promote a more equitable distribution of care responsibilities.

[9] Rizza, Bonvicini, *Attori e territori del welfare. Innovazioni nel welfare aziendale e nelle politiche di contrasto all'impoverimento*, FrancoAngeli, 2014.

2.2. *Integrated welfare and gender equality*

The implementation of targeted welfare policies represents a concrete operational tool for reducing the gender gap and promoting real equal opportunities in the workplace[10]. Several significant interventions stand out:

- Shared and equal parenting: Equal leave policies (extended paternity leave, equal pay for men and women during leave) that implement traditional gender norms that assign fathers a secondary role in childcare.
- Work flexibility: Smart working, flexible hours, and the ability to temporarily reduce working hours for caregiving responsibilities allow for a more equitable distribution of work and family life, particularly benefiting women, who traditionally bear the brunt of domestic and care work.
- Care Services: Company-based daycare, eldercare, and home support services are mechanisms 'through' which companies share responsibility for ensuring their employees can effectively balance their professional and family responsibilities.
- Pay equity: Explicit pay auditing policies, transparent pay grades, and regular pay review mechanisms are essential to ensure that historical pay gaps based on gender stereotypes are not perpetuated.

3. *Case studies: the historical and contemporary system of corporate welfare*

The Italian tradition of corporate welfare has its roots in the past, characterized by enlightened entrepreneurs who, already between the 19th and 20th centuries, recognized the inseparable link between workers' well-being and that of the company. Although sometimes characterized by a paternalistic dimension, these pioneering experiences represent the foundation upon which modern awareness of corporate social responsibility is built.

3.1. *Olivetti: The Humanist Model of Corporate Welfare*

Adriano Olivetti's story represents a turning point in the modern concept of corporate welfare[11]. When Adriano Olivetti took over his father's

[10] OECD, *The Pursuit of Gender Equality: An Uphill Battle*, OECD Publishing, 2019.

[11] Olivetti S.p.A. is an Italian company operating in the information technology sector,

factory in Ivrea in 1932, it was not yet "corporate welfare" in the contemporary sense of the term; however, his deeply humanistic nature – despite his rigorously technical training in chemical engineering – led him to care for his employees not only as professionals, but as individuals, with a dignity that transcended the simple employment relationship. Adriano Olivetti was not just an entrepreneur, but a visionary who combined industrial skill, social sensitivity, and humanistic vision in a way that was entirely unique in the business landscape of the time. Driven by an awareness of the times and the need to combine industrial development with the affirmation of human rights, Adriano Olivetti revolutionized the business model, transforming the workplace into a place of cultural and personal enrichment[12].

The "Olivetti recipe" for a "human-scale" company was based on principles that are still extraordinarily contemporary today. Starting from his statement, "the factory cannot focus solely on profitability. It must distribute wealth, culture, services, and democracy. I think the factory is for people, not people for the factory", it can be said that his vision represented a Copernican revolution compared to the forms of capitalism of the time and a reversal of the traditional industrial paradigm. Not man at the service of the factory, but the factory at the service of man and his personal and social fulfillment[13].

Another fundamental element was the integration between work and culture, in the firm belief that work should be enriched by cultural content and that industry should contribute to the cultural elevation of society. Alongside this element is the presence of the factor of industrial democracy, through the promotion of worker participation in company decisions, the creation of a collaborative climate and the overcoming of the traditional division between capital and labor.

The welfare system provided, in an innovative way:

- Access to culture and education: Olivetti established company libraries accessible to all employees, including blue-collar workers. Cultural events and educational initiatives were not merely a marginal benefit, but a fundamental right of workers, an expression of Olivetti's belief that the elevation of humanity was the goal of industry.

which in the past was one of the most important companies in the world in the fields of typewriters, calculators and electronics.

[12] Ochetto, *Adriano Olivetti. La biografia*, Edizioni Comunità, 2013.

[13] Campanini, *Adriano Olivetti: il sogno di un capitalismo dal volto umano*, Studium, 2020.

- An integrated system of services: housing (in a logic that valued modern architecture and quality of life), nurseries, quality canteens, medical clinics, social assistance services, all elements of a system to support the well-being of workers and their families.

Furthermore, the concept of profit as a tool for integral innovation is emphasized. Olivetti's vision of profit was not as an end, but rather as a tool for creating a "virtuous chain aimed at the common good". Profit, from this perspective, was intended to fuel ongoing investments in worker well-being, technological research, and responsibility toward the local community.

Even today, the Olivetti model offers concrete inspiration to companies seeking to combine economic success with a positive social impact on employees and the local community.

3.2. *Marzotto: Paternalistic Welfare and the Construction of the "City of Harmony"*

Gaetano Marzotto represents another emblematic figure in the history of Italian corporate welfare[14]. He invested significant financial resources in the construction of an urban complex that ultimately included over a thousand housing units for various employee categories – apartments, townhouses, and single-family homes – as well as a wide range of welfare and recreational facilities. This experience culminated in the creation of the "Social City" or "City of Harmony" in Valdagno, built between 1928 and 1937. The "Social City" was created to integrate the working life of the factory with the social, recreational, and cultural life of its employees and the community.

Marzotto's welfare interventions were structured around some fundamental areas:

- Residential housing: the construction of housing for employees, organized according to a social hierarchy that reflected organizational status (stately homes for managers, middle-class homes for employees, and public housing for workers).
- Service system: Marzotto implemented a widespread system of ser-

[14] Marzotto S.p.A. is an Italian textile group headquartered in Valdagno, in the province of Vicenza. It is a leading textile company in Italy in terms of turnover, employees, and international expansion.

vices for employees, including schools (a school complex with elementary, middle, and high schools, and a technical and industrial institute), sports and recreational facilities (a swimming pool and sports facilities), social institutions (a nursery school, a kindergarten, and a retirement home), and cultural institutions (a theater, a music school, and a company afterwork club). The company also established a corporate health service, which provided medical care with a team of specialists in various areas of care, and mountain and sea summer camps for employees' children.

- Mobilizing corporate culture: after-work initiatives, community organizations, and professional groups represented channels through which the company's name was amplified throughout the community, creating a connection between the company's image and the well-being of the local community.

The Marzotto experience represents a significant contribution to the awareness that worker well-being is not a cost to be minimized, but rather a strategic investment in long-term corporate prosperity. The Social City exemplifies a model of industrial humanism, in which the entrepreneur Gaetano Marzotto sought to offer services and facilities to improve the lives of his workers and their families. The experience is part of the European industrial paternalism of the 19th and 20th centuries, taking the form of a structured set of material, ideological, and political instruments that regulated labor relations. The factory became the center of an entire community, providing services to meet a wide range of citizens' needs, and working-class neighborhoods were conceived as an integral part of the city, not as industrial appendages.

3.3. *Pirelli: The institutionalization of welfare as a tool for corporate cohesion*

The history of welfare at Pirelli represents a particularly significant example of the progressive evolution from simple welfare to a more informed and institutionalized welfare system[15]. Giovanni Battista Pirelli, founder of the company in 1872, had an extraordinary vision of the role of business in promoting worker well-being. Pirelli expressed a profound awareness of the need to create bonds of belonging and a sense of community that

[15] Pirelli & C. S.p.A. (Pirelli) is a multinational corporation headquartered in Italy, operating in the automotive sector as a manufacturer of tires for cars, motorcycles, and bicycles.

transcended mere work performance. Throughout its long history, Pirelli[16] has developed an integrated welfare model that has progressively evolved through the following phases:

- Initial phase (1872-1900) – Mutualism and welfare: two important recognitions, namely the foundation of the Mutual Aid Fund in 1877 for sick workers and the Concordat between the company and the Workers' Commission in 1902 aimed at guaranteeing better working conditions, which represent the first formal instruments through which Pirelli recognizes the need to guarantee social protection to workers in the event of illness and economic difficulty.
- Intermediate phase (1900-1970) – Institutionalization and integration: the creation of the Dopolavoro Aziendale Pirelli (Pirelli Company after-work club), the founding of the Pirelli Foundation, and the transformation of welfare institutions into autonomous structures represent a process of progressive welfare institutionalization. The company established permanent structures, managed independently from the production organization, through which it ensured systematic coverage of employees' well-being needs.
- Contemporary phase (1970-present) – Integrated welfare and inclusiveness: in recent times, Pirelli has consolidated its integrated welfare model which is based on three strategic pillars that represent best practice in the Italian industrial landscape.

The first pillar focuses on individual well-being ("For You"), offering inclusive work environments, work-life integration support with up to eight days of remote work per month, supplementary healthcare plans, and supplementary pension plans. The second pillar focuses on family support ("For Your Family"), with specific initiatives for shared parenting, caregiver support, and educational programs for employees' children. The in-house clinic and supplementary health fund provide advanced healthcare, while courses for new parents and psychological counseling support family transitions. The third pillar extends to the community ("For the Community"), through corporate volunteering programs and educational, environmental, and cultural projects. These programs also involved 100% of raw material suppliers in business and human rights training, extending ethical commitments along the entire value chain.

[16] Https://corporate.pirelli.com.

3.4. *Contemporary Case Studies: Strategic Integration of Welfare and Gender Equality. Barilla: From equal pay to systemic inclusion*[17]

The Barilla Group[18] represents a contemporary example of how the strategic integration of corporate welfare and commitment to gender equality can generate significant corporate cultural transformation. Some points worth highlighting[19]:

- Gender Pay Equality (2020): in 2020, the Group achieved gender pay equality for all employees worldwide, eliminating all unjustified pay gaps. This represents an ambitious goal that requires a multi-year programmatic commitment to salary auditing, transparent pay grades, and regular pay reviews.
- Gender Equality in Leadership: 38% of Barilla executives and managers worldwide are women, while 47% of female employees report directly to the Global Leadership Team.
- Global equal leave policy: in 2023, Barilla introduced a new global paternity and maternity leave policy that guarantees all parents a minimum of 12 weeks of fully paid leave, regardless of gender, marital status, or sexual orientation.
- Partnerships with advocacy organizations: in March 2024, Barilla partnered with LEAD Network (Leading Executives Advancing Diversity), extending its commitment to gender equality beyond company boundaries to suppliers and supply chain partners.
- International recognition: in 2021, Barilla was the first Italian company to win the Catalyst Award for initiatives accelerating the advancement of women in the workplace. In 2022, it ranked third among food companies in the European Diversity Leaders survey promoted by the Financial Times.

On the topic of Diversity and Inclusion, Barilla has established the Global Diversity and Inclusion Board with the appointment of a Chief Diversity Officer. Barilla has developed relationships with external organizations and the third sector to promote awareness and inclusion processes.

Interventions have been developed for suppliers, positive actions have

[17] Barilla G. e R. Fratelli S.p.A., known as Barilla, is an Italian multinational food company, operating in the markets of dry pasta, ready-made sauces, baked goods, flour, and bread.

[18] Barilla G. e R. Fratelli S.p.A., known as Barilla, is an Italian multinational food company, operating in the markets of dry pasta, ready-made sauces, baked goods, flour, and bread.

[19] Https://www.barillagroup.com.

been promoted towards refugees, disabled people, and the LGBTQ+ community, representation and inclusion initiatives for people of different ethnic origins have been promoted to combat inequalities, and significant interventions for gender equality have been implemented.

3.5. *Lavazza: welfare as community building*

The Lavazza Group[20] (Luigi Lavazza S.p.A.) has developed an approach to corporate welfare that particularly emphasizes building a sense of community and promoting shared parenting.

The recent supplementary agreements (four-year period 2020-2023, renewed in 2024) highlight:

- Innovative flexible work: the "Short Friday" system (reducing the Friday workday to 4 hours compensated with increased performance on other days) represents a creative approach to reconciling the needs of organizational flexibility and work-life balance.
- Inclusive parenting: extension of paternity leave (5 additional paid days in addition to the 10 required by law), recognition of leave for de facto couples and same-sex couples, and baby bonuses for births or adoptions represent an inclusive approach to parenting that recognizes the plurality of contemporary family configurations.
- Caregiving and family leave: granting 8 hours of paid leave per year to accompany family members to medical appointments, extension to pet care (4 hours per year), in recognition of the multiplicity of care responsibilities that characterize contemporary life. Lavazza has also implemented several development programs connected to the employee well-being system and social inclusion policies: Lavazza has adopted a Gap Free program (launched in 2020) of cultural transformation to promote equal opportunities and enhance diversity. A structured, medium- to long-term process to eliminate all barriers and grow an organization free of any form of discrimination.

Some examples of interventions:

- Global D&I Week;
- Employee Resource Groups;

[20] Lavazza – officially Luigi Lavazza S.p.A. – is an Italian roasted coffee company founded in 1895 in Turin by Luigi Lavazza.

- Inclusive Leadership Training per management;
- Social inclusion programs.

Through its Welfare & Wellbeing strategy, Lavazza has developed a comprehensive framework for assessing employee well-being in Italy. Employee well-being is the result of a combination of different, closely related factors. The following factors have been highlighted: physical well-being, emotional well-being, social well-being, and financial well-being.

With respect to welfare policies, the following services are highlighted:

- Smart working and flexible hours;
- Wellness and health & safety programs;
- Company nursery and family services.

Furthermore, Lavazza has implemented compliance programs that protect the corporate community and business partners and strengthen stakeholders' trust in the operational and managerial correctness of the organization. In pursuing regulatory and ethical compliance objectives, promoting the culture of legality and proper conduct highlights:

- Code of Ethics;
- Anti-Harassment Policy;
- Anti-corruption, Policy zero tolerance;
- Supplier Code of Conduct for the entire supply chain;
- Protected and confidential Whistleblowing System.

3.6. *EssilorLuxottica: toward a multidimensional inclusive culture - The Employee Welfare System*

EssilorLuxottica has developed an integrated welfare system that goes well beyond the minimum wages, positioning itself as the employer of choice in the global industrial sector[21].

Luxottica's welfare system in Italy is a comprehensive corporate model, established in 2009 and managed in collaboration with the trade unions. It includes various initiatives to support employees and their families. A key element in the welfare implementation strategy is the territorial differen-

[21] EssilorLuxottica S.A. is an Italian-French multinational, founded in 2018 following the merger of the Italian company Luxottica and the French company Essilor. It is among the world's leading groups in the design, manufacture, and marketing of ophthalmic lenses, optical devices, and eyeglasses and sunglasses.

tiation of initiatives, designed based on the needs of the different sites, and which stems from the company's tradition of strong local roots.

Healthcare and Wellness

- Health Insurance: Coverage of supplemental healthcare costs.
- OneClick Wellness: Digital platform for prevention, health campaigns, and discounted rates.
- Counseling Services: Psychological and relationship support for employees and families.
- Financial Support Programs: Assistance with medical, educational, or elderly care expenses.

Financial Support and Purchasing

- "Shopping Basket": A package of non-monetary benefits to increase purchasing power.
- Textbook Vouchers/Reimbursements and Scholarships: Financial support for employees' children.

Flexibility and Working Hours

- Hour Bank: Greater flexibility in managing working hours.
- Paid Paternity Leave: Additional paid leave.
- Family Job Sharing: A family member can temporarily replace an employee to ensure financial continuity for the family unit.

Pension and Future

- Life Bonus: A €30,000.00 contribution to be paid to heirs in the event of the employee's death, even outside the workplace.
- Generational Pact: Agreement with INPS for the payment of voluntary contributions for participating employees.

Mobility and Local Support

- Collective Transportation Service: Experimental home-work transportation service to reduce worker inconvenience.
- Local Initiatives: Collaboration with local authorities to support services such as daycare centers and senior centers, extending the value of welfare to the local community.

The company, in relation to effective worker participation, has also implemented shareholding and ownership programs. In 2021, 67,000 employees in 85 countries became company shareholders through employee shareholding plans. In 2023, the number of employee shareholders grew to nearly 80,000, creating a strong sense of ownership and alignment of interests with corporate strategies.

In July 2021, EssilorLuxottica launched "Eyes on the Planet," the most ambitious corporate sustainability program in the optical industry, structured around five strategic pillars that encompass various areas and widespread interests.

1. Eyes on Carbon: Towards Carbon Neutrality, with the aim of combating climate change and achieving carbon neutrality.

2. Eyes on Circularity: Circular Economy, by applying the logic of the circular economy and transforming the linear "take-make-dispose" model into a circular "reduce-reuse-recycle" system, the primary objective is to develop sustainable innovation to improve materials, processes, products, and services.

3. Eyes on World Sight: Universal Right to Sight, this plan has the mission of eliminating, through the OneSight EssilorLuxottica Foundation, uncorrected vision by 2050. This is because sight is considered a fundamental human right.

4. Eyes on Ethics: Integrity Without Compromise, by adopting and adhering to ethical behavior (Code of Ethics, Code of Conduct for Business Partners, Human Rights Due Diligence) and applying the most rigorous ethical standards (Supply Chain 360°) along the entire value chain, with a focus on local impact, stakeholder engagement, and value creation.

5. Eyes on Inclusion: Diversity and Belonging, the inclusion pillar focuses on promoting diversity and inclusion in the workplace.

The global DE&I function has launched a series of global and local initiatives aimed at raising broad awareness, with a commitment to ensuring a fair, safe, and inclusive environment for individuals and communities. The company actively promotes respect for diversity and protects against any form of discrimination, intimidation, or harassment.

Specifically, with regard to the Diversity, Equity, and Inclusion (DE&I) Policy, some key elements stand out:

Multidimensionality of inclusion: the policy explicitly recognizes and addresses multiple dimensions of diversity: gender, sexual orientation and

gender identity, disability, age, ethnicity, religion, with specific actions for each dimension.

Gender equality and female leadership: adoption of fair hiring practices, equitable pay, equal career opportunities, support for work-life balance, and parental leave for all genders.

LGBTQIA+ Inclusion: recognizing the need to create a supportive environment for LGBTQIA+ employees, with explicit non-discrimination policies, extension of benefits to same-sex partners, and parental leave for LGBTQIA+ families.

Caregiving and parenthood: a shared family responsibility model that recognizes both traditional and alternative families, with concrete support for life transitions (parenthood, eldercare, gender transitions).

Accessibility and inclusion of people with disabilities: implementation of concrete measures to remove architectural and technological barriers, creation of fully accessible work environments.

Global Inclusion Committee: establish a permanent DE&I governance structure to act as a cultural change agent, review strategy, and ensure that inclusion programs are maintained over time as the foundation of organizational culture.

4. *Regulatory standards as a strategic framework: UNI/PdR 125:2022 and SA 8000. UNI/PdR 125:2022: Gender Equality Certification*

UNI/PdR 125:2022 represents a detailed operational standard that allows companies of all sizes – from SMEs to large enterprises – to define, measure, and certify their commitment to reducing gender inequalities[22].

Introduced by Law No. 162/2021, the certification represents not only an attestation tool, but also a structured framework through which companies can gradually evolve towards conscious gender equality. UNI/PdR 125:2022 is based on four key assessment areas, each of which represents a pillar of organizational gender equality:

- Organizational culture and strategies: assessment of widespread awareness of the importance of gender equality, the presence of explicit

[22] UNI, *UNI/PdR 125:2022 - Parità di Genere. Prassi di Riferimento*, Ente Italiano di Normazione, 2022.

strategies, internal communication on gender issues, and the organization's ability to prevent stereotypes and discrimination.

- Corporate governance: analysis of gender representation in decision-making positions, the composition of strategic committees, female participation in decision-making processes, and the presence of figures dedicated to managing gender equality.
- Human Resources Management: evaluation of recruitment, selection, and professional development policies, with particular attention to the presence of bias in performance evaluations, equal professional growth opportunities, and equal access to training and career paths.
- Pay equity: systematic salary auditing to ensure there are no unjustified pay gaps, analysis of the distribution of performance bonuses and incentives, and monitoring of pay trends over time.

By implementing specific and measurable key performance indicators (KPIs), companies can monitor their organization's level of maturity across all dimensions, identify areas for improvement, and plan systematic evolutionary interventions.

To obtain certification, an organization must achieve at least 60% of the expected score, demonstrating it has undertaken a structured and monitorable path towards gender equality. Certification is valid for two years, after which a renewal process with a full audit is required to confirm progress made.

It is important to emphasize that UNI/PdR 125:2022 explicitly incorporates dimensions such as equal access to career paths, reducing pay inequalities, equal management of parental responsibilities, and workplace inclusion. This multidimensionality reflects the scientific understanding that gender equality cannot be reduced to a single policy but requires systemic intervention that touches every aspect of organizational life.

4.1. *SA 8000: The international standard on social responsibility*

SA 8000 (Social Accountability 8000) is the international voluntary certification standard developed by Social Accountability International (SAI) and accredited by Social Accountability Accreditation Services (SAAS)[23]. Unlike UNI/PdR which focuses on gender equality, SA 8000

[23] SAI, *SA8000:2014 - Standard*, Social Accountability International, 2014.

adopts a broader perspective of social responsibility that embraces the integral protection of human rights in the workplace.

The standard is explicitly based on the principles of the United Nations Conventions on Human Rights, the Rights of the Child, and the Conventions of the International Labor Organization (ILO)[24]. Thus, SA 8000 represents a framework that directly integrates internationally recognized human rights principles into the company's operational context.

The standard defines stringent requirements in multiple areas:

- Prohibition of Forced and Child Labor: SA 8000 explicitly prohibits all forms of forced, compulsory, and slave labor, as well as any form of child exploitation. This is particularly relevant for organizations operating in international contexts or with complex supply chains.
- Freedom of Association and the Right to Collective Bargaining: the standard recognizes and promotes the right of workers to freely associate, form trade unions, and collectively negotiate their working conditions. This is a fundamental element of dignity at work.
- Non-discrimination: SA 8000 explicitly prohibits discrimination based on race, caste, national origin, religion, disability, gender, sexual orientation, trade union membership, or political affiliation. The prohibition of discrimination is a cornerstone of human rights protection in the workplace.
- Health and Safety: the standard requires organizations to ensure safe and healthy working conditions, with particular attention to industry-specific risks.
- Fair and Decent Wages: SA 8000 requires all workers to be paid a "living wage," which is sufficient to meet basic needs and provide disposable income.
- Reasonable Working Hours: the standard places limitations on excessive working hours, recognizing workers' right to rest and leisure.
- Prohibition of Abusive Disciplinary Practices: SA 8000 prohibits any form of corporal punishment, physical coercion, verbal threats, sexual abuse, or other forms of intimidation as a means of discipline in the workplace.

A particularly relevant element of SA 8000 for inclusion concerns the governance of social responsibility. The standard requires organizations to

[24] ILO, *Conventions and Recommendations on Core Labour Standards*, International Labour Organization, 2023.

establish collegial bodies that include a balanced representation of management and workers, including a health and safety committee and a social performance team[25]. This requirement recognizes that true change towards more equitable labour relations requires genuine worker participation and a voice in decision-making processes.

4.2. *Regulatory framework integration as a long-term strategic vision*

The integrated implementation of regulatory tools such as UNI/PdR 125:2022 and SA 8000 offers companies the opportunity to build a coherent, long-term strategic vision that combines Corporate Social Responsibility, corporate welfare, and a commitment to equality and inclusion.

These tools should not be interpreted as bureaucratic obligations to be formally fulfilled, but rather as concrete opportunities for organizational transformation and the creation of lasting value. Companies that consciously invest in certification and systematically align their commitments to social responsibility and gender equality demonstrate a profound awareness, resulting in the benefits of these choices manifesting over long horizons. The tangible benefits of this commitment include:

- Reduced turnover: inclusive and humane work environments generate greater engagement and a sense of belonging, significantly reducing voluntary turnover rates and saving on recruitment and onboarding costs.
- Talent Attraction: organizations with strong inclusion and EDI policies are viewed by younger generations as preferred employers, making it easier to attract talent.
- Improved reputation: certification and transparent communication of corporate social responsibility commitment significantly improve reputation perception among multiple stakeholders: customers, investors, the local community, and institutions.
- Organizational Resilience: diverse and inclusive organizations demonstrate greater adaptability, innovation, and creative response to complex challenges, generating significant competitive advantage.
- Ability to meet stakeholder expectations: contemporary stakeholders – from new generations of workers to institutional investors integrating

[25] SAI, *SA8000 Implementation Guide - Stakeholder Participation and Governance*, Social Accountability International, 2024.

ESG (Environmental, Social, and Governance) considerations into their investment criteria – increasingly demand that organizations demonstrate a genuine commitment to social sustainability.

5. *Safety at work as a system of measures for overcoming inequalities between workers: an historical overlook in Italy*

The economic history of Italy since the Industrial Revolution is a field of study which gives the chance to reflect upon social inequalities and political-institutional attempts at limiting differences[26]. This fact emerges with strength not only when it comes to social interactions about contracts, salary, work time length, but it also finds its accomplishment by looking at safety at work and, in general, at work conditions for the workforce. Workers' capacity to contribute to society's development passes through the put at disposal to employers of their own main characteristically trait, being in the workforce. Historical evolution can be read as history of economic and social relationships development.

A specific interest in the way in which safety at work was discussed (if) throughout centuries has raised only in contemporary history, since the end of Nineteenth century. Before this period, references to safety at work in terms of injuries and professional illnesses as byproducts of work relationships had been truly sporadic[27]. Despite the attempts by some physicians to step inside the subject and explore the nexus between work and health, the topic did not develop in a structured and constant way throughout centuries. Professionals such as Bernardino Ramazzini (1633-1714) have favored the rise of a climate of acculturation around professional illnesses but this awareness did not represent the foundation for a social and economic

[26] Crepax, *Storia dell'industria in Italia. Uomini, imprese e prodotti*, il Mulino, 2002.

[27] Among the first references to this topic, it is possible to mention a workpiece from the Renaissance, *De Re Metallica* by Georgius Agricola, published in 1556. The Author focused on workers' conditions in the mining sector, which became a modern theme even more after the discovery of the New World in the Americas and the spoliation of the territories by the involvement of immigrant workers introduced as slaves, in addition to local people. Perrone, *La Leyenda del Indio Dorado. Per la dignità e la salute dei lavoratori: alla carica in cinque secoli di storia*, INAIL, 2010, pp. 27-34.

movement that could lead to systematic introduction of new interactions between the parties[28].

At the rise of Industrialism, enterprises hardly looked in their work organization at factors such as genre or age of workers and at work environment conditions. The Age of Liberalism spread around the most developed countries of the world was accompanied mostly by key concepts such as economic freedom, free trade, reconciliation between private and universal interest in the name of neo-classical economic models, according to which the "natural" trend of market was directed to the reach of the most widespread welfare of people. In parallel to the spread of big corporations and capitalistic forms of market, though, also the need for association and coordination between groups of interests arose, leading to the first form of legal protection of workers, from the Factory Act in Great Britain in 1833 to the German law of 1844, which originated the insurance against accidents at work.

In this sense, economic development brought with it wide inequalities in the income distribution and forms of aggregations between social groups characterized by similar ways of living emerged. In this framework, a "domain of battle" was represented by the organization of work in the name of rationalization. Among others, Friedrich Winslow Taylor overcame, associating his name to process engineering and in a sense "massification" of workforce for efficient forms of employment. Science, production, human factor: all these words underly the denomination of "Taylorism", which can be considered as a masterpiece moment in the history of work organization and in the study of work as the "momentum" to reflect upon workers, equality vs. inequality in terms of employment and even safety at work. His dissection of work moments, tailored distribution of tasks and chronological measurement of workers' efficiency paved the ground to concepts like rhythm, pauses, work time and task analysis, which would lead in the Twentieth century and would establish the studies for "industrial psychotechnics"[29].

[28] In his *De morbis artificum diatriba*, Ramazzini focused on 50 professional illnesses from the study of clinical cases that he studies from his points of observations at the Universities of Modena and Padova. Carnevale, *Prefazione*, in Carnevale, Ramazzini, *Le malattie dei lavoratori*, La Nuova Italia Scientifica, 1982, pp. 9-37.

[29] Friedmann, *Problemi umani del macchinismo industriale. Il progresso tecnico e l'uomo contemporaneo*, Einaudi, 1946.

The need for insurance for workers in case of injuries at work developed together with the evolution of the legal qualification of injuries themselves. In fact, at the dawn of the Industrial Revolution, compensation for workers was a residual condition, attributed if and only if workers were able to demonstrate the etiological link between the injury and the responsibility of the employer at causing it. In the second half of Nineteenth century, the burden of proof reversed, and it became the task of the employer to demonstrate that the enterprise did not have caused the injury. Injuries became a subject connected with contractual responsibility of the employer and they related to professional risk. Given the fact that the employees sell their workforce in exchange for a salary, the employers which take advantage of this factor of production began to have an objective responsibility for the workers' conditions in case of damage to their safety at work[30]. Concepts such as traumatic events and occasion of work entered the lexicon of the discipline.

The Civil Code, then, in 1942, developed the concept of safety from the physical integrity of workers to moral protection. In the following years, law developed from safety at work towards health protection as well. The Italian Constitution of 1948, in fact, affirmed health as a fundamental right of people (Article 32), therefore not as a "good" in the availability of employers, conceptually limiting their potential interactions with workers considering the idea of responsible forms of economic initiative (Article 41). Despite the corpus of norms, though, the trend of injuries at work did not sign concrete improvements. Technical norms had been, until then, slower in their evolution than the broad legal framework and the status of machinery and equipment in factories inadequate or highly variable in any context. For this reason, in the 1950s, laws focused on technicalities through a series of presidential decrees: DPR 547/1955 on injury prevention, 164/1956 on civil works and 303/1956 on industrial hygiene went in the direction. Progressively, the subject of prevention became more connected to legal obligations for employers and less accepted as a social condition that may occur, given the need for poor people to provide their income and accept existing conditions of the workplace. So, to say, the iconography of work began to

[30] Morello, *Alle origini della tutela degli infortuni sul lavoro*, in *DSL*, 2016, 2, https://journals.uniurb.it/index.php/dsl/article/view/742/690.

change, and symbols of safety could start to evolve from a status of acceptance and hope in spiritual faith into a material request for safe conditions[31].

In parallel, the need was the consolidation of employers' participation in the destiny of workers when accidents took place, so that DPR 1124/1965 defined their obligation to enroll at the national insurance institution, giving birth to the modern entity named INAIL ("Istituto Nazionale per l'Assicurazione contro gli Infortuni sul Lavoro")[32].

The development of such institution has always been twofold: on the one hand, providing economic stability to workers who become unfitting for work and their families; on the other hand, introducing good praxes and controls on economic subjects, to foster measures of safety at work which go beyond the mere compliance to law or, in other cases, checking on minimum legal standard implementation. The deep differences between economic subjects are sources for unequal treatment for workers, depending on higher or lower safety standards implementation by their employer; therefore, the role of an institution which oversees their operations becomes crucial. INAIL represents a point of balance by its inner nature, being the place of encounter for employers and social parties.

Technical norms may have introduced forms of protection for workers based on the reality of the company or public institution where workers are employed, generating greater opportunities of protection depending on their scale. The scale of the employer's structure is not the only determining criteria that favors or put obstacles to the level of protection of workers from health and safety points of view. The geographic location of the employer represents indeed another fundamental factor for employee's destiny. Economic and geographic spaces like the European Communities and then the European Union, given the emphasis put on social law, were key for protecting European workers, in relation to their colleagues located almost everywhere else in the world. The keyword for levelling differences and increasing levels of protection regardless of the (European) country in which people are employed was at the basis of principles underlying the European Single Act of 1987. This Act changed rights to vote for decision making processes of laws from unanimity into

[31] Aa.Vv., *Breve viaggio nella prevenzione. Tra iconografia votive e simbologia di sicurezza*, INAIL, 1995.

[32] Aa.Vv., *Storia della prevenzione*, INAIL, 2014, https://fad.gruppopls.com/public/allegati/210/16_108_Quattordicesimo-Allegato_storia-INAIL.pdf.

majority and this modification determined the necessity to accept more easily influences of leading countries that were more apt to push for social improvements in workers conditions.

Not by chance, the European Single Act included the improvement of workplace among its objectives to be pursued under majority votes. In the following phase, Directive 89/391/CEE emanated, determining a turning point for national legal systems in terms of prevention and protection of health and safety. Harmonizing legal systems became crucial, accomplishing a process that the European Communities had initiated in the mids-1970s. Directives took into consideration various aspects of safety at work: methos of identification, measurement and assessments of hazards and risks for workers exposed to chemical, physical, mechanical, biological risks, as well as prohibitions to pursue economic activities under certain conditions of uneven exposition to risk for the workforce. Directive 89/391/CEE introduced a fundamental principle, such as that of reasonable practicability. According to such principle, the limit for work organization is twofold and it is given by the capacity of assessing risks, in line with updated knowledge, and the technological state of progress. Under such conditions, work organizations in European states cannot maximize profits by flattening at the minimum level costs determined by health and safety: employers must be adequate to the status of current knowledge ("culture of safety" in a broad sense) and adapt their equipment and machineries to the latest technological discoveries[33].

This European framework paved the ground for the national horizon in which Italian workers operate, considering the "Single Act" for health and safety, contained in Decrees 626/1994 and 81/2008. Conceptual, organizational and legal developments have led in Italy to the affirmation of principles that were unimaginable a few decades before: not only physical risks of workers have then to be assumed to "goods" to be protected, but socio-psychological ones as well. Once more, structured organizations have now the possibility and the need to offer their workers forms of governance that have to do with aspects such as breaks, flexibility of shifts or the distance between home and workplace, conjugating private and professional life. New models of management entered the field of work organization,

[33] Angelini, *La sicurezza del lavoro nell'ordinamento europeo*, in *WP Olympus*, 2013, 29, https://journals.uniurb.it/index.php/WP-olympus/article/view/270/262.

and health and safety has progressively stepped into the main domains of social relations[34].

5.1. *Adjusting inequalities at work through the standardization of models of management of safety at work: the voluntary norms ISO 45001:2018 and the role of the International Labor Organization*

Given as a fact that work conditions are generally inequal, vary from region to region and depend on economic sector and company dimension and overall organization structure, an attempt to reduce variety and introduce standardization is pursued in the name of models of management implementation. Starting from the voluntary norm named Occupational Health and Safety Assessment Series (OHSAS) 18001:2007, complemented by OHSAS 18002, which contains guideline for the implementation of such norm, the push for larger companies, in particular, to follow rational systems of coordination of safety aspects and potential impacts on workers' safety is continuing and has led to the introduction of the successive norm ISO 45001: 2018. The goals followed by such norms are fundamentally common and include provision for a structured approach for managing occupational health and safety, establishment and maintenance of commitment with that regard, demonstration of commitment to safety excellence, organizational structures in place with clear roles and responsibilities, existence of a continuous improvement culture, consolidate levels of trust and communication, reduction in incident levels with increased measures of performance and contribution to business performance by reducing cost and liabilities.

The underlying principle from the management viewpoint is determined by the "PLAN-DO-CHECK-ACT" (P-D-C-A) system, also known as the Deming Cycle or Shewhart cycle, the Deming wheel of continuous improvement spiral[35]. The introduction of forms of controls for eliminating hazards which workers are exposed to can be started through a planning phase, consisting of setting goals and processes to achieve specific results. Following planning, "do" represents the phase of action and execution of

[34] Tiraboschi, *Nuovi modelli della organizzazione del lavoro e nuovi rischi*, in *DSL*, 2022, 1.

[35] Patel, Deshpande, *Application of Plan-Do-Check-Act Cycle for Quality and Productivity Improvement – A Review*, in *IJRASET*, 2017, 5, 1, https://www.researchgate.net/profile/Vivek-Deshpande/publication/318743952_Application_Of_Plan-Do-Check-Act_Cycle_For_Quality_And_Productivity_Improvement-A_Review.

the measures of prevention. Once the system is in place and executive in its day-by-day implementation, then "check" requires monitoring and evaluation of results, according to certain specifications. Last, "act" is the phase post-review and has to do with results reached and corrective action. This system allows a reflection on inequality between industries and employment conditions, given the fact that it is frequently implemented in the manufacturing industry, where it is mainly originated as source to reduce waste (waiting time, idle, failure, defects).

The steps that contributed from the logics of the P-D-C-A method of conceiving organizational system of management towards ISO 45001 omni-comprehensive approach to the management of safety at work has had a push in the last two decades. During such period, safety culture has evolved to a new conception of preventive safety culture, leaving behind the original approach which aimed at the mere implementation of safety regulations and moving towards a broader emphasis on forms of direct participation of the workforce into the life of the organization[36]. If the former approach was directly centered on the management and its own engagement, skill, knowledge about safety rules and obligations, the latter moves the focus from "legal compliance" into constructive interactions between all stakeholders, inside and outside the organization.

This is the reason why the International Labor Organization (ILO), the specialized institution of the United Nations which deals with labor and labor parties, founded with the specific dual objective of posing basic standardized conditions for decent work at the benefit of workers and generating more harmonious international market contexts[37]. ILO recognizes

[36] Neag, Ivascu, Draghici, *A debate on issues regarding the new ISO 45001:2018 standard adoption*, in *MATEC*, 2020, 305, 00002, https://www.matec-conferences.org/articles/matecconf/pdf/2020/01/matecconf_sesam20_00002.pdf.

[37] Dinman, *Impact of the International Labour Organization on Occupational Health and Safety Laws and Practice*, in *JOM*, 1987, 29, 4, https://www.jstor.org/stable/45013811. In the Author's words, "the roots of the ILO extend back to the late 19th century, when several economists foresaw a need for international economic agreement to alleviate hardships to workers arising from industrialization and international competition. In their views, such deleterious conditions would ultimately pose potential dangers to peace and international harmony. By 1900, the International Organization for Labour Legislation had been formed, and 6 years later it formulated and adopted two conventions, i.e., international treaties. One of these initial efforts in international legislation concerned a subject of interest to occupational health: prohibition of the use of yellow phosphorus in match manufacture". Today 187 Member States have ratified their adherence to this International Organization.

the ISO 45001 as key norm for guiding employers towards the goal of levelling disparities of treatment and offering valid models of work organization. Leadership and workers participation, jointly, assumes thus the fundamental meaning in the system[38]. So, to say, the fostering of models of extensive forms of management of safety at work, particularly for large enterprises, enters the field of human rights protection in a globalized world, which constituted the epicenter of international debates since the late nineteenth of the past century[39]. ILO develops international standards related to labor and work, exerting considerable influence on laws and regulations of member States through international Conventions and Recommendations on different fields of work condition[40].

Among others, two fundamental documents are represented by No. 155, Occupational Safety and Health Convention, and No. 187, Promotional Framework for Occupational Safety and Health Convention. Countries which voluntarily decide to ratify a Convention have then one year as span of time to finalize national debate and internal ratification, before the norms of the text should come into force. For both Convention, nowadays less than 50% of the International Community of Member States (data updated at 2023, extrapolated from the group of countries adhering to the ILO) have successfully completing the iter of ratification of those texts[41]. When we con-

[38] The system of interactions between management and workforce does not imply that there is minor accountability for the managers on the effectiveness of the implementation of measures of prevention. Top management must take overall responsibility and protect workers by introducing a system of management that will include, not limited to such processes, incidents and near misses reporting and corrective actions on the basis of occurrences, supporting the establishment joint committees that analyze safety trends, clearly defining roles and responsibilities of all actors, defining an Occupational Health and Safety (OHS) policy. Policy must include a commitment to consultation and participation of workers. The organization must also provide training and resources necessary to ensure consultation and participation and must provide all relevant information about the management system.

[39] Mayer, Gostin, *Human Rights in Global Health. Rights-Based Governance for a Globalizing World*, Oxford University Press, 2018.

[40] As an example, we can mention the Convention and the Recommendation relevant to protection of workers against ergonomic risk factors at the workplace, Convention No. 127 and Recommendation No. 128, which specify the international requirements concerning the manual transport of a load. As well known, dual standards from State to State with this regard may represent at once forms of disparities in terms of workers' health protection and economic market disruptions, creating forms of dumping based on safety at work.

[41] Trivedi, Lai, *Ratification Status of International Labour Organization (ILO). Fundamental Conventions on Occupational Safety and Health*, in *OEMJI*, 2024, 2, 2, https://www.researchgate.

sider that national ratification is nothing more than the formal prelude to the substantial possibility of the effective implementation of requisites and then disparities between economic subjects are enormous and effectiveness of public controls on rules implementation has a great variety from state to state, we have the clear picture of the long way to go to reach forms of equality in worldwide economy facing workers and their health and safety.

6. *Conclusions*

This research aims to contribute to the interdisciplinary debate on how contemporary companies can transform themselves into conscious agents of social change, promoting fair and inclusive working relationships through the strategic integration of Corporate Social Responsibility (CSR), integrated corporate welfare, and workplace safety.

The paper highlighted that promoting fair and inclusive working relationships is not only an ethical and social imperative, but also a conscious strategic choice capable of generating lasting value for the company, its workers, the local area, and the community as a whole.

Through the analysis of historical cases (Olivetti, Marzotto, Pirelli) it has shown that this awareness is rooted in Italian entrepreneurial thought, although often characterized by a tension between paternalism and autonomy, between social control and human dignity. In contemporary cases (Barilla, Lavazza, EssilorLuxottica), the integration of corporate welfare and an explicit commitment to gender equality and inclusion represents the response to workers' needs and is adapted to contemporary ethical demands and awareness.

The adoption of regulatory standards such as UNI/PdR 125:2022 and SA 8000 represents a formalization of this vision, allowing companies to structure their commitment within recognized, measurable, and certifiable frameworks.

In the same way, international standards such as those dictated by the ISO for managing and integrating models of management contribute to

net/profile/Ashish_Trivedi4/publication/382825950_Ratification_Status_of_International_Labour_Organization_ILO_Fundamental_Conventions_on_Occupational_Safety_and_Health.

shift from a mere orientation of legal compliance towards a broader a system in which all stakeholders interact and search for common ways to improve standards of safety and health prevention.

Therefore, the contemporary company, which aspires to become an agent of social change, can consciously assume the role of promoter of fair and inclusive working relationships, through the systemic integration of CSR policies, integrated corporate welfare, and a commitment to equality and inclusion for all stakeholders, not only through means of contractual interactions with the workforce but by the increase of the offering of service and higher standard setting for workers.

Abstract

This research paper addresses the issue of corporations as conscious agents of social change in the context of contemporary challenges related to Equality, Diversity, and Inclusion (EDI), through the combination of two different segments of organizational management.

On the one hand, the study analyzes how the strategic integration of Corporate Social Responsibility (CSR) and integrated corporate welfare represents a concrete operational tool through which organizations can address structural inequalities in the workplace and promote fair and inclusive working relationships.

On the other hand, the study takes into consideration another focal aspect of organization as key engine for workers' condition upgrading and levelling: health and safety at work.

Keywords

Corporate Social Responsibility, Integrated Corporate Welfare, Gender Equality, Inclusion and Equity, Stakeholder Theory, Organizational Change, Health and Safety at Work.

Angela Zaniboni

How Industrial Relations shape organizational Equity: The case of Automobili Lamborghini

Contents: 1. Introduction - Context and Problem Statement. 2. Equity: from abstract principle to organizational device. 3. Methodology. 4. The Industrial relations model at Automobili Lamborghini. 5. Practices for organizational equity. 5.1. Reorganization of working time. 5.2. Shared parenting and family policies. 5.3. Diversity & inclusion policies and cultural change. 6. Data analysis. 7. Discussion.

1. *Introduction - Context and Problem Statement*

In recent years, academic and managerial debate on work has increasingly engaged with the themes of Diversity, Equity & Inclusion (DEI – an acronym widely used in academic and legal contexts, as well as in HR and management). What initially appeared as a dimension of HR policies – comprising value-based initiatives, awareness projects, and voluntary programs – has progressively evolved into one of the central indicators of contemporary work quality and the sustainability of organizational models. Indeed, the introduction and subsequent implementation of these practices have converged over time into what is known as Diversity Management, an organizational approach voluntarily adopted to create value within the organization itself. The pandemic, shifting values among younger generations, the growing weight of caregiving responsibilities, and the acceleration of technological transitions have further expanded the awareness that organizations can no longer limit themselves to guaranteeing formal rights, but must adopt an organizational approach aimed at promoting more equitable and inclusive workplaces.

Despite this growing emphasis, the literature highlights a striking paradox: increased attention has not consistently translated into substantial and lasting changes in organizational outcomes[1]. DEI policies proliferating across European organizations – especially in their 'traditional' formulation – often appear voluntary, fragmented, and lacking in impact[2]. Many companies make bold commitments, publish sustainability reports, implement unconscious bias training, or strengthen ethical codes, yet these interventions rarely lead to structural changes in work organization[3]. Initiatives largely remain confined to the HR domain, lacking transformative power over organizational processes, career progression, work time distribution, or workload management[4]. Evaluation of outcomes is often partial or limited to climate indicators, while shared accountability mechanisms involving worker representatives are scarce[5].

The risk of this approach is that DEI policies, although well-communicated, fail to impact the material conditions of individuals, intervening only at the margins of inequality rather than addressing its structural causes. Yet, and this is a central point in the most recent literature, inequalities do not only emerge from individual behaviors but are embedded in the very architecture of work[6]: in schedules, shift systems, skill hierarchies, evaluation mechanisms, access to opportunities, and the ability to reconcile personal and professional responsibilities.

In this context, the concept of equity plays a fundamental role. The distinction between equality and equity, widely discussed across various strands of research, shows that equality tends to offer everyone the same formal op-

[1] Ahmed, *On Being Included: Racism and Diversity in Institutional Life*, Duke University Press, Durham, 2012; Ainscow, *Promoting inclusion and equity in education: Lessons from international experiences*, in *NJSEP*, 2020, n. 1, pp. 7-16.

[2] Ponzellini, Riva, *Work-life balance e performance aziendale nella prospettiva del Diversity Management*, in *SL*, 2014, n. 2, pp. 83-98; Gazzaroli, Diallo, Gozzoli, *A critical perspective on diversity and diversity management for a contextualised and conscious approach*, in *ER*, 2025, vol. 47, n. 9, pp. 214-233.

[3] Dobbin, Kalev, *Why Diversity Programs Fail*, in *HBR*, 2016, nn. 7-8, pp. 52-60.

[4] Ravazzani, Mazzei, Butera, Fisichella, *Diversity, Equity & Inclusion. Stato dell'arte nelle aziende italiane*, FrancoAngeli, Milano, 2023.

[5] Telljohann, *Le nuove piste di Lamborghini e Ducati*, in Carrieri, Nerozzi, Treu (eds.), *La partecipazione incisiva*, Il Mulino, Bologna, 2015, pp. 113-130.

[6] Acker, *Inequality Regimes: Gender, Class, and Race in Organizations*, in *G&S*, 2006, vol. 20, n. 4, pp. 441-464; Konow, Saijo, Akai, *Equity versus equality: Spectators, stakeholders and groups*, in *JEcPsy*, 2020, vol. 77, 102171.

portunities, while equity recognizes that individuals start from profoundly different conditions. As a result, treating everyone the same may reproduce – rather than reduce – existing asymmetries. Equity, in fact, highlights the multiple structural and intergenerational inequalities that affect actual access to resources, opportunities, and possibilities for growth[7]. Similarly, the concepts of diversity and inclusion take on distinct depths: diversity goes beyond a value-based dimension, positioning itself as an intentional commitment to embrace differences – whether cultural, linguistic, gender-based, or educational[8]; inclusion, on the other hand, is configured as a critical response to exclusion and segregation, aiming for full integration. The concept seeks to go beyond diversity, acting as a critical disposition that questions dominant narratives which perpetuate exclusion and discrimination[9].

These concepts express the set of activities aimed at recognizing and valuing the multiple qualities and characteristics that shape each person's unique identity in the workplace, including demographic, social, and cognitive dimensions such as gender, age, generation, culture, values, skills, and working style[10].

Considering this conceptual evolution, it becomes increasingly relevant to ask how, within contemporary organizational models, equity can be made a concrete, stable, measurable concept capable of guiding transformative actions in the workplace. The literature[11] suggests that such a result cannot be achieved through HR policies alone. What is needed is an infrastructure that holds legitimacy, continuity, bargaining power, and the capacity to intervene on the material determinants of work: in organizations, this infrastructure is represented by the system of industrial relations.

The concept of industrial relations refers to the management of social relations between the company and workers' representatives aimed at ensuring control over the collective employment relationship in a way that

[7] Konow, Saijo, Akai, *cit*.

[8] Thomas, *Interactive session: Equity, diversity, and inclusion in open education*, paper presented at the *Oregon Statewide OER Summit*, Lane Community College, Eugene, 17 May 2019.

[9] Villegas, *Inclusion, exclusion, segregation, and integration: How are they different?*, in *Think Inclusive*, 11 July 2017; Ahmed, *cit*.

[10] Ravazzani, Mazzei, Butera, Fisichella, *cit*.

[11] Kalev, Dobbin, Kelly, *Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies*, in *ASR*, 2006, vol. 71, n. 4, pp. 589-617; Holck, *Unequal by Structure: Exploring the Structural Embeddedness of Organizational Diversity*, in *Organization*, 2018, vol. 25, n. 2, pp. 242-259.

supports business competitiveness[12]. From this perspective, industrial relations are not limited to conflict regulation but can take on a proactive role in the construction of solutions. Second-level decentralized bargaining is considered the most suitable tool for developing concrete and context-specific solutions. Among the many topics addressed are participation, welfare, work-life balance, DEI policies, training, and organizational change. However, this generative activity of practices and innovations depends on the quality of social dialogue and the ability of the parties to negotiate constructively, working to combat the emergence of inequalities[13]. Industrial relations, therefore, do not merely regulate conflict but can serve as a driver for inclusion and act as an enabler in building innovative solutions for organizational equity.

It is precisely in this regard that the experience of Automobili Lamborghini becomes particularly significant. Over the years, the company has developed an advanced participatory model of industrial relations, in which information, consultation, and second-level bargaining constitute permanent tools for the governance of work. Unlike what happens elsewhere, DEI practices are not confined to the discretionary sphere of HR but are integrated into a structured, bilateral, and continuous process. The trade union is not merely informed but plays an active role in the design of measures: it is informed, it emerges, and it engages in discussion.

Collective bargaining, in fact, acts directly on those levers that can generate inequalities in the workplace: working time, shifts, workloads, flexibility, welfare, and protections for those in vulnerable conditions or with caregiving responsibilities. Equity thus becomes a matter of work governance, also expressed through bargaining tools that include monitoring, periodic review, and shared accountability. The 'Social Innovation' Working Group, the Bilateral Technical Committees (BTC), the constant sharing of information, and experimentation processes represent spaces where diversity and inclusion are not just values but concrete objects of regulation.

This very ability to treat equity as a collective – not merely individual – issue is one of the distinctive features of the Lamborghini model. The collective lens makes it possible to integrate tools and perspectives, allowing for the

[12] Testoni, *Manuale di tecnica di relazioni industriali*, Giuffrè Editore, ADAPT University Press, Milano, 2014.

[13] Carrieri, Della Rocca (eds.), *Il lavoro dopo il Novecento. Nuove forme, nuovi conflitti*, Donzelli, Roma, 2019.

identification of needs that are not immediately visible, the representation of demands from heterogeneous groups of workers, and the construction of solutions that do not penalize those with less voice within the organization.

This perspective also highlights a significant gap in literature. While studies on DEI practices focus primarily on HR processes and managerial approaches, the systemic relationship between industrial relations and equity policies remains underexplored. Analyses showing how participatory systems can strengthen – rather than hinder – the construction of inclusive contexts are still lacking. Even rare is the observation of equity as a negotiable, regulatable, and institutionalizable object through collective bargaining. The aim of this research is to investigate whether an advanced participatory model can represent the transformative lever to make equity operational, measurable, and sustainable within a complex production context. The objective of this paper, therefore, is not to present a 'best practice' case, but to shed light on how equity can become a driver of change and, consequently, to explore how participation and bargaining – when well-structured – can serve as the foundation for a fair transformation of work.

2. *Equity: from abstract principle to organizational device*

A solid understanding of the theoretical distinction between equality and equity constitutes the conceptual foundation of this work[14]. In the international debate on rights and work organization, equality implies uniform treatment for all, offering the same resources and opportunities regardless of individual differences. For example, a company might apply identical policies to everyone – same working hours, same benefits, same rules – assuming this ensures fairness. However, mere formal equality risks ignoring differences in starting conditions and existing systemic barriers (related, for instance, to gender, socioeconomic status, or caregiving responsibilities), ultimately perpetuating or even exacerbating existing disparities. In contrast, the concept of equity shifts the focus from equal treatment to substantive justice[15]: it recognizes that different starting points require dif-

[14] Konow, Saijo, Akai, *cit.*

[15] Fraser, *Redistribution or Recognition? A Political-Philosophical Exchange*, Verso, London-New York, 2003.

ferentiated measures to ensure genuine access for all. In other words, equity favors the correction of inequalities through tailored solutions, calibrated to specific needs, rather than applying a one-size-fits-all approach. Thus, equality guarantees equal inputs (the same resources for everyone), while equity aims for equal outcomes (ensuring everyone has the conditions to succeed) through differentiated support mechanisms. This distinction is crucial: identical treatment is not automatically fair, especially in the presence of heterogeneous personal circumstances.

In organizational contexts, the shift from equality to equity translates into moving beyond uniform solutions in favor of targeted interventions. An equity-oriented organization does not apply the same rules to everyone indiscriminately but instead seeks, where possible, to tailor policies and practices to the characteristics of groups and individuals, with the goal of ensuring equivalent opportunities for all. This means, for example, adapting working hours, benefits, leave policies, and career paths to employees' needs, thereby embedding a concrete approach to equity within the organization rather than treating it as a merely theoretical construct. Such an orientation requires a deep analysis of how the organization functions in order to identify where structural asymmetries – implicit or explicit – are embedded and to develop organizational or regulatory tools to correct them. These asymmetries are not only attributable to individual differences but are often built into the very structures of work. For instance, they may manifest through uniform regulations that produce unequal effects: rigid standard work schedules, limited access to flexible work or remote work, unequal ability to use leave and reconciliation measures for those with caregiving responsibilities, unbalanced distribution of (including cognitive) workloads, disparities in career paths, access to training, or opportunities for professional mobility. In all these areas, equity acts as a redistributive and reorganizational principle, requiring the reshaping of processes and practices to compensate for disadvantages and remove obstacles faced by certain groups. From this perspective, equity becomes an element of organizational justice, influencing how the company allocates resources, opportunities, and working time among employees. Ensuring equity is therefore not only a matter of ethics but also of organizational effectiveness: a workplace perceived as fair and inclusive is associated with higher levels of productivity, innovation, and employee engagement.

It is important to emphasize that the equity-based approach shifts the center of gravity of Diversity, Equity & Inclusion initiatives toward a

structural paradigm. As highlighted by literature[16], many traditional corporate diversity interventions focus on the individual (e.g., anti-bias training, awareness or sensitization programs) but fail to sufficiently impact actual outcomes in terms of equity and inclusion. This occurs because such programs, although well-intentioned, often merely promote awareness or attempt to change personal attitudes, without modifying the organizational mechanisms through which inequalities are reproduced. Equity, by contrast, requires intervention on processes and the rules of the game[17]: as research in behavioral economics applied to the workplace suggests[18], it is "by changing systems – especially at key moments in organizational operations where bias tends to emerge – that we can make workplaces more equitable, cohesive, and productive". In practice, this means, for example, revising personnel management criteria (from hiring to evaluation to career paths) to "build fairness into existing processes" and remove hidden obstacles that lead to unequal treatment[19]. 'Data-driven design' approaches[20] – based on the analysis of internal data to identify gaps and pain points – are emerging as effective tools for designing targeted interventions that address equity gaps within companies and allow for scientific testing of their impact. In short, treating equity as an institutional objective means integrating it into the formal mechanisms of the organization (HR policies, contracts, decision-making processes, evaluation metrics), rather than relegating it to statements of intent or ad hoc initiatives. Not coincidentally, some companies have begun to explicitly declare equity and inclusion as structural values to be pursued through dedicated policies and internal standards.

A crucial aspect, which lays the groundwork for the following sections, is the translation of equity into an organizational and bargaining device. To move from an abstract principle to concrete implementation, equity must be institutionalized through shared rules and practices. In this sense, the role of industrial relations is essential: collective bargaining and participatory

[16] Bohnet, Chilazi, *Make Work Fair: Data-Driven Design for Diversity and Inclusion*, Harvard University Press, Cambridge, 2025.

[17] Bohnet, *What Works: Gender Equality by Design*, Harvard University Press, Cambridge, 2016.

[18] Bohnet, Chilazi, *cit.*

[19] Kalev, Dobbin, Kelly, *cit.*

[20] Williams, Dolkas, *Data-Driven Diversity*, in *HBR*, 2022, vol. 100, n. 2; Pinkett, *Data-Driven DEI: The Tools and Metrics You Need to Measure, Analyze, and Improve Diversity, Equity, and Inclusion*, Wiley, Hoboken, 2023.

models serve as the infrastructure supporting organizational justice, as they allow for the codification of differentiated treatments into binding rules that make the organization more equitable. Numerous studies[21] in the field of labor relations have emphasized that the free market and unilateral corporate policies alone often do not guarantee equity; to balance economic efficiency with social justice, it is necessary to establish rules and institutions capable of governing the system and ensuring broadly shared prosperity. In other words, equity becomes a negotiable object: it can (and must) be included in trade union agendas and collective agreements, made measurable, and subjected to periodic review through shared indicators and accountability systems[22]. This shift from the individual to the collective level is decisive, as it allows the principle of equity to be anchored in enforceable rights and formal procedures.

Ultimately, to generate real change, equity must permeate the organizational structure through shared policies, processes, and tools. In certain contexts, as demonstrated by the case analyzed in the following sections, this transition from ideal to action has been made possible thanks to an advanced system of industrial relations, capable of translating differentiated needs into concrete negotiated solutions. It is precisely through the analysis of these dynamics – and in particular the role of collective bargaining and participation – that this paper will explore how equity can become a true regulatory and organizational device.

3. *Methodology*

The choice of Automobili Lamborghini S.p.A. as the case study[23] for this research does not stem from a merely descriptive intent, but from the analytical need to observe a mature participatory model in action, within a highly specialized manufacturing context. In the scope of this work, the company's participatory framework is not a mere preliminary consultation,

[21] Carrieri, Della Rocca, *cit.*; Freeman, Medoff, *What Do Unions Do?*, Basic Books, New York, 1984; Polanyi, *La grande trasformazione*, Einaudi, Torino, 2004.

[22] Telljohann, *cit.*; Pillinger, Wintour, *Collective Bargaining and Gender Equality*, Agenda Publishing, London, 2018.

[23] Gillham, *Case Study Research Methods*, in *Real World Research*, Continuum, London-New York, 2000, pp. 1-106.

but a structured process that has enabled the introduction of innovations and the achievement of joint results.

The case study methodology was deliberately chosen, as it is effective not only in describing the output of a research project, but also the context in which it took place, highlighting its specific features. The aim of the investigation was to assess whether it was possible, within the organization under study, to adopt targeted policies and interventions to bridge equity gaps, and whether industrial relations have served as an infrastructure for organizational equity.

Over time, the company has developed a particularly advanced participatory system that has enabled the introduction – through collective bargaining – of Diversity, Equity and Inclusion practices.

Methodological triangulation is at the core of the research design, combining qualitative and quantitative sources to ensure the robustness and validity of the results. First, a systematic document analysis was conducted on company-level bargaining (integrative agreements and participatory protocols from recent years). This made it possible to reconstruct the evolution of Lamborghini's participatory model and to identify the main innovations in terms of equity and inclusion. The contractual texts – with particular attention to the new Integrative and Participation Agreement signed on January 24, 2024 – were coded by key themes, distinguishing the areas of DEI intervention.

In parallel, extensive field observation was carried out. Thanks to the internal role of the author, it was possible to directly participate in numerous meetings, bargaining sessions, and daily activities related to the case. This prolonged participant observation[24] made it possible to capture relational nuances and mechanisms of collaboration between the social partners that would be difficult to detect from the outside. The observation was also made possible by conducting semi-structured interviews with a targeted and diverse sample (company executives, HR representatives, and internal trade union delegates - RSU)[25].

Finally, the research integrated both qualitative and quantitative components through the 'Inclusion Survey'[26], addressed to the entire company

[24] Corbetta, *Metodologie e tecniche della ricerca sociale*, il Mulino, Bologna, 1999.

[25] Kvale, *Interviews: An Introduction to Qualitative Research Interviewing*, Sage Publications, Thousand Oaks, 1996; Albaret, Deas, *Semistructured Interviews*, in *Qualitative Research Methods for International Organizations*, JSTOR, 2023, pp. 81-93.

[26] Creswell, Rafferty, Carr, *Longitudinal Surveys*, in *Social Science Research Methods*,

population and focused on perceptions of inclusion and diversity within the organization.

The adopted methodological design – a single in-depth case study using multiple sources – is consistent with the objective of exploring equity as an organizational and bargaining process. The triangulation of different techniques (qualitative and quantitative) strengthened the internal validity of the results, allowing for the comparison and validation of information across different levels. This approach made it possible to detect not only what has been done at Lamborghini in terms of DEI, but also how such innovations were made possible, shedding light on the causal relationships between participation, collective bargaining, and the promotion of organizational equity. In summary, the methodology employed offers a holistic and empirically grounded view of the "Lamborghini case", laying the foundation for discussing – in the following sections – the theoretical and practical lessons emerging from this experience.

4. *The Industrial relations model at Automobili Lamborghini*

Since the late 1980s, Automobili Lamborghini S.p.A. has progressively developed an advanced model of industrial relations, in which the participation of workers and their trade union representatives has become an integral part of corporate governance. In parallel, the company has developed its own policies and initiatives on diversity, equity, and inclusion (DEI), which have been progressively integrated into its integrative agreements – evolving from general references to concrete and measurable measures embedded in collective bargaining.

Even before the acquisition by Audi Volkswagen in 1998, the company was no stranger to negotiation. From its early years, there was space for dialogue between the social partners, with significant dynamics of exchange, even in a context marked by alternating phases of growth and crisis. It was during this period that the distinctive features of a system of industrial relations began to take shape – one based on constructive exchange and rooted in a territorial culture where trade unions were already strongly present. For this reason, Lamborghini

is often described as a company with 'fertile ground,' ready to embrace the evolution that would come with its entry into the Audi-VW Group.

The pre-acquisition phase was marked not only by the signing of union agreements but also by the conclusion of Integrative Company Agreements. In 1988, one of the first such agreements was signed[27], in which management recognized the role of the Factory Council and introduced important procedures for information sharing and prior consultation with worker representatives – including the commitment to inform the union about industrial plans and organizational changes before their implementation. This was a significant step, as it introduced elements that went beyond mere *ex-post* communication, valuing *ex-ante* dialogue and laying the foundation for a more structured exchange.

The subsequent agreement, signed in 1991[28] came at a time of serious production crisis for the company, and industrial relations became one of the tools used to manage the situation. Elements of joint crisis management were introduced, including procedures for informing the Factory Council before activating measures such as the Wage Guarantee Fund (Cassa Integrazione Guadagni), along with employment guarantees. It was during this phase that it became clear that company-level bargaining was not only a tool for distributing economic bonuses – already in place since 1968[29] – but also a means to involve the union in developing plans to avoid redundancies and safeguard production continuity.

Finally, in 1995[30], the first experiments in direct participation and group-based work organization were launched: the parties agreed to implement the creation of Working Groups composed of management, trade union representatives (RSU), and non-delegated workers, tasked with contributing to the identification and improvement of operational processes and working conditions. Another crucial innovation was the introduction of a 'cooling-off clause,' under which the company and unions agreed not to take unilateral action in the event of disputes for at least seven days, dedicating that time to meetings aimed at finding shared solutions. This laid the foundation for a climate of participatory and non-confrontational

[27] *Contratto Integrativo Aziendale*, 18 May 1988.
[28] *Contratto Integrativo Aziendale* 16 December 1991.
[29] *Accordo sindacale* 5 July 1968.
[30] *Contratto Integrativo Aziendale* 27 July 1995.

industrial relations, oriented toward dialogue and problem-solving through negotiation.

In the post-acquisition phase, the industrial relations model began to be influenced by that of the parent company, gradually evolving into a unique integration of the Italian participatory tradition and the German codetermination system – generating a form of negotiated cooperation that has few parallels in the national landscape[31]. The arrival of the VW Group in 1998 brought resources and a reference model – as a manager from that period stated, "the Audi acquisition provided a multi-level consultation structure and strengthened transparency and openness; an antagonistic approach – in which information is withheld from the union – would not have worked," emphasizing that "industrial relations and organizational performance must collaborate… they must grow together" (Management Interview, 2023). At the documentary level, the 1999 integrative agreement[32] represents a historic turning point, introducing a fully structured model of corporate participation inspired by the German model but adapted to the Italian context: industrial relations began to take on a permanent structure with the introduction of a calendar of meetings between company management and the union. The agreement also included significant improvements in working hours and individual rights for employees, effectively laying the groundwork for many internal equity measures: experimental flexible working time mechanisms were introduced, and leave entitlements were extended beyond those provided by the national collective agreement (CCNL).

In the following years, the system was consolidated and prepared for the mature participatory model that exists today. A key milestone was the signing of the Volkswagen Group's 'Charta of Labor Relations' in 2009, which promotes principles of cooperation and participation and encourages company-level bargaining to adopt them. The company, through the RSU and local unions, formally adhered to the Charta in 2011, and the 2012 Integrative Agreement[33] marked the consolidation of these principles within the organization. It was at this point that the Bilateral Technical Committees (BTCs) were formally established – joint bodies composed of company and union representatives with consultative and proactive functions on specific

[31] Carreri, Gosetti, Mattei, *Il "caso" Lamborghini: contrattazione continua e tempi di lavoro*, in *LD*, 2024, n. 4.

[32] *Contratto Integrativo Aziendale* 12 November 1999.

[33] *Contratto Integrativo Aziendale* 4 July 2012.

topics. The introduction of the BTCs, as stable bodies within the participatory architecture, reflects both the German *Bestimmung* system and the working groups already piloted by Automobili Lamborghini in the 1990s.

The company's inclusive capacity has grown in parallel with the evolution of these participatory mechanisms. In fact, the historical trajectory shows that Lamborghini's union activity initially focused on traditional issues (wages, working hours, job classifications, training), with no explicit references to Diversity & Inclusion – except in compliance with legal obligations on disability or equal opportunities. However, over time, negotiated participation has progressively incorporated the dimensions of equity and inclusion: since the early 2000s, topics such as work-life balance, organizational well-being, and equal opportunities have entered company agreements, becoming subjects of negotiation between the parties. The Integrative Agreement signed in 2015[34] definitively consolidated the participatory model and fully introduced DEI topics into bargaining: in particular, welfare and parental support measures were introduced or strengthened, including additional parental leave beyond what is provided by the CCNL, the establishment of agreements to support parenting, and a commitment to positively consider part-time requests for family needs. Measures supporting flexible working hours were expanded, and a commitment was signed to pilot agile work arrangements (so-called smart working) for white-collar employees by 2018.

Today, the Lamborghini model integrates DEI measures formalized in the integrative agreements of 2015[35], 2019[36] e 2024[37], which are now firmly embedded in the organizational system. The pillars of participation – information, consultation, and bargaining – have tangibly enabled a transformation in the company's inclusive capacity: initially, DEI topics were not part of the dialogue between the parties, but the constant sharing of information made the needs of different groups visible, active consultation allowed for the inclusion of diverse and alternative perspectives, and ultimately, bargaining made the resulting solutions enforceable and stable. The net effect of these innovations is a more inclusive organization, in which workers rec-

[34] *Contratto Integrativo Aziendale* 8 June 2015.
[35] *Contratto Integrativo Aziendale* 8 June 2015.
[36] *Contratto Integrativo Aziendale* 26 July 2019.
[37] *Contratto Integrativo Aziendale* 24 January 2024.

ognize that the company's attention to equity and equal opportunities has grown compared to the past.

Continuous bargaining has thus ensured that the three pillars of participation did not remain mere theoretical principles but were translated into stable procedures. This ongoing structured dialogue has enabled a shift from traditionally adversarial bargaining to a true system of corporate co-governance, in which workers have a voice in strategic decisions and – within the procedures established by company agreements – can influence their own working reality, with positive effects on the internal climate and perceived organizational justice.

To fully understand the model, it is important to recognize that the social partners have been a crucial success factor, having anticipated innovation. Both parties – management and unions – have invested in participation and embraced the structured model introduced with the Group's arrival. As a manager from that period stated, "the Audi acquisition provided a multi-level consultation structure and strengthened transparency and openness, showing that an antagonistic approach – in which information is withheld from the union – would not have worked," emphasizing that "industrial relations and organizational performance must collaborate… they must grow together" (Management Interview, 2023). But the real innovation came from the people at Lamborghini, who translated those principles into daily practice. The union seized the opportunity to expand its role beyond economic demands, becoming a co-architect of organizational and inclusive policies. The company's management, for its part, invested in joint training and the creation of mutual trust, recognizing the value of worker involvement as a source of perspective enrichment, thereby enabling the development of innovative solutions and real competitive advantages. A trade union representative recalls the post-acquisition transition phase: "Our RSU went through a period of waiting and learning; we even visited German factories to understand metrics, bargaining methods, and how to achieve goals together" (RSU Interview, 2023). This attitude of mutual learning and openness made it possible to adapt the VW model to local specificities, rather than imposing it rigidly.

The geographical context, characterized by a strong social fabric, also contributed to the system's consolidation: Sant'Agata Bolognese is located in the heart of Emilia, a region known for its strong union presence, culture of dialogue, and pragmatic approach to problem-solving. From the documen-

tary analysis presented above, it is clear that when Automobili Lamborghini was acquired, it already had a well-established system of industrial relations. This facilitated the local translation of the German participation model: as researchers have noted, the VW framework merged with a tradition of labor relations rooted in years of territorial practices[38]. Additional factors also stimulated the development of the industrial relations system: on the one hand, the company's single production site allowed for the system to evolve through direct and frequent interactions between the social partners; on the other hand, the parties themselves engaged in joint training projects on the principles of the Charta and the broader participation system.

5. *Practices for organizational equity*

Having outlined the evolution of the company's participation system, the following sections will analyze different areas of intervention through which industrial relations at Lamborghini have translated organizational equity into concrete measures: the reorganization of working time, policies supporting parenting and family life, and more broadly, Diversity & Inclusion initiatives. In each of these areas, structured participation has made it possible to identify innovative solutions that combine improvements for workers with organizational needs, promoting greater internal justice and equity.

5.1. *Reorganization of working time*

In recent years, Lamborghini has implemented a radical reorganization of shifts and working hours, with the stated goal of improving the work-life balance of all employees – not merely increasing production flexibility. This initiative is at the heart of the 2024 Integrative and Participation Agreement and represents a practice of equity, as it aims to rebalance reconciliation opportunities between white-collar and blue-collar workers. In the past, office staff already benefited from flexible hours and the possibility of working remotely (agile work or smart working), thus managing both time and place of work with greater autonomy. Conversely, production workers, bound to

[38] Carreri, Gosetti, Mattei, *cit.*

physical presence on the shop floor, were almost always excluded from these reconciliation measures due to their shift-based work schedules. Making the organizational structure more equitable and inclusive allowed the parties to rethink the entire system, ensuring work-life balance tools that take into account the specificities of different roles. To this end, a Bilateral Technical Committee (BTC) composed of engineers and technical experts was established. This committee conducted an in-depth analysis of the existing organization, identifying solutions capable of supporting the company's growth path and updating a shift system that no longer met current needs. The technical approach made it possible to avoid political solutions, focusing instead on developing an organizational model that could restructure working hours while safeguarding both company productivity levels and pay equity. For production workers, the agreement introduced a new weekly schedule alternating between five-day and four-day workweeks: departments operating on two shifts or a central shift benefit from one Friday off every two weeks, while departments on three shifts receive two Fridays off every three weeks. This measure was accompanied by a reduction in Paid Annual Leave (PAR), ergonomic improvements, and enhanced organizational efficiency, ensuring the overall sustainability of the new system. In parallel, the already extensive flexibility system for white-collar staff was further strengthened, confirming and expanding the hybrid work model. Employees retained the option to work remotely up to twelve days per month, and a flat-rate time bank mechanism was introduced, allowing up to twelve days per year to be used for the recovery of mental and physical energy.

This reorganization represents an emblematic case in which operational flexibility is combined with equity among workers. The main 'constraint' to overcome was the very nature of the roles: many traditional reconciliation measures (adaptable hours, telework) were not applicable to production line workers for obvious practical reasons. The challenge, therefore, was to find a formula that would also return free time to this category. The most innovative contribution of the technical committee was to bring expertise to the bargaining table, shifting the discussion from a purely 'political' level to an objective and design-oriented one, restructuring working hours in a differentiated way for each department. Although it is not yet possible to report the final outcomes of the pilot project – still ongoing and expected to conclude at the end of March 2026 – this research presents some of the data that emerged from the 2024 internal WellBeing Survey. Most of employees

who participated in the survey reported that they perceived a positive impact on their work-life balance thanks to the new work time reorganization. Once the pilot data becomes available and the 2024 and 2025 results can be compared, it will be possible to assess whether the reorganization also had an impact on production workers' perception of organizational justice, reducing the treatment gap between them and white-collar employees.

5.2. *Shared parenting and family policies*

A second area of participatory practices aimed at equity concerns support for parenting and family life. At Lamborghini, the union and the company have used integrative agreements to build an advanced system of family welfare and work-life balance, often anticipating national legislation. The most innovative element of these negotiated measures lies in giving back time to workers to balance professional and private commitments, accompanied by appropriate financial support. For example, as early as the 2015-2017 integrative agreement, three days of paid paternity leave were introduced – in addition to what is required by law – and five unpaid days per year for child illness up to the age of 12. Subsequently, the parties further extended these provisions: today, Lamborghini significantly supplements the parental leave allowance provided by INPS, ensuring new parents greater financial support than the legal minimum. These measures directly address structural inequalities such as the 'motherhood penalty' and gender stereotypes: on the one hand, by encouraging co-parenting (fathers are supported in sharing childcare responsibilities through increased paid leave), and on the other, by offering working mothers' conditions that allow them to return to work without career penalties. The joint attention of the company and the union to these issues is also reflected in their commitment to raising internal awareness, promoting parenting as a valued component of professional development within the company. Another crucial aspect is the inclusion of vulnerable groups, which adds a dimension of real equity: the most recent agreements provide more favorable conditions for employees with particularly demanding family situations – for example, additional leave for single parents or those with children with disabilities, extended leave and part-time options for those caring for non-self-sufficient relatives, financial support for family care, and more. By recognizing the specific needs of these groups and designing tailored protections, the social partners have pursued

the goal of enabling all employees to reconcile work and private life more equitably. These innovations negotiated years ahead of the national debate – demonstrate how an equity-based approach in industrial relations can effectively address initial inequalities, rebalancing opportunities for those in disadvantaged positions.

5.3. *Diversity & inclusion policies and cultural change*

Finally, a broader reflection is proposed on Diversity, Equity & Inclusion (DEI) policies as they intersect with collective bargaining. Perhaps the most significant feature is precisely this integration: the issue of inclusion is not confined to unilateral initiatives by the Human Resources department but is shared at the bargaining table, discussed, and codified in agreements. This approach prevents DEI from remaining rhetorical and instead ensures concrete resources and accountability. A clear example is the reorganization of shifts, which was conceived with an inclusion-oriented perspective. On a broader level, the Social Innovation Working Group has served as a participatory governance tool for inclusion. In this shared laboratory – composed of HR professionals, RSU representatives, and specialists – inclusion projects are discussed and monitored, survey results are shared, and new initiatives are co-designed. The group has functioned as a driver of social innovation, aligning DEI projects with the real needs of the workforce. Among the implemented projects, some have had a particularly transformative impact on corporate culture – for example, the introduction of Italian Sign Language (LIS) training within the company, aimed at raising awareness among colleagues about communication with deaf individuals, breaking down communication barriers, and tangibly demonstrating a commitment to disability inclusion. Company-wide training on unconscious bias has also played a key role in fostering broader cultural change: by encouraging more inclusive practices, the training has helped employees become aware of how biases can influence their work, relationships with colleagues, and everyday dynamics. Overall, these DEI projects – some of which were planned and implemented with union involvement – have had visible and positive effects: increased awareness, the creation of internal support networks (e.g., employee communities), and a clear signal that inclusion is a shared value. The very fact that these initiatives are enshrined in agreements with the RSU elevates D&I to a

'serious' and collective issue, making it an integral part of the company's governance system.

6. *Data analysis*

To assess how the DEI policies adopted by the company are perceived, reference can be made to the Inclusion Survey, which is administered annually to all employees. The results show positive trends in parallel with the implementation of the measures described above.

The surveys conducted in 2025 and 2024 (after the signing of the new integrative agreement at the beginning of the year) were taken into consideration. The first notable finding concerns the participation rate, which increased between 2024 and 2025. In addition, the inclusion index – i.e., the overall score reflecting the perception of inclusion within the company – also rose in percentage terms. This increase in both engagement and overall perception of inclusion is a significant indicator, suggesting that the actions implemented during the intervening period – including those introduced by the agreements (e.g., reorganization of working hours, enhanced reconciliation policies, and DEI projects) – were positively received and contributed to improving the internal climate.

Specifically, the survey investigates three different dimensions: the first relates to the individual dimension of the employee, assessing whether they feel they can be authentic at work and whether they experience a sense of belonging to the company. The second dimension concerns the team, focusing on psychological safety in expressing oneself and the inclusive behaviors adopted by colleagues. Finally, the third dimension pertains to the organization, asking whether company processes are perceived as fair by employees and whether an inclusive culture is truly present within the company. Although all dimensions showed positive and growing results compared to the previous year, it is particularly interesting to note that the dimension with the most significant percentage increase was the one related to the organization and its processes[39]. This leap likely reflects the tangible

[39] Inclusion Survey Automobili Lamborghini, 2024-2025: The survey on the topic investigated the organization and business processes in a general way, without asking a specific question about the elements of work organization introduced with the 2024 Company Bargain.

benefits of the initiatives described (more equitable schedules, new welfare policies, etc.), suggesting that these measures have helped make internal processes appear fairer in the eyes of employees.

Analyzing differences in perception among various employee groups, the most relevant findings concern gender and job classification, which offer interpretive insights. In general, men and women report very similar levels of inclusion, indicating that equal opportunity policies are perceived as equitable across genders. The situation is different, however, for blue-collar production workers, who show a slightly lower inclusion index compared to their white-collar colleagues. This suggests that, although they benefit from the new measures, production workers perceive a comparatively smaller improvement in their autonomy and influence. Overall, these variations indicate that, while there is broad cross-sectional support for the model (no group reports low inclusion scores), there are still areas where efforts should be focused to close the perceived gap.

It is important to note that these climate data also have inherent limitations. First, since the surveys are voluntary, the results may be affected by participation bias: for example, more engaged or satisfied employees are generally more likely to respond to the questionnaire, while more critical voices may go unrepresented. Moreover, because the survey is voluntary, the response rate does not cover 100% of the company population. Second, surveys measure subjective perceptions, which do not necessarily correspond to 'objective' changes in phenomena, whether positive or negative. For this reason, the data should be interpreted alongside other organizational indicators. These limitations do not diminish the value of the evidence collected but rather suggest a degree of caution in interpretation.

7. *Discussion*

The Lamborghini case allows for broad theoretical and practical implications. On an academic level, the findings confirm – and at the same time enrich – what has been highlighted in the literature regarding the positive role of industrial relations in the field of Diversity, Equity & Inclusion (DEI). Numerous studies suggest that the active involvement of workers in decision-making processes improves the organizational climate and perceived well-being; the Lamborghini experience provides a concrete

example of this dynamic: structured participation, supported by inclusive bargaining, has translated into measures that have effectively reduced inequalities and increased satisfaction. In particular, Lamborghini demonstrates the complementarity between business performance and collaborative industrial relations, in line with the views of authors such as Hirschman and Gallie on the link between organizational voice and worker engagement/motivation. At the same time, the case pushes beyond some traditional positions: in the typical Italian framework, DEI initiatives have often been considered the exclusive domain of HR functions, while collective bargaining was expected to focus primarily on wages and standard protections. The case study presented here breaks out of this dichotomy, showing that industrial relations can be the driving force behind inclusion and sustainability policies, expanding company bargaining to encompass the individual and their needs, rather than limiting it to the management of the employment relationship. In this sense, the case shifts to the classical paradigm: DEI policies are no longer external to social dialogue but are integrated into negotiations oriented toward worker well-being.

The original contribution of this study lies in documenting how the concept of equity can be made concrete, stable, and measurable within an organizational model. Through in-depth document analysis combined with the examination of employee perceptions, the study illustrates a real case in which equity – understood as attention to diverse needs and the reduction of inequalities – has become a guiding principle codified in corporate governance. This enriches the theory of participatory industrial relations by highlighting the importance of considering not only economic outcomes but also socio-organizational ones. In particular, the analysis shows how typical industrial relations tools (assemblies, bilateral committees, integrative bargaining) can be used to promote inclusion and reconciliation, expanding the traditional function of bargaining. This provides the literature with a concrete case of impactful 'negotiated participation,' a concept that had been theorized but rarely observed in practice in Italy. Furthermore, the paper's integrated approach – which combines historical analysis of contractual texts with internal qualitative and quantitative data – constitutes a relevant methodological contribution, offering the opportunity to study from within how social partners experience and perceive the participatory process.

The Lamborghini experience shows how an industrial relations system based on a participatory model can become a strategic resource for

both the company and its workers, provided it is built over time, adapted to the context, and nurtured daily. It is not a 'pure' or mechanically replicable model: it is a hybrid system, born from fertile ground but one that has required – and continues to require – a constant investment in culture, trust, and shared responsibility. For HR departments, strategic collaboration with trade unions can become a competitive advantage: involving workers in the design of organizational solutions and welfare policies improves both the acceptance and effectiveness of these measures. Such an approach implies a significant cultural shift: management must recognize the union as a partner in value creation, sharing information transparently and respecting the rules of engagement. As stated in a management interview: "For dialogue to be effective, it must be on equal footing: without information sharing, it is impossible to build a shared synthesis" (Manager Interview). This does not mean relinquishing corporate leadership but rather exercising it inclusively: decisions must be aligned with values and respectful of people, because only by involving people can the best performance be achieved.

From the union's perspective, the participatory system has represented a path of collective growth. As one RSU delegate emphasized, "participation has been a structured process, a compromise that does not exclude conflict but channels it into constructive forms." In a context like Italy, where union culture has historically been rooted in confrontation, participation has required a shift in mindset: "in the past, we would go on strike; today, we sit down and talk." This does not mean that conflict has disappeared, but rather that it has been transformed into ongoing dialogue, where differences in interest are addressed through negotiation rather than rupture.

The system has also strengthened the role of the union delegate, who "is no longer just a representative, but a respected interlocutor, recognized by both workers and the company." This evolution was preceded by necessary specialized training to acquire technical and managerial skills (including sessions with the German union). Participation has helped build an image of the union as a constructive actor, capable of proposing solutions and not merely making demands. As some delegates have noted, "the participatory system alone is not enough: we need a strong, rooted union, capable of speaking to workers and renewing itself in language and methods." The model and the construction of a stronger union are not without limitations. Some delegates point out that "there is no such thing as 100% trust between

the parties, and perhaps there never will be: it's right that a balance of power remains." Others warn of the risk that participation may be misunderstood or exploited, or that it may lose touch with the everyday reality of work. But all agree on one point: the system has brought widespread well-being, a more relaxed atmosphere, and greater accountability.

From the company's side, the system has brought tangible benefits. Union involvement has made it possible to build decisions that are more robust, shared, and sustainable over time. As one manager put it, "participation simplifies difficult things, but it can also make simple things more complex." It is a system that requires time, dialogue, and experimentation. But it is precisely this gradual approach that allows for testing solutions, gathering feedback, and adjusting courses. The introduction of experimentation as a bargaining practice – for example, in flexible working hours for blue-collar workers – has been one of the most significant innovations: "you don't just sign an agreement and stop there; you test it, measure it, and refine it".

Another distinctive element has been the investment in joint training. Workshops, shared learning paths, and moments of dialogue outside the bargaining table have helped build a common culture and overcome mutual prejudices. "Participation is demanding," noted an HR manager, "but it's also a system that creates value. It's not just about dividing a pie, but about baking a bigger one together." Training has helped build trust between the parties. "Participation can start at the top, but it must be embraced by everyone. Middle management has enormous responsibility. The union must be willing to take risks and, when it holds the upper hand, not exploit it: we prefer to involve and listen, initiating a dialogue based on trust. Daily experiences, over time, consolidate this trust" (RSU Interview, 2023). In other words, mutual credibility is built through consistent behavior over time: the union uses new participatory tools responsibly (without abuse or extremism), and the company honors its commitments, avoiding punitive or delaying tactics.

What makes the Lamborghini model particularly interesting for future participation policies is its ability to structurally integrate inclusion. Participation is not an end in itself but has become, over time, a vehicle for promoting equity, well-being, and the recognition of diversity. As one union delegate observed, "participation is a form of enrichment in everyone's life, because it allows us to achieve results that truly improve the quality of working life."

In this context, inclusion is not just a stated goal but a daily practice. Measures supporting parenting, disability, generational and cultural diversity, as well as reconciliation policies and awareness projects, are the result of ongoing dialogue between the parties. The union has become a spokesperson for new demands, while the company has confirmed that "decisions must be aligned with values, respectful of people, and, above all, effective".

This synergy has generated an environment in which workers feel actively involved in change. "Employees don't feel like numbers, but part of a project," said one delegate. "The well-being experienced in the company is perceived as something we helped build." Participation, therefore, not only improves productivity but also strengthens the sense of belonging, trust, and internal cohesion.

For HR departments, this implies a paradigm shift: it is no longer just about managing personnel, but about co-designing with them. For unions, it means taking responsibility for contributing to decisions, moving beyond a purely adversarial logic. For public policy, finally, the Lamborghini case demonstrates that a participatory and inclusive system is possible even in the absence of national legislation, provided that the cultural and relational conditions allow it.

As one union representative put it: "Participation means blending together; it's not about one person in one place making the difference. It can start at the top, but it must be embraced by everyone." And as a manager reminded us: "Industrial relations and organizational performance must collaborate. They are not two separate worlds, but two dimensions that must grow together."

The Lamborghini model is not easy to replicate, but it shows that participation and inclusion can coexist and reinforce one another. The case study suggests that a participation system is achievable even without dedicated legislation[40], if the parties are willing: this confirms what scholars such as Treu and Caruso have theorized about the need for greater willingness to converge on the part of companies and unions to implement Article 46 of the Constitution on cooperation in management. Secondly, the integration of inclusion and well-being objectives into bargaining can become a model of participatory sustainability governance elsewhere as well: institutions and

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social partners should consider company-level bargaining not only as a tool for conflict, but also as a platform for social innovation.

In conclusion, the central theoretical insight guiding this study is that organizational equity arises from a virtuous cycle of dialogue and action: first, the company listens to the needs and concerns of workers, collecting data (e.g., internal surveys) and giving voice to employee representatives (employee voice); second, it discusses these needs in participatory and bargaining forums, involving both the union and relevant technical experts (e.g., bilateral committees on topics such as working hours, welfare, training); third, it jointly decides on interventions and solutions, which are then implemented and monitored over time. This process shows how well-designed and sustained participation can transform the workplace into a complex inclusive system that generates well-being, equity, and competitiveness.

Abstract

This paper examines how industrial relations can function as a structural driver of organizational equity, through an in-depth case study of Automobili Lamborghini. Drawing on document analysis, participant observation and semi-structured interviews, the study shows how a mature participatory model, characterized by continuous information-sharing, consultation, and second-level collective bargaining, enables the translation of Diversity, Equity and Inclusion (DEI) principles into concrete, measurable organizational practices. The findings illustrate that equity emerges not from voluntary HR initiatives alone, but from negotiated processes capable of reshaping working time, supporting shared parenting and incorporating inclusion into corporate governance. The Lamborghini model demonstrates how collective bargaining can institutionalize equity as a regulative device, reducing structural inequalities and enhancing organizational justice. The study contributes to the literature by showing that participatory industrial relations can act as an infrastructure for fair organizational transformation.

Keywords

Industrial relations, Participation, Organizational equity, Collective bargaining, Work-life balance.

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abbreviations

The list of abbreviations used in this journal can be consulted on the website www.ddllmm.eu/dlm-int/.

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