

INCODING case studies reports

European social partners' approaches to Artificial
Intelligence and Algorithmic Management

Partner: Zentrum für Soziale Innovation

Authors: **URSULA HOLTGREWE**

LEONIE DWORSKY



ZENTRUM FÜR SOZIALE INNOVATION
CENTRE FOR SOCIAL INNOVATION



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PREFACE

The INCODING project is a two-year project supported by the European Commission, Directorate-General for Employment, Social Affairs, and Inclusion, receiving funding under the call for proposals SOCPL-2021IND-REL aimed at improving expertise in the field of industrial relations.

The INCODING is a joint project of 5 partner organizations from five countries. The aim of the project is to analyse the role of collective bargaining and other forms of employee involvement at workplace level in (co) governing the black box of Algorithmic Management (AM) with a view to identify the main challenges for workers and their representatives, and explore its contribution to Inclusive AM understood as the turn to more transparency in the design and implementation of Artificial Intelligence (AI) based systems at company level and guaranteeing human oversight of automated processes. Moreover, the project also aims to learn from best practices, develop collective bargaining strategies and provide recommendations for trade unions, workers' representatives and employers negotiate the conditions under which AM and AI systems are used.

The first phase of the project consists of gathering existing information on the role of collective bargaining in governing Artificial Intelligence and Algorithmic management systems. The output of this activity is the publication of four national (DK, ES, GE and HU)¹ stock taking reports summarising the state of the art in each country, paying attention to the sectors where company case studies have been selected, and one stock taking report summarising the state of the art in relation to legal and social dialogue development at EU level.

The second phase of the project consists of empirical qualitative research of two companies (in two sectors) where artificial intelligence and algorithmic management is used by the company. At supranational level, fieldwork consists in the analysis of positions, views, and discourses of relevant actors in relation to artificial intelligence. The output of this activity is the publication of a set of national reports and an EU-level report presenting the findings of the two company cases studies and the analysis at EU level.

1. METHODOLOGY

In addition to desk research and analysis of documents of trade unions, employer and business associations, we conducted interviews with five European trade union experts on digitalisation and AI/AM and sectors that use these technologies, and three representatives of European employer and business associations. Interviews were conducted in Summer 2023. They followed a guideline which was adapted to each organisation's experience on the subjects of AI/AM and the platform economy. They were transcribed, coded and analysed using MaxQDA. Interviews with UNIEuropa1 and WeCGlobal were conducted in German and quotes translated by the research team.

The selection of interviewees was challenging in one particular way. Firstly, we contacted representatives of those organisations that had concluded joint declarations on the European level.

¹ INCODING Stock-taking reports available at: <https://incoding-project.eu/country-stock-taking-reports/>

Whereas union experts were responsive and interested, representatives of employer associations were more reluctant to take part. In spite of several reminders some did not respond whereas others' European offices replied that they lacked expertise and/or resources to participate. Unfortunately, exactly those employer associations who had concluded Joint Declarations for their sector were unavailable. On the union side, we interviewed representatives of UNIEuropa, industriALL and ETF, and a former ETUC Confederal Secretary who had been the only union representative in the EC's High-Level Expert Group on AI.

The views of employer associations are thus somewhat underrepresented in this paper. Unionists (who partly had negotiated with them) when asked about possible reasons for their reluctance to engage with the project suggested that their social partners might have felt they lacked a sufficient mandate from their member organisations to represent a European sectoral view beyond signing joint declarations. Indeed, the representatives of employer and business associations who were interviewed said that the subject, compared with other issues in EU legislation, was not always prioritised.

2. SOCIAL PARTNERS' ACTIVITIES IN THE FIELD OF AI AND AM

Generally, both European union and employer association federations are comparatively small organisations that cover a wide range of agendas and have limited resources on their own. They centrally rely on their networks and the resources and knowledge bases of their member organisations – which are unevenly distributed according to their respective size, scope, power and institutional embeddedness. They also rely on European funding to support knowledge exchange, research into central issues, and the preparation and monitoring of agreements. This is likely to be one of the reasons for employer associations' limited participation in the study. Indeed, some of those who participated clearly state that the resources they can devote to the subject in question are limited. It is also a reason why union federations devote considerable effort to stocktaking of existing initiatives at collective bargaining on AI/AM and on raising the awareness of those member unions that are less close to the subject. In this, stronger and more proactive unions take the lead, but it raises the ongoing question how well their initiatives can be extended to or adapted by smaller or weaker unions and those in less co-ordinated economies.

2.1. EMPLOYER ASSOCIATIONS

Arguably, employer associations face even more of a challenge of interest aggregation on the subject of AI/AM than trade unions: the new technologies offer companies new opportunities that go well beyond possible productivity gains: options to access new labour markets, transform employment relationships, exploit customer relations or company-specific data and knowledge. These options are unevenly distributed even within a (sub-)sector and also shaped by tech providers and by the possible network effects of general purpose AI systems. Competition thus increasingly extends across sectors, which may challenge the conventions of sector-specific representation.

SMEs and smaller, less productive companies are likely to have fewer options. Hence, company strategies to use AI/AM as well as their resulting interests in regulation or collective action may increase in variation. Especially large employers and companies that are well-positioned in their respective value chains (with good reasons to expect disproportionate gains) are also very well able

to lobby for favourable regulation on their own. Hence, powerful companies may expect higher benefits of uncoordinated lobbying and political action than of a “level playing field” achieved through collective action. The result may well be that employer and business organisations lose some power to aggregate interests and represent their respective sector, especially on those politically important issues where companies do not simply compete but struggle over the rules that govern and structure further competition.

This is suggested by both interviewees of WEC Global and DigitalSME Alliance. IN WEC Global, the large global companies have both more public affairs staff and more technological expertise which WECGlobal also builds on:

“But we have the principle that associations and companies have equal rights in our association and do not act against each other” (WEC Global Pos. 38).

DigitalSME Alliance confirm the interest aggregation challenge as well: representing a wide and heterogeneous range of SMEs with digital interest on the provider and user side, they encounter some mistrust by regulators but generally enjoy political attention in Europe:

“Sometimes regulators think that SMEs kind of want to get away with everything just because they're small. And then SMEs think that regulators have no idea what it is to run a company of two or three people that competes with Google services. So I think it's a bit unfortunate, but there's a bit of this mutual relationship that has to be much more invested in discursively, and we find we have a lot of attention from institutions. They reach out a lot. No MEP will ever turn away from you if you say you represent SMEs, because it is known how much employment they bring, how much money they bring, how important it is for Europe. But then when it comes to the things that would make a difference, it's a whole different story. And it also makes sense because even agreeing on things in our membership is super hard when you have members who are Bulgarian, members who are German, and members who are from a small village in the south of Italy, members who are from Milan. It's extremely hard to unify their demands and their concerns in a joint voice.”

WEC Global in its activities focused first on the Platform Directive (WEC Global, 2020) (see below), and put the AI Act more on a back burner. However, they recently developed global guidelines on ethical AI uses in employment (WEC Global, 2023), consulted with OECD on the recent Employment Outlook (OECD, 2023) and held their 2023 annual conference on “Working in a digital age: orchestrating digitalisation for better labour markets”. However, the interviewee rates the share of AI and platform economy-related activities in the organisation at some 10% each. WEC collaborate with employer associations that use their services such as retail, electronics manufacturing, or cleaning services and its European public affairs manager also holds the presidency of the European Business Service Alliance.

The DigitalSME Alliance organises its work in working groups and our interviewee reports that the “AI working group/focus group/taskforce” is the largest with some 250 members. Their priority is skills and also, importantly for SMEs, data ownership:

“data ownership because [...]often one of the main reasons why people choose to not just go to a big company that operates the regular way and have an alternative is because they want to be more privacy-mindful, because they want people to even sometimes profit off their own data and have a different approach on what it should mean to make business out of data, that it should not be at any cost.” (Digital SME Alliance, Pos. 37)

They also aim to see AI and digitalisation in connection with sustainability and the Green transition as well as with regard to being competitive with Big Tech companies. Still, addressing the complexity of the subject matter and liaising with their clientele simultaneously is taxing. The EU offers dedicated support to SMEs and civil society organisation which, however, cannot fully compensate the challenges and issues of equal representation.

“SMEs don't have the knowledge or the time to follow up on all the requirements to participate in these [consultation and] decision bodies. So these bodies have kind of like the aura of neutrality and objectivity and impartiality because they're open to anyone. But in practice it's not realistic to expect to participate. Then of course, there's European money, actually, that is exactly dedicated to this, to helping SMEs access – not only SMEs, also consumer organizations, environmental organizations, worker organizations – but they only really fund one player out of these groups. [...] At least you can send experts that represent the voice of these stakeholders. But when it comes to voting, they get completely drowned out by the bigger companies 100%.” (Digital SME Alliance, Pos. 17)

2.2. UNIONS' ACTIVITIES

European trade union federations' activities with regard to AI/AM amount to stocktaking of the situation in their respective sectors including research on the sectoral level, discussions, workshops and peer learning among member unions. They also do some awareness raising, provide guidance, exchange of experiences and support to member unions' and European works councils' collective bargaining, support organising efforts of member unions and also emerging bottom-up initiatives, and of course influence or lobby in the development of European AI/AM legislation.

With regard to stocktaking and awareness raising, UNI Europa started a series of webinars in 2020. In collaboration with Friedrich Ebert Foundation they commissioned a survey of European service trade union members on their awareness of AM in the workplace (Holubová, 2022) and are currently running a follow-up project to take stock of collective agreements addressing AI/AM – aiming for a database of systems in use and possible issues for consultation and negotiation by works councils.

Manufacturing union federation industriALL are only recently delving deeper into AI issues and running a series of workshops to gather member unions' experience and insights. For IndustriALL, the issues depart from traditional digitalisation in manufacturing:

“it's including digital technologies that you can more or less see. [...] Now, when it comes to artificial intelligence, very often you don't necessarily see physically. It's often a program. Obviously you feel it because one of the main issues that our members report is an increase in the volume of work, in the pace of work. And obviously, when it comes to our quality

management, also our loss of autonomy of the workers, because it is the program telling them what to do.” (IndustriALL, Pos. 7-9)

This leads to some intransparency as AI-based or AM tools are frequently introduced as system upgrades to existing software packages without consultation.

Transport federation ETF aim to raise the awareness of member unions of the impacts of algorithmic management. At first sight, this appears to be remote from more pressing issues:

I mean, we could say to them there's this other piece of legislation, but then [...] there's riders out there working 14 hours a day in terrible weather conditions, poor light, poor clothing. This stuff is so far away from their day to day” (ETF, Pos. 32)

Yet algorithmic performance management and the uses of customer feedback can have immediate impacts on the amount of work that platform workers receive. In addition, technologies and tools used by platform companies may easily spill over in traditional transport work:

“we're trying to raise awareness amongst our unions that aspects of how these algorithms work will come into other aspects of job, whether that be train drivers work or even pilots' work in aviation with drones. So initially I think people are thinking, oh, that doesn't relate, you know, to my sector right now. So we're trying to raise awareness, saying this is the thin end of the wedge.” (ETF, Pos. 13)

In lobbying, European trade union federations have been joining forces and unionists agree that collaboration is working well. In the HLEG on artificial intelligence, they jointly agreed to nominate ETUC's Confederal Secretary Thiébaud Weber as the only union representative. On the Platform Directive, ETUC is also taking the lead, due to its intensive contacts with the European Parliament, European Economic and Social Committee etc. The research and expertise of ETUI is also important as the challenges affect multiple sectors.

As is common in the European union federations, some member organisations have more experience and capacities in the issues at stake around AI/AM than others along national, sectoral and professional lines. The Nordic unions are mentioned in both manufacturing and services, and engineering, tech and professional unions especially play a part. They also take a keen interest in the debates about ethical AI. In manufacturing, it is the large well-resourced unions in Northern Europe, Germany, Italy and France. In UNI Europa, telecommunications and financial sector unions have been influential, and the UK's TUC and the professionals' union Prospect also are active, especially since they are no longer covered by EU legislation.

Where issues fit less neatly into sectors as in platform work, the picture is less predictable. Spanish unions have successfully influenced the Spanish legislation on platform work and algorithmic management and are a presence in the European debate as well. Our ETF interviewee mentions the Dutch union federation FNV with its track record in successfully taking platform companies to court and also recruiting new members through TikTok.

In manufacturing in particular, IndustriALL perceive a gap between Western and Eastern European unions: During the Covid-19 pandemic Western European unions noted an acceleration of digitalisation whereas in the East, “the conclusion was that digitalisation stopped” (IndustriALL, Pos. 17).

“as long as it's going to be cheaper to hire a manual worker to do the job than to invest in digital technologies, we're going to keep having this problem in countries where labour costs are cheaper. And the only solution that we see to that is upward wage convergence. [...] Our colleagues in Slovakia are always saying, we want to be part of the transition, we want to be part of digitalisation, but it's very difficult if you are not informed, consulted and if you are just seen as a cheap labour.”

For CEE unions, thus the workshops and research conducted by industriALL become a central source of information and orientation as national resources are few.

3. SOCIAL DIALOGUE

3.1. SOCIAL DIALOGUE AS WIN-WIN

UNIEuropa and industriALL generally argue in line with their framework agreements and joint declarations that social dialogue especially on digitalisation and AI/AM issues is a win-win suggestion and indeed the prerequisite of successful and productive uses of technology. Considering job quality, health and safety, and workers' skills and voice in implementing new technologies contributes to mobilising both workers' expertise and trust.

However, this mutual appreciation of the benefits of social dialogue is contingent upon existing social dialogue. In the platform economy, this is not a given. Unionists working with platform companies in logistics or other gig work sectors find that many (but not all) of them are reluctant to engage with social dialogue at all. This encompasses defining business models, contracts and their own function outside of an employment relationship, or forming alliances with consumers to fight municipal or national attempts at regulation (Rahman & Thelen, 2019).

With Business Europe, there is a social dialogue project promoting and supporting the implementation of the Framework Agreement on Digitalisation of 2020² through a digital tool, a series of field visits to explore and compare national initiatives, a repository of examples of good practices. This is, according to our Business Europe interviewee, increasingly addressing subjects of AI and AM.

“our line ist to say, there's something in it for everyone. It is a win-win situation if this becomes more transparent and if everyone has a better understanding of what is happening in such a system” (UNIEuropa1, Pos. 19).

Ethical and responsible use are considered areas of consensus and include the insight that “some things are just not okay” (Pos. 27). Another well-established consensus refers to skill development. However, actual meanings and issues in the implementation of these agreements may still be contested. For example, social partners do not necessarily agree who is supposed to invest into skills.

² <https://resourcecentre.etuc.org/thematic-project/implementation-european-social-partners-framework-agreement-digitalisation-and>

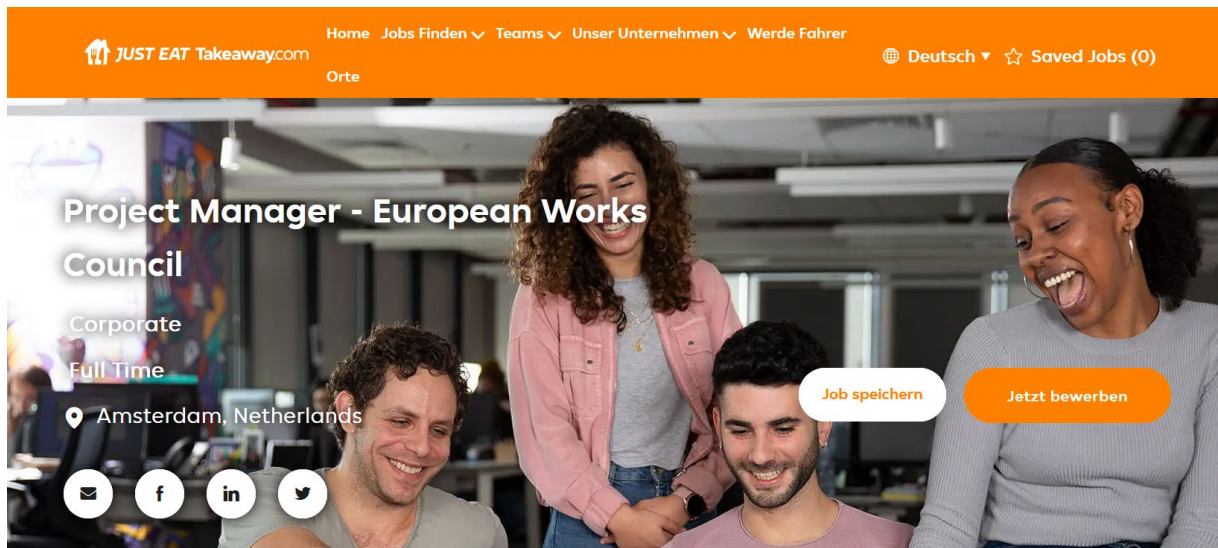
All in all, the existing joint declarations are clearly seen as compromises and tools that, however, still require implementation and translation into agreements on the national or company level.

“Now, the problem with this agreement is always that what is going on at national level and the push to really implement the agreements at the national level to make our members aware of the leverage they have with these agreements and so on. [...] I think it's like with everything, it's easy to speak about skills and these softer issues, then it's a bit more difficult when it comes to other topics. (industriALL, Pos. 21)

3.2. INROADS INTO SOCIAL DIALOGUE

Some inroads into social dialogue have already been made also among algorithm-driven and platform companies. Just Eat Takeaway, which in several European countries use employed riders, are in the process of establishing a European Works Council and advertised the position of a project manager for this in early January 2024 (Figure 1).

Figure 1: Job advert³ last visited January 3, 2024



UNIGlobal have concluded an agreement with global provider of offshored services Teleperformance in December 2022⁴, a company known for its globally offshored customer service centres (Ursula Holtgrewe & Schörpf, 2017) that also offers content moderation services to Big Tech clients. The agreement aims to ensure workers’ rights of association, health and safety, in line with the ILO’s core labour rights and the OECD Guidelines for Multinational Enterprises. National implementation has started in Colombia, El Salvador, Jamaica, Poland and Romania.

³ https://careers.justeattakeaway.com/de/de/job/R_035539/Project-Manager-European-Works-Council

⁴ <https://uniglobalunion.org/news/uni-global-union-and-teleperformance-celebrate-achievements-after-one-year-of-global-agreement/>

Some national union initiatives and agreements are controversial in union federations. For example, the Belgian transport union BTB concluded an agreement with Uber in 2022⁵ although the company does not recognise its drivers as employees. The union provides a platform for workers to raise complaints over unfair evaluations and access union support. BTB then regular consults with the company over complaints and improvements in working conditions.

“At least that gives an opportunity for the worker to engage with a union and have some sort of mediation of the issues. [...] So then they would literally take this stack of complaints and go, well, this person on this day had this issue. Can we talk about how we can be more systematic about that?”

This is complemented by bottom-up organising: Belgian unions also have regular monthly meetings of riders on the city level – an approach that should be extended according to our ETF interviewee:

“I mean, ideally, they should be meeting once a month in every town like they're in Belgium. We need to be doing that directly on the ground in every town once a month, meeting with trade unions and doing as much as they can for them on a day to day basis. [...] I think in Brussels we're a bit removed from what's already happening day to day. So I think it's a dual strategy both at EU level, but also getting our unions down into the dirt and working hard every day.

Indeed, gathering insights and inspiration from varied local and national initiatives is expected to both accelerate union involvement beyond the legal debates and add strength to their position in Europe. It appears that some successful examples come from unions and bottom-up initiatives (and their collaboration) in smaller countries: Apart from the controversial agreement with Uber in Belgium, Dutch FVV is cited with new tech-based formats of organising and mobilisation via TikTok, and the Austrian Riders' Collective⁶ is supported by services union vida (Herr, Schörpf, & Flecker, 2021).

3.3. UNION ORGANISING

With a perspective to organising, auspicious target groups for unions are somewhat polarised in line with the polarisation of digitalising labour markets: Unionists addressing issues of platform and gig work see a potential new constituency in gig workers that may also compensate for the ageing and shrinking of their traditional union constituencies – but organising this group requires their inclusion into collective bargaining, that is, clarification of their status as employees and/or an extension of interest representation to the more-or-less self-employed:

“And also this is what I tell my unions and my members. We need to expand the scope of representation. Okay. Unions are dropping in membership. [...] But we need to also cover the people not covered by the collective bargaining, especially logistics, which is in between transport and post. It's a mess. But the more you expand that scope, the more you will be able to have that fake self-employed algorithm platform worker in the scope of

⁵ https://www.btb-abvv.be/images/WordVanDeVoorzitter/Interview_FrankMoreels_UBT_E.pdf. This followed a Memorandum of Understanding concluded with the company by ITF.

⁶ <https://www.riderscollective.at/>

bargaining, and only with strong bargaining unit will you derive good social dialogue.” (UNIEuropa2, Pos. 46).

In a different segment of the labour market, the younger cohorts of engineers in ICT and AI are found to take an increasing interest in trade unions.

“The largest segment of classical trade unions is in telecommunications, not tech or video games, [but] there in recent years have been many grassroots movements where employees joined forces, especially in tech, Google or Facebook or whatever, who have understood that trade unions can be helpful because they offer more structure and more possibilities to interact with employers. So currently we have an enormous wave of unionisation in the tech industries“ (UNI Europa1, Pos. 90).

These groups also take an interest in the ethical and social impacts and legitimate uses of the technology and may be reached through unions’ involvement with these debates.

4. AI/AM-RELATED ISSUES AT LARGE

4.1. THE BIG PICTURE: DYSTOPIA VERSUS INCREMENTALISM

In referring to the big picture of current and future uses and impacts of AI, unionists on the one hand embrace the aim and possibility to regulate it, and the potential to improve the quality of working life and “make life better for workers” (industriALL). On the other hand, there is a sense of uncertainty over the bleaker scenarios:

“What’s the value added of human labour vs AI? And what is simply fantasy and some kind of science fiction scenario?” (UNIEuropa 1, Pos. 86)”

Unionists are very aware that those scenarios do not just lie in the future, and regimentation and monitoring play a central part in them. They are exemplified by work in Amazon warehouses or by jobs in content moderation for large tech providers. There, to train AIs and to classify unacceptable content in social media, considerable amounts of human labour are required – tightly monitored, stressful and psychologically harmful “bad jobs” that are frequently offshored to low-wage countries (Williams, Miceli, & Gebru, 2022):

“You’ve seen it too extreme in Amazon [...] where the people’s movement is tracked etcetera, etcetera. So, I mean, this is happening. All the information, all the monitoring of people and how they’re doing their job is feeding into managers’ decisionmaking without any qualitative enrichment. They’re just seeing the numbers saying, well, this person, you know, is doing x, y. And [...] the workers don’t have an input in that. So that the worry is the monitoring, the surveillance and what’s done with the information.” (ETF, Pos. 57)

Yet, ETUC’s former HLEG member points out that actual technological impacts are often slower-moving and more incremental than the more drastic scenarios suggest:

“I’m not saying it’s risk free or something but perhaps there is a gap between this sort of high level discussions and what’s happening on shop floors, and of course risks may creep in more incrementally as well [...] So I suppose there would need to be some sort of way of moving beyond these hype cycles and this panic and some relief and then the subject’s off again”(ETUC, Pos. 93, 98).

Business Europe as well as other employer associations have a different take on the implications of uncertainty. They argue that at present, algorithmic management and decision-making in “traditional workplaces” does not appear to be widely spread, and that for that reason they do not see much need for further regulation. They also see more actual evidence of favourable win-win uses of productivity gains in which both managers and workers get freed up from unpopular routine tasks for more productive and satisfying interactions:

“So because you take away basically the focus on these repetitive and redundant tasks, you open up the time of a manager more to really spend with their workers. So again this this can lead to more productivity, more increased efficient decision making. So we indeed see this as well as a positive. Okay. And then lastly as a positive, we see from some surveys as well that there’s a possibility for increased job satisfaction. So because of all the reasons that I’ve stated just above, we see that there is an opening for workers to be working more on the tasks that they like. [...] On the other hand, we also see that there is a lot of fear with regards to biases that could be included in algorithmic management. And we actually think that algorithmic management tools can improve inclusivity and inclusiveness. But of course, it all depends on how the algorithm is made” (BusinessEurope, Pos. 32-33).

The subtext appears to be a demand for policy to set more trust into companies’ judicious and incremental uses of technology in ways that favour win-win-scenarios. Employer organisations in unionists’ views appear to pursue a strategy of containing the issues of AI and AM and to prevent an overflow of the current dynamic of AI/AM regulation to labour market and employment regulation at large.

Unions, while agreeing that win-win configurations are possible and desirable, have more of a sense of urgency in regulation and prevention of risks. This reflects the asymmetries of information and insights into actual practical use of AI at present.

4.2. QUESTIONS OF DEFINITION

Social partners use diverging definitions on algorithmic management to frame the resulting challenges. For example, BusinessEurope refer to the JRC’s definition of AM, where Wood (2021) describes that “[AM has] been largely confined to enabling the automatic direction, evaluation, and discipline of workers”. Yet they shift the meaning in the interview and define AM as

“The use of artificial intelligence to automate managerial tasks that relate directly to the coordination of labour input within the workplace. So making it very clear that it’s about the labour inputs and it relates to managerial tasks”. (BusinessEurope, Pos. 21)

This relates the technology firmly with management tasks. ETUI define AM “as automated or semi-automated computing processes that perform one or more of the following functions: (1) workforce planning and work task allocation, (2) dynamic piece rate pay setting per task, (3) controlling workers by monitoring, steering, surveilling or rating their work and the time they need to perform specific tasks, nudging their behaviour, (4) measuring actual worker performance against predicted time and/or effort required to complete task and providing recommendations on how to improve worker performance and (5) penalising workers, for example, through termination or suspension of their accounts” (ETUI, 2022).

Social partners thus disagree on the scope of the subject and the context applied. This is not just a matter of definition. Employer associations favour narrower definitions to limit regulatory and co-determination ambitions of policy and social dialogue. The focus on automating managerial tasks also suggests that this is not unions’ problem. However, for trade unions the interrelation of control and intransparency in AM and its impacts on job quality, labour rights and psychosocial wellbeing is crucial.

4.3. (IN-)TRANSPARENCY

This issue is centrally discussed in terms of transparency or the absence of it. Transparency of personal data use is already a requirement of the GDPR but there, is transposed into national law in very varied ways, encouraging for example regime shopping by multinationals. Transparency is also a prerequisite of unions and works councils’ consultation and co-determination rights, as information is essential to meaningful consultation. However, Algorithmic Management tends to be somewhat opaque, and it appears that some companies do use that opacity to hinder co-determination, for example by claiming that national management has no decision-making power over the algorithms in use. A survey commissioned by UNIEuropa and Friedrich-Ebert-Stiftung (Holubová, 2022) finds that workers who mostly are union members or representatives are strongly aware of the risks of AM but have a considerable sense of uncertainty over what technologies their employer uses in which way.

For unions to ascertain platform companies’ practices thus may require lawsuits:

“So the idea behind their kind of lawsuit is, I think they're taking Uber to court in six countries at the same time, asking for the information through GDPR and then comparing it and seeing how they use the algorithm in different contexts because it's not clear. Which [amounts to] how the algorithm works in each country, whether it's the same based on what Silicon Valley wants, [...] like constantly country managers tell us, [...]. It's all decided in Silicon Valley. There's developers there who are working on it. So there's a lack of transparency, whether they use that as an excuse not to tell people the information. Um, so that's kind of the big one right now, is trying to get access to the information.” (ETF, Pos. 14).

Intransparency is found on several levels. On the level of machine learning, it is unclear if logically and technologically, learning algorithms or their creators can explain their “reasoning” at all. More generally, decision criteria and reasonings in algorithm-based management are often unclear. In recruitment, there is the risk and some evidence of discrimination, and in performance appraisal workers and their representatives often do not know and are not told which data are used for what purposes.

This again works in favour of the company. Heiland (Heiland, 2023) describes how in food delivery in Germany, riders' assumptions on performance appraisal create an almost panoptic situation: both interviews with former managers and tests of the system by the author (who worked as a rider himself) found that deliveries in that company were *not* assigned on grounds of riders' performance, speed and availability in such a way that unattractive jobs went to slower or less available riders. Many riders, however, were quite convinced that this was part of the system and adapted their work mode to these assumed criteria for the assignment of jobs.

This opacity may also render other changes in work organisation intransparent. Our industriALL interviewee reports that in manufacturing often AI-based tools are introduced under the radar of managers and works councils as system updates – then workers find that work volumes are increasing and work is intensified without visible reorganisations taking place. Generally, unionists observe painful losses of worker autonomy across sectors as workers find travel routes, sequence of tasks, or emotional expressions prescribed and deviations, however reasonable, reported back to management. This sense of intrusive monitoring turns human-machine-interaction into a further source of psychosocial stress:

“You say, good morning, Alexa. Okay. [...] Alexa in the morning is happy, but Alexa doesn't change tone throughout the day. At the end of your day, you know you want to insult Alexa very much. However, Alexa is there, hasn't changed, is not upset, but has indicated to your employer that you've become upset. You've become stressed, that you are late, that you did not do well, that you didn't take a break. [...] So all that slowly is going to become the future. (UNI Europa2, Pos. 45)”

Social dialogue and worker voice are thus essential prerequisites for shaping technologies in favour of workers and fair distribution of gains. Indeed, in the view of unionists, these are both institutional and shopfloor prerequisites for trusting algorithms. However, social dialogue is not getting easier to achieve as the technology comes with striking information asymmetries between workers and management. Information asymmetries are also found among companies, as especially the DigitalSME Alliance find: SMEs especially have difficulties in evaluating AI-based tools for fitness for purpose and compliance with legal requirements, especially as they come as part of general purpose packages.

4.4. AUTOMATION AND SUBSTITUTION OF JOBS

There is some disagreement among unionists about the potential of AI to actually automate jobs. Since the Frey and Osborne study's (Frey & Osborne, 2017), far-reaching predictions are gaining public attention and are a matter of concern to unions, although many experts are seeing less comprehensive impacts. In addition, automation of unhealthy or stressful work may not always be a bad thing.

Both DigitalSME Alliance and some union interviewees agree that developments may be more incremental. IN SMEs,

“thinking of our sector, it's too soon to claim that there's jobs being lost to robots, the digital tech sector. Because again, there's many things about human reasoning that still weigh much more, and especially in small and medium organizations, there's a lot about their contact with the client, the back and forth, the changing pace environment. So a lot of improvisation, a

lot of flexibility, all these things that robots are very far from mastering” (Digital SME Alliance, Pos. 69).

Interestingly, in the staffing agency and personnel services sector, the possibilities of automation are the most contested between the employer and union side. WECGlobal’s spokesperson (like BusinessEurope’s) see little AI or algorithmic management actually happening in their sector apart from the use of chatbots, whereas our union interviewee sees far-reaching uses in some large companies: A large staffing agency he knows manages some 80% of its matching and recruiting activities algorithmically. The final decisions are made by humans, but

“Clearly I would say it’s only a 5% of that process that remains under human control. The other thing that is scary is that the workers, which are the recruiters, that need to supervise that machine process effectively have no control over that machine process. And have not been able to bargain collectively for the imposition of that machine process. The company presents this as leniency, agility, and of course, saving time and increasing productivity, which makes sense.” (UNI Europa2, Pos. 12f.)

This productivity increase comes with a change in the employment status of the agency’s own workers:

“However, [...] that is the trick in the temporary agency. They have found contractual ways to not call it layoff. So it’s not dismissal, but they change the contractual arrangement of the person responsible for the recruitment of five industries. Okay, so you are no longer with a full employee contract, but you’re on a quasi-service contract, [...] and you have pressure for the year with targets.” (UNI Europa2, Pos. 13)

In this configuration, instead of automation, productivity gains in conjunction with the increased amount of performance information enable a change in the employment status with considerable decreases in job quality – and employees who face increased pressure on performance are less likely to take the time to challenge the algorithm’s decisions.

In sum, it appears that direct automation is not negligible as a potential issue but that the distribution of productivity gains is again closely related with the technologies’ transparency or intransparency. It appears that this is the largest challenge to social dialogue which is contingent at least on shared and trusted information and a shared perception of reality. With the incrementalism of AI/AM uses in many industries, this appears still possible but likely requires some continuous cultivation. We may conclude that the much-heralded “trustworthiness” of AI cannot be generated with technological or regulatory means or combination of both, but requires trust among the actors that deploy it.

4.5. THE PLATFORM ECONOMY

Platform work is emblematic of many of the issues that unions raise with regard to AI and AM as they are centrally based on algorithmic management that aims nearly to automate HR, task assignment, and quality control through online platforms. Platform business models touch upon existing sectors and industries in various ways. The best-known platforms disrupt established sectors (e.g. Uber in relation to taxi services, AirBnB to hotels, Amazon and retail, Google or Apple Pay in relation to banks). Other platforms provide incumbent sectors with subcontractors to (e.g. in postal services or

logistics, creative industries, but also B2B platforms that support manufacturing supply chains), and some platforms' activities (in job advertising and recruitment) overlap with those of staffing agencies. Contracts with workers vary between service contracts and actual employment relationships. Indeed, employment status is a central area of contestation between unions and platform companies, and "presumption of employment" a longstanding demand of unions and labour-oriented experts (Graham & Shaw, 2017).

"Platforms [are] very complicated. [...] There is nobody to represent the totality of them. I have very little contact with the companies themselves. I know, for example, the Uber European office. But it's in between trade union federations, you know, and then you bring Amazon in there and you're lost because they do everything and they're everywhere." (UNI Europa2, Pos. 34)

These cross-cutting functions of platforms are challenging for organisations that operate along sector lines on both the employer and union side. In addition, platforms argue that their highly automated business models cannot very well be regulated along the lines of human-in-control. From the union view, the question arises whether social dumping through the use of self-employment, low wages and tightly monitored work is essential to this model and what a regularised platform sector would look like.

Current concerns regarding platform work have much in common with those in other low-wage service sectors (Gautié & Schmitt, 2010; U Holtgrewe, Ramioul, & Kirov, 2015; Kowalik, Lewandowski, & Kaczmarczyk, 2023). Jobs offer easy access to the labour market, also for recent immigrants and other people with difficulty accessing conventional jobs. However, work is precarious and often occurs in (fake) self-employment, and brings low wages, long working hours and so on. Often platform work is done "part-time" in combination with other jobs to achieve a modest living wage. All of this amounts to multiple and interrelated challenges that our UNI Europa interviewee maps on types of algorithms that govern (1) recruitment, (2) work organisation, and (3) performance management:

" [There is] tremendous discrimination in the recruitment process to start off. And secondly, a lot of stress, a lot of surveillance and work alienation feeling on behalf of the workers. Or the third type [of algorithm], which is the performance management algorithm, which by definition [is] the platform, its bread and butter. Without that algorithm, there is no platform, however, that really defines the working conditions. So in a way, the third type is also related to the second type of algorithm. Because it's the algorithm that will determine how you do your work, but also with the increased pressure and stress generated. But also it will determine your actual pay and remuneration." (UNI Europa2, Pos. 11)

4.6. DISCRIMINATION

Social partners do not talk very much about discrimination with regard to AI/AM, largely because this is addressed in other European legislation. Yet there is concern over training data that almost inevitably carry the inequalities of existing labour markets with them, and may not even be taken from the national labour market in question. Again, BusinessEurope point out the possibilities of AI to redress discrimination:

If the algorithm is made with an inherent bias, then it can be, of course, exacerbated over time. But this is no different, I should say, than if a human is in charge of recruitment or allocation of tasks or things like that. Who also has certain inherent biases. And of course, we all know all humans have these biases, whether they are vocal about them or not. So it's all about the ethical development, let's say, of these, um, algorithmic management tools. And to ensure from the beginning that no biases are included there. And if we can ensure that again, then this can actually increase and improve the inclusiveness of employees in the workplace. So that's something that we definitely see as a potential benefit. (BusinessEurope, Pos. 32)

5. THE AI ACT AND THE PLATFORM DIRECTIVE

Whereas the Platform Directive is located in DG EMP, has been shaped by considerable social partner input and answers to some long-standing demands of unions and experts (such as the default classification of platform workers as employees), unions' relationship with the AI Act has been more at arm's length. AI-related initiatives from the High-Level Expert Group onwards were generally started by DG CONNECT, and the Act is primarily a market regulation with employment and work a bit of an afterthought.

“The focus is on looking into which kind of AI enters the European market. The focus isn't on health and safety or employment or anything like that. This has only been included, I'd say, through civil society exercising extreme pressure” (UNIEuropa1, Pos. 46).

While unions have stated their positions and several of them have been taken up by the European Parliament, they are aware of the limitations of the AI Act. They aim for a distinct legislation on AI/AM in the workplace to be developed by DG EMP, which would also fit better into existing European labour legislation.

“Actually, our lobbying strategy has been to not try to necessarily improve the AI act, to include the workplace dimension in it. I mean, obviously we tried to limit the damages and try to improve that in that sense, but we from the start, aimed at actually calling for a separate piece of legislation on artificial intelligence at the workplace. And we really hope that this is going to come with the next commission.” (IndustriALL)

Business Europe disagree and argue that especially algorithmic management is not very commonly used in European companies and that definitions and demarcations of AI and AM are not quite clear:

“Combining that as well with the work that the social partners have done, both at EU level and at national level, we basically see that right now, there is currently no need for new legislation on algorithmic management in traditional workplaces.” (BusinessEurope, Pos. 47)

Still, they agree that a European initiative addressing the workplace would require input by the social partners.

With regard to the AI Act the lines of debate are along the “balancing act, we [Europeans] want regulation, but we also want innovation” (UNIEuropa1, Pos. 45). Employer and business organisations are by definition more concerned with limiting regulation – but apart from their dedicated social partnership initiatives they say they looked more into market and innovation questions with regard to the AI Act.

5.1. AI ACT: RISK-BASED APPROACH

It appears that the Act’s risk-based approach generally is accepted, but unionists demand more independent public bodies to assess and monitor risk.

Looking back to the initial debates in the High-Level Expert Group, our former ETUC interviewee remembers

“[The] risk-based approach was really something that the digital players didn’t like. They preferred [...] something like [...] opportunity-based approach. [...] Because they were considering that as good Europeans we were again only looking at risks and not opportunities. (ETUC, Pos. 75 - 78)”

WEC tried (unsuccessfully) to challenge the notion that all labour-market and recruitment applications of AI and AM are to fall into the high-risk category.

“If we connect databases through AI systems and facilitate the matching of supply and demand in this way, that isn’t high-risk as such. If employees are selected on grounds of skin colour, disability or gender, these are high-risk factors that must be avoided. But it has to be differentiated.” (WEC, Pos. 16)

The Digital SME Alliance focuses in its comments on the cost and burden of compliance with the AI Act. This entails the need for representation of SMEs in standardisation bodies, the need for sandboxes for experimentation and innovation, a clarification of development and implementation phases in which assessments are needed, and a consideration of company size in assessing the risk of AI applications (European Digital SME Alliance, 2021).

“So [...] in terms of visibility of our positions, I would say we fared quite well. And we’ve rarely raised a topic that was extremely controversial.” (European Digital SME Alliance, Pos. 50)

Their reasoning is that early regulation hinders the market entry and innovative potential of SMEs more than that of large companies and thus puts a specific innovative potential at further risk in a market that already offers uneven access:

“We really pushed for the fact that they should be made for SMEs, because often these legislations are made in a way that they just hope SMEs will pop up. And that’s really not how it works, because we all know that the people who just pop up are big companies who are always ready to offer their services for free, to offer to try things out, to give feedback and to be invited to these things.” (Digital SME Alliance, Pos. 48)

5.2. AI ACT: ETHICAL AND TRUSTWORTHY AI

Both employer organisations and unions embrace the AI Acts objectives of rendering AI and its uses ethical and trustworthy – unsurprisingly, as it would be hard to object to. They also agree on the EU’s aspirations to pioneer AI regulation and set normative standards that may shape global developments. Unionists especially connect these aspirations to the European social model, but first appreciate the initiative as such:

„ The simple fact that in Europe we are working on legislation on the subject at a comparatively early point in time, that’s setting a trend and can be a bit of a model. That should be appreciated. If you are satisfied with the outcome, that’s different, and it may be a bit vague.“ (UNIEuropa, Pos. 60)

In so far, this framing of the EU’s approach which already was central on the agenda of the High-level Expert Group, has been successful. It remains to be seen if it is just sufficiently vague to be embraced by representatives of varied interests or can provide a robust frame and orientation for these interests to be negotiated.

BusinessEurope generally endorse trustworthy and ethical approaches to AI:

“Yes, we do see that the large, large majority of companies really take this ethical responsibility, I would say quite seriously. Um, we have had no word indeed from our membership or from our associated companies that they are not in favour of the human in control principle and that they are not incorporating it. And we actually see a lot of proactive examples of bigger companies who are trying to, for example, collaborate to make the most ethically sound software tool.” (BusinessEurope, Pos. 27)

For them, this develops into an argument to leave it to companies:

“We’ve been calling for a while now to the European Commission to ease up on the regulatory burden. [...] we need to really take a pause and before we introduce even more legislation so we don’t see the need for any new legislation on algorithmic management as it is, because we think legislation that we have already covers it quite well.” (BusinessEurope, Pos. 54)

The DigitalSME Alliance as well as WEC relate more emphatically to the ethical approach of the AI Act. Representing employment agencies, WEC traditionally argue that they contribute to the common good by facilitating the functioning of labour markets and labour market transitions – and need some space for innovating and improving this functioning. The DigitalSME Alliance states first that they are not against regulation per se but require consideration of SMEs’ situation and some support in fostering compliance:

“If any kind of amping up in compliance was followed by a relevant amping up on funds or assessment to SMEs on how to comply, we don’t think that necessarily it is true that regulation kills the innovation, but it’s some forms of regulation and some forms of innovation, and we just have to choose which ones.” (European Digital SME Alliance, Pos. 8)

In addition, ethical and non-discrimination approaches fit with many of their members' business models, and those members with a business interest in the subject (such as specialised consultancies) are likely to provide extra input and expertise to the Alliance:

“What we do have a lot of is consultancies or companies that do these assessments for other companies. So then through that angle we do talk a lot about ethics in general, ethics of AI. And then that's when algorithmic bias is come into the discussion a lot.” (Pos. 38)

In addition, the constituency at large appear to subscribe to the EU's aspirations to translate European values into regulation for both competitive and normative reasons:

“We want to be European. We want to be more sustainable or we want to be more ethical, or we want to keep jobs here, or we want to develop the industry. We want to create more competition. So I think it's not very hard to have this view in mind, because both from the organization point of view and from a membership point of view, it's a constant. [...] and I think that's also what speaks for the critical European approach [...] is that, you know, it's too late for you to compete in every other factor. [...] You know, you cannot compete in terms of market share, but you can compete about privacy. And you see that people care about privacy more and more every day. So if your market interests fit your ethical concerns, I think that that's kind of something that's not necessarily a contradiction in a way that other things are.” (European Digital SME Alliance, Pos. 63)

Unionists connect ethics and trustworthiness with social dialogue and insist on the need for operationalising ethical considerations to make a difference on the shopfloor:

“At the end, maybe saying that we protect workers and we make sure workers are consulted is something ethical, I agree. [...] But our entry point is not ethics as something theoretical, it's something more practical. With values. Of course it has value, but indeed it's not necessarily something you think about first. It's more about the concrete impact on the working conditions and the life of people at work.” (ETUC, Pos. 41)

“The question is, how do you define that. For me, ethical and trustworthy is clearly connected with two demands we have, that is transparency and justification, ethically. [...] If you have an AI application that does monitoring, there needs to be an explanation. That must be clearly justifiable, and there must be transparency: why, what for is this being done. For what purpose? How long for? What happens with my data? And then you can run through an entire catalogue of questions.” (UNI Europa1, Pos. 38)”

This could specify the legal (and somewhat vague) principles enshrined in the AI Act, and also the “red lines” of unacceptable uses. Our interviewee mentions uses of biometric data and neuroanalytics, and also uses of data for predictive purposes as unacceptable:

“If [the employer] says, you've done this and that on Facebook, they've been screening that in the background, and on these grounds we assume you are no longer loyal as an employee. And that's why we are preemptively

terminating you, something like that. Or you will be looking for a new job in two years' time. Such things, that isn't okay.” (UNIEuropa1, Pos. 38)

In the interviews, ethical AI uses, transparency and the human-in-control principle are interrelated, but the interplay of technological and political provisions on the level of principles, practices and assessment is not entirely clear. The former ETUC expert points out that logically and technologically, explainability of AI-based decisions by the AI implementation may not be achievable if deep learning systems are being employed.

“You know, one of the main topics of discussion was the black box. [...]How to create a backdoor in the black box to look at inside the machine and [...] I couldn't make my own opinion on whether it is possible for designers, for developers themselves to make sure [...] it could be fully explainable, [...] But that at the end, if it's a self-learning or deep learning system, they are not. They could not guarantee 100% that they could explain it. [...] And today, maybe the debate is less hot on this issue, but. I can't say we have found a solution on this.” (ETUC, Pos. 88)

This may be one of the reasons why the human-in-control principle is generally agreed upon.

5.3. PLATFORM DIRECTIVE: PERFORMANCE APPRAISAL

The human-in-control principle is most obviously relevant in the platform economy where performance appraisals are often delegated to customer reviews and algorithm-based decisions.

“If a delivery of some dinner is adequate and fast: if this evaluation is made without human control, and only if that is the case, that is questionable, because up until now, we have also done employees' performance appraisal in a conversation between people. And there we say, human control is important and should be retained.” (WEC, Pos. 11)

A unionist working with platform companies and workers points out more intricacies of automatic decisions over terminations or assignment of gig jobs. Terminations for union organising activities may or may not be decided by an AI-based system.

Yet in the union's view performance evaluations in the platform economy may indicate that an employment relationship exists – something that platform companies contested by claiming the decision was automatic.

“So we've had members who have been terminated without any human oversight. So for example. [...] it was a food delivery platform company in Denmark and a member of ours was organizing events, leafletting, you know, encouraging people to join a union. And his work was terminated. Um, so we obviously in this instance, there may have been a decision, a human element in making that decision, but there's been other cases where people's terms of conditions or whatever you like to call it, we call the employment contract. They say the, the service agreement, um, their employment has been terminated. So then then we ask the company, uh, on what grounds. And they said, well, he's not an employee, so it's not a labour law issue. And we're like, the evaluation tells us it's an employment relationship. Why was this person terminated? And then they don't know.

And then they admit it was an automated decision. And then this is where we're back to the human element in the automated decision part of the directive.” (ETF, Pos. 15)

5.4. THE PLATFORM DIRECTIVE: PRESUMPTION OF EMPLOYMENT

Social partners see the urgency to improve platform work within the EU but do not agree on the shape these changes should take. With regard to data protection and the use of Artificial Intelligence, trade unions support the proposal of new regulatory legislation in the platform directive covering AI and have been pushing for specific legal improvements to improve workers' social rights. Employer organisations argued in favour of making use of already existing legislation such as the GDPR, instead of creating new regulation (European Commission, 2021b), and with the presumption of employment decided, aiming to raise the threshold for the criteria for presumption.

The key issue in the Platform Directive is the introduction of a presumption of employment which in the case of “genuine” self-employment could be rebutted by platforms. For trade unions, this is essential to support their voice in platform work as unions by definition represent employees (with certain exceptions such as traditionally, freelance journalists in many countries). Classification of platform workers as employees is essential to include platform workers in collective bargaining, enable their collective action and improve their bargaining power.

Trade unions strongly support the platform work directive and are in favour of the presumption of employment.

“We always have this nice analogy of an orchestra. [...] The person that leads the symphony has more bargaining power because he's alone, and without that person, the others can't play. They are, in their individual capacity, excellent artists and performers. However, it is the collective that makes their bargaining unit. And so of course, the person that plays the gong or the drummer would have less bargaining power than the chief of the orchestra. And that is a bit the discussion here. So, you know, an architect is a self-employed person. However, the architect with a portfolio of 200 clients has clearly more bargaining power than a driver on his own provided paid scooter or electric bicycle. So the classification has been a tremendous issue. And of course, the platforms themselves have lobbied hard to be excluded to the extent possible in that same discussion.” (UNI Europa2, Pos. 8)

One food delivery company, Just Eat Takeaway also were in favour of the directive with the argument of the “level playing field” and as a company that is aiming to distinguish itself by higher standards (a strategy known from other “new” industries in regulated environments the 1990s and 2000s such as fast food, staffing agencies, or call centres) (Bode, Brose, & Voswinkel, 1991; Ursula Holtgrewe & Doellgast, 2012; Voswinkel & Lücking, 1996).

“There was [Just Eat Takeaway's] CEO has [...] been in favour of the European directive. Publicly, he's come out and said, we have an employment model in Europe. We have social rights that need to be protected. I'm doing it by the book, and I'm burning money [...] it's no level playing field, they have unfair competition, particularly in Belgium, for example. I mean, he's saying we're paying people by the hour here. I mean,

we're paying their pension, their Social Security and Uber Eats have this bogus self-employment [where] people don't need fill out a form, you're on your bike and away you go.” (ETF, Pos. 47)

Indeed, the presumption of employment is strategically central for unions as an opportunity to attract further members as platform work is affecting more industries and trade unions can then collectively organise underrepresented workers.

“We as a union are saying, well, there's an unlevel playing field. Some companies are playing by the rules, others are not. The national governments should step in if there's no EU directive and make it fairer for everyone. Um, because otherwise it's just they might just go out of business, to be honest. [...] But then the other side of it is in Norway, um, and to a certain degree in Austria, there's two models going on at the same time. So one company would have freelancers, whatever you'd like to call them, self-employed and the somewhat unemployed. And often the workers are quite happy to do freelance because they can work almost unlimited hours where under employment contract they're limited by the working time directive.” (ETF, Pos. 48)

However, unionists are concerned about the transposition of the Platform Directive into national law. Drawing on the experience with the EU Directive on temporary agency work (Directive 2008/104/EC) they argue that it is likely that on the national level, loopholes and other, weaker criteria can be introduced.

Employer organisations do not entirely agree on the presumption of employment. Their positions vary according to their positions in their respective markets. As we have seen, BusinessEurope take a principled stand against more regulation and resulting additional bureaucracy, and they also opposed the presumption of employment and favoured a non-binding orientation for Member States (BusinessEurope, 2022).

“So in the beginning, we had been quite vocal about the fact that the legal presumption of employment is absolutely the wrong way to go when it comes to the platform work directive. Since then, we have altered our approach a little bit because we see, of course, that the legislators are moving forward quite a bit with this legal presumption of employment. So we just wanted to be within the right scope, basically at EU level.” (BusinessEurope, Pos. 13)

This entails a narrowing of the scope of the directive:

“This also goes hand in hand with the definition of what a platform or a digital labour platform is. Of course, if you make it too wide then this legislation will cover a whole bunch of businesses who really shouldn't be covered by this legislation. We are really calling for a targeted approach. So, the definition should be more narrow on a number of items.” (BusinessEurope, Pos. 16)

WECGlobal support the “level playing field” argument for the market of incumbent staffing agencies and newly competing platforms. They also stress that additional rules on online labour platforms should be carefully assessed and justified.

However, with regard to the modifications to the presumption of employment introduced during the trilogue negotiations, presumption of employment has been weakened. The use of criteria for presuming employment may shift the burden of proof back onto workers and unions. Timing is an issue here as the business models of platforms rely on market share and rapid expansion, says ETF's expert:

“If you're telling me you're going to have another piece of law with criteria on it, those platform companies are just going to be so happy. They're going to be celebrating, the champagne's going to be out and [...] it'll take another three years before it's international law, and then they'll fight us for another five years [...] and they'll have sectors sewn up. They'll create monopolies in certain areas.” (ETF, Pos. 26).

For this reason, finalizing the directive sooner than later will be more important than getting it right even if it is a weakened compromise:

“I mean, we're not too hopeful about this EU directive, but we're I mean, we're part of the project. I mean, we have to be, we've expectations to meet. We've sold it to our members as something that will be easy for them to reclassify their employees. [...] We're talking about mobilizing workers. If they're organized, if they're employees, they can have collective agreements. [...] And then we can improve the situation for workers easily. That's what we've been trying to say and that's what we believe. [...] So now we're going to be put into a position where this position is going to be on the table, and then we'll have to bring it back to our affiliates. And then the case of, is it better to have something that's less perfect or have nothing at all?” (ETF, Pos. 26).

Hence, both BusinessEurope and the unions are converging on some European *realpolitik* but it is unions that emphasise the urgency of regulation (while simultaneously attending to the bread-and-butter issues that platform workers face every day) whereas the employer side appears to be more interested in slowing down the process and leaving space for detailed assessment – but may be overlooking the possibility that time losses may work more in favour of disruptive players than European businesses at large.

Trade unionists believe that disruptive platform models rely on social dumping which they oppose. However, ETF's expert is aware of a dilemma of improving working conditions versus endangering platform workers' jobs if indeed the business becomes unsustainable without cheap labour.

“In three years time, all these platform workers are reclassified as employees. And then you have a very different situation. Then you have works councils in certain countries where it's highly developed, and then the companies will have no choice. But then how will they survive without massive increases in prices to cover all the humans that will need to be involved in making these decisions at that point? [...] I mean, we haven't thought that far ahead. The companies have and they of course overexaggerated the impact this will have. But it remains to be seen. It would be a transformation.” (ETF, Pos. 45)

5.5. PLATFORM WORK VS. AGENCY WORK

The relationship of incumbent and disruptive sectors is exemplified in the positions of social partners of the staffing agency sector. WECGlobal are in favour of the Platform Directive:

“In many areas we see that the platform economy and the use of AI of some platform is creating competition that is almost unfair. Because if you do everything via AI and via a website compared to a traditional temporary employment agency, then you really have lower costs. They don't have staff, they have fewer offices and that's where we say a fair level playing field is important and must be achieved”. (WEC 2023, item 32, translated into English)

Yet UNIEuropa's expert sees an agenda of the sector that goes beyond the common interest in a “level playing field”.

“But I'm wondering about the agency companies.[...] they are trying to distinguish themselves from plain old platforms and probably they, they have this background of having been involved in social dialogue. And they [...] may, on the one hand, be interested in emerging as the European good guys or better guys or less bad guys if you like. And on the other hand, they still want to turn themselves into a more and more algorithm-driven sort of company at the expense of working conditions.” (UNI Europa2, Pos. 16)

This is in line with the sector organisation's suggestion to keep certain AI uses in job matching outside of the high-risk category in the AI Act, and also with the difference in views between WECGlobal and UNIEuropa on the actual uses of AM by staffing agencies.

5.6. STRATEGY

Unionists generally share a common vision “that the technology is helping the worker, not the other way round” (industriALL, Pos. 11). This entails the subjects of autonomy, skills, health and safety, and not least, the evolution of association and collective bargaining rights.

UNI Europa's interviewees describe a process of capacity building that entails

- awareness raising among member unions,
- stocktaking of national, regional or sectoral initiatives,
- building of networked capacities, and
- operationalisation of insights into demands to be fed into collective agreements.

Connecting AI/AM issues with existing legislation such as antidiscrimination law or the GDPR is also being pursued. Strategically, UNI Europa aim further to develop consultation and co-determination formats through collective agreements that are appropriate to ongoing technological change:

“not to just say [the works council] has been consulted once and then we introduce the system [...] we talk about the lifecycle of an AI application. [...] As soon as something new is added and maybe an application that is questionable, then you would need to consult again. And in this process, to have a kind of routine loop with the works council, that would be important and I don't think that is provided for yet in every agreement on digitalisation.”

Unionists see their allies centrally in the left and progressive groups in the European Parliament, civil society organisations that address privacy and human rights such as EDRI, and AlgorithmWatch or AccessNow, and the European Economic and Social Committee (EESC). However, mobilising consumers (who are being cast as allies by platform companies in fighting regulation (Rahman & Thelen, 2019) to prefer socially responsible platform services is not deemed to be an auspicious strategy.

“our trade unions have tried [...]in Scandinavia in particular, where there's more social consciousness: they've put out ad campaigns where where they've encouraged people to use companies that have collective bargaining agreements. So, [...] they would say, this is what you're paying for when you use this company, when you use this other company, you're not. Um, but I think even in Norway they're saying people don't really care. (ETF.m4a, Pos. 51)

ETF's interviewee envisions a double-pronged strategy towards platform companies of exerting European-level influence in both social dialogue and regulation and grassroots organising by national and local unions. The classification of platform workers as employees is a key prerequisite for that.

“We're talking about mobilizing workers. If they're organized, if they're employees, they can have collective agreements.” (Pos. 26)

Still, ETF's interviewee suggests that incremental efforts should not be neglected over the Platform Directive on which they are coordinating with ETUC and the other union federations:

“I think we need to be more strategic, look more long term, look at the day to day, [...] I mean, we're going to be waiting another three years if this directive even gets through before anything happens. So, [...] hundreds of thousands of platform workers would have had a crap work experience and just be very vulnerable for those years. So I think we have to focus more on that level”,

This means, addressing the bread-and-butter issues of platform workers as well as the questions of regulation.

5.7. SHAPING TECHNOLOGY

As we have seen, the lack of transparency is a key issue for trade unions in the uses of AI/AM. This affects the application and the actual operations of AI/AM in making decisions that affect workers, and the asymmetry of expertise between the company and the worker side as well. Indeed, knowledge gaps and lack of transparency present challenges for unions and worker representatives in preventing disadvantageous uses and shaping the technology in the interest of workers.

“The problem often isn't just that you don't know which data are being collected but you need to understand the systems. To be able to ask the right questions you would need a specialist know-how. That means we demand that information is given in easily understandable language [...].”(UNI Europa1, Pos. 77)

The issue needs to be approached from two sides: rendering information given by the employer accessible, and developing employees' and their representatives' expertise, directly and indirectly:

We also demand that worker representatives can get advice by data protection experts, IT experts etc. We know, even with best efforts, small unions don't have the capacity to have a data specialist or data advisor each. [...] So the option would need to be provided. That would depend on negotiating with the social partner, saying, we would like to join the debate on AI and accompany the implementation of the technology. For this, we need the expertise and we would need to buy that in and have neutral experts support the union or the works council and together analyse systems that are being introduced" (UNI Europa1, Pos. 77)

In some countries such as Germany, such an infrastructure has been established by the German DGB and its member unions since the 1980s, the so-called "Technologieberatungsstellen"⁷. However, there appear to be no contacts with that network, and scaling a similar structure up to a European level would apparently require more effort and resources than unions can muster on their own.

In algorithm-driven industries such as platform-based delivery services there is a further dilemma: demands for transparency and human oversight collide with employers' claims that automated decision-making is at the core of their business models and competitive edge:

"Within the platform directive we're trying to have human oversight on these decisions. So that's key to stop situations where a person's [...] employment is ended based on an algorithm as opposed to having some sort of human oversight. The platform companies are saying, well, this is strictly information we need for our business. We can't disclose this. Our rivals will use this information to optimize their earnings, etcetera, etcetera. So there's this ongoing discussion between the need for regulation and the companies saying we can't be regulated in this way because this is our competitive edge, this everything is done automatically" (ETF, Pos. 17).

While in favour of social dialogue and compromise, this interviewee is not overly optimistic that even through European regulation the Nordic and Continental European traditions of co-determination and shaping technologies are likely to be transferred into the data-driven and disruptive parts of the platform economy:

"at the same time, I don't see the union side negotiating or making a co-decision on how the algorithm works. I mean, I don't see that. I don't see it happening. I mean, there's no culture like there is in Germany [with] works councils and co-decision." (Pos. 44).

In between regulatory requirements of transparency, technological R&D aiming for "explainable" AI, and both strong interests of companies (possibly diverging between tech providers and users) in opacity and possible technological limitations of transparency and human-in-control, the shaping

⁷ <https://www.tbs-netz.de/startseite>. The network of advice centres also has one working group on AI.

of technologies in democratic societies and workplaces appears to be both a necessity and a challenge.

6. CONCLUSIONS

It appears that European social partners address the subject matter of AI and AM in ways that are similar to their general approaches to digitalisation. However, some challenges are thrown into sharper focus. As we have seen, it is not just trade unions that have difficulty in addressing cross-sectoral changes in which technologies, changing political economies of digitalising societies (Thelen, 2019), and restructuring of value chains interrelate in a globally volatile environment. Employer organisations have difficulties in aggregating their members' interests as well. Emerging business opportunities and options are unequally distributed among companies in various countries, regions, sectors and those of varying sizes. Key technology players and platform companies are influential on the European level but appear to be outside the reach of established employer associations. In this context, employer organisations represented in this study tend to contain the issues of AI/AM at work, downplaying its actual diffusion and largely opposing further European regulation on the grounds of the burden it puts on companies to comply. It is business and employer organisations with "special interests" such as WECGlobal and the Digital SME Alliance who favour some regulatory support for their members' interests for both strategic and normative reasons. However, these associations would like regulation to be on the soft side, leaving space for their constituencies to develop ethical and human-in-control approaches as they see fit. There are also individual companies that enter into social dialogue or continue it such as Just Eat Takeaway or Teleperformance, aiming to distinguish themselves as the "good guys or better guys or less bad guys", as one union interviewees put it. Nevertheless, employer associations apparently rely on some slowing down of the process of regulation, pointing out that in most established industries uptake of AI and AM technologies is slow and incremental. This, however, is in strong contrast with the acceleration in competing for market shares that both AI tech providers and platform companies are pursuing in recent years. It is SMEs who are most aware of these tensions.

Compared to employer and business organisations, unions present a more coherent picture. Indeed they are relying much on their cross-sectoral umbrella organisations, and ETUC and ETUI are providing and organising considerable expertise and interest aggregation. They also rely on national unions' and in the platform economy, strongly on bottom-up organising and collaborations of unions with emerging bottom-up initiatives. Unionists also have a sense of urgency that cannot rely on slow-moving EU regulation at large but must set steps in social dialogue on all levels simultaneously. Indeed, social dialogue and tripartite policy initiatives have been influencing the Platform Directive especially, and the coordinated contacts with the European Parliament brought the AI Act to pay more attention to the world of work. However, initiatives for a Directive addressing AI and AM in the workplace at large will require ongoing political pressure, especially in the light of the "regulation fatigue" expressed (strategically) by the business side that chimes with widespread political sentiment in many European countries. It remains to be seen how the interdependent web of bottom-up, national, and European initiatives of social dialogue, civil society and policy will manage to aggregate the diverse "old" and "new" interests and values of working people affected by the cross-cutting AI and AM technologies. They clearly need all the cooperation and mutual help they can get – and very likely, the division of policy domains in Europe between market regulation, employment and workplace regulation, and industrial policy needs to be complemented by more integrated views and ways to develop them.

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