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Labour Rights &
The Digital
Transition

28 October 2021

EXPANDING THE SCOPE OF LABOUR RIGHTS - A PARADIGM SHIFT

etui.
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BACK TO THE
ORIGINS:

THE ORIGINAL
FUNCTION OF
LABOUR LAW TO
ADDRESS TODAY'S
WORKERS
VULNERABILITY

The problems

The emancipatory rationale of
labour law

A paradigm change

Possible regulatory solutions

Q&A?

The autonomy
narrative

Disguised method
of control

Apparent obsolescence
of traditional normative
concepts

Blurred lines
between self-
employed and
employees

THE PROBLEMS

What are
business assets?
Is AI an asset?

Labour market
monopsonies and
downward pressure on
labour conditions

Evolving nature
of company
and of its
business models

DIGITAL INNOVATION IS CHALLENGING SOME OF THE FUNDAMENTAL
PRECEPTS OF LABOUR LAW

REINVENTING THE
WHEEL IS NOT
NECESSARY



- Working conditions shall not disproportionately reflect the interest of the dominant party
- Employers shall not extract profits from lowering working conditions
- Limits to the tendency of businesses to compete on labour costs

Statutory labour law:

Limiting the freedom of contract of the business owner

Collective labour law:

Uplifting the contractual power of the weaker party through collective bargaining

IT IS TIME TO
REALIGN LABOUR
LAW WITH ITS
EMANCIPATORY
RATIONALE

The current/traditional scope of labour rights does not effectively prevent contractual arrangements which evidently reflect the economic and contractual power unbalance among the parties

Platform economy is a prime example

A 'NEW'
PARADIGM



SOME ROW IDEAS !

Labour rights when the service performed:

IS PREDOMINANTLY PERSONAL WORK – LABOUR INTENSIVE

- Unless was provided in the context of the business activity habitually operated

Example: translator working through a crowd-work digital platform

CONVERGES IN THE ECONOMIC ACTIVITY OF THE RECEIVER (THE BUSINESS)

- The service performed is an integral part of the production process that enables the business contractor to conduct its business and perform its business activity / provide its services

Example: lorry driver or parcel deliverer that executes the delivery for a digital market platform that offers delivery services as part of its market offering

IS PERFORMED FOR A BUSINESS THAT OFFERS THE SAME SERVICE OR PRODUCT ON THE MARKET

- The contractor could be considered a competitor of the provider
- Limited to wage setting – residual category; possible quantitative threshold

Example: baker that provides cakes that are sold to customers as package of groceries by an online grocery shopping platform / small milk producer selling its milk to a large dairy product conglomerate

EVALUATING POSSIBLE REGULATORY SOLUTIONS (1)

NORMS SPECIFIC TO PLATFORM WORKERS

1) **Platform workers as a third category**

Not desirable. No proper emancipatory function; dumping and downward pressure; risk of progressive generalized lowering of working conditions

2) **Expansion of the status of ‘employee’ to platform workers**

See Spanish presumption; option of European Commission DG EMPL and DG COM

Partial solution – better than nothing. Might not cover all workers (SP); anchored to subordination

EVALUATING POSSIBLE REGULATORY SOLUTIONS (2)

INTERVENING ON THE NOTION OF WORKER

1) **Broadening the criteria used to define 'worker'**

CJEU FNV Kunsten, Yodel.

Not a resolving approach - Still anchored to notion of control and subordination; lack of automatism – judicial avenue.

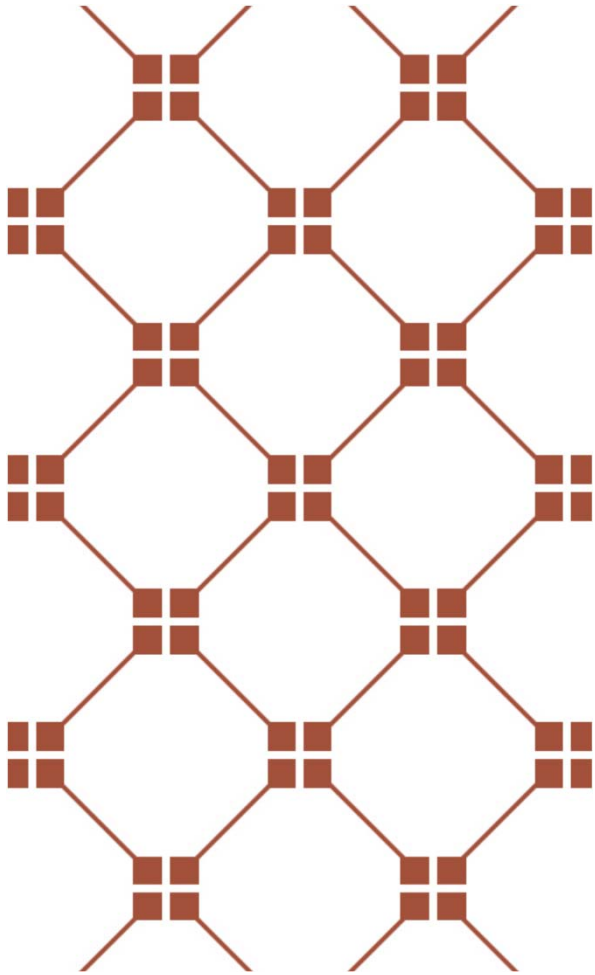
2) **Person whose labour activity is performed in favour of a contractually and economically dominant party**

Paradigm shift but - based on the three proposed criteria; lack of automatism – judicial avenue; classificatory problem persists.

EVALUATING
POSSIBLE
REGULATORY
SOLUTIONS (3)

APPLICATION OF
LABOUR RIGHTS
REGARDLESS OF
STATUS

- 1) **Full body of labour rights when certain conditions**
Italian eterorganizzazione.
Not yet - Scope still too narrow; judicial avenue
- 2) **Certain rights and/or for a certain category**
SP in relation to AI and IT for platform workers in delivery
Better –good automatic extension; but scope too limited
- 3) **Whenever Algorithmic management is introduced**
Service provider can still submit that any of the three criteria of the proposed paradigm shift exist
Even better ! – AI tools as modern means of production



THANK YOU!
