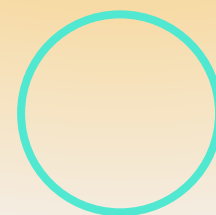
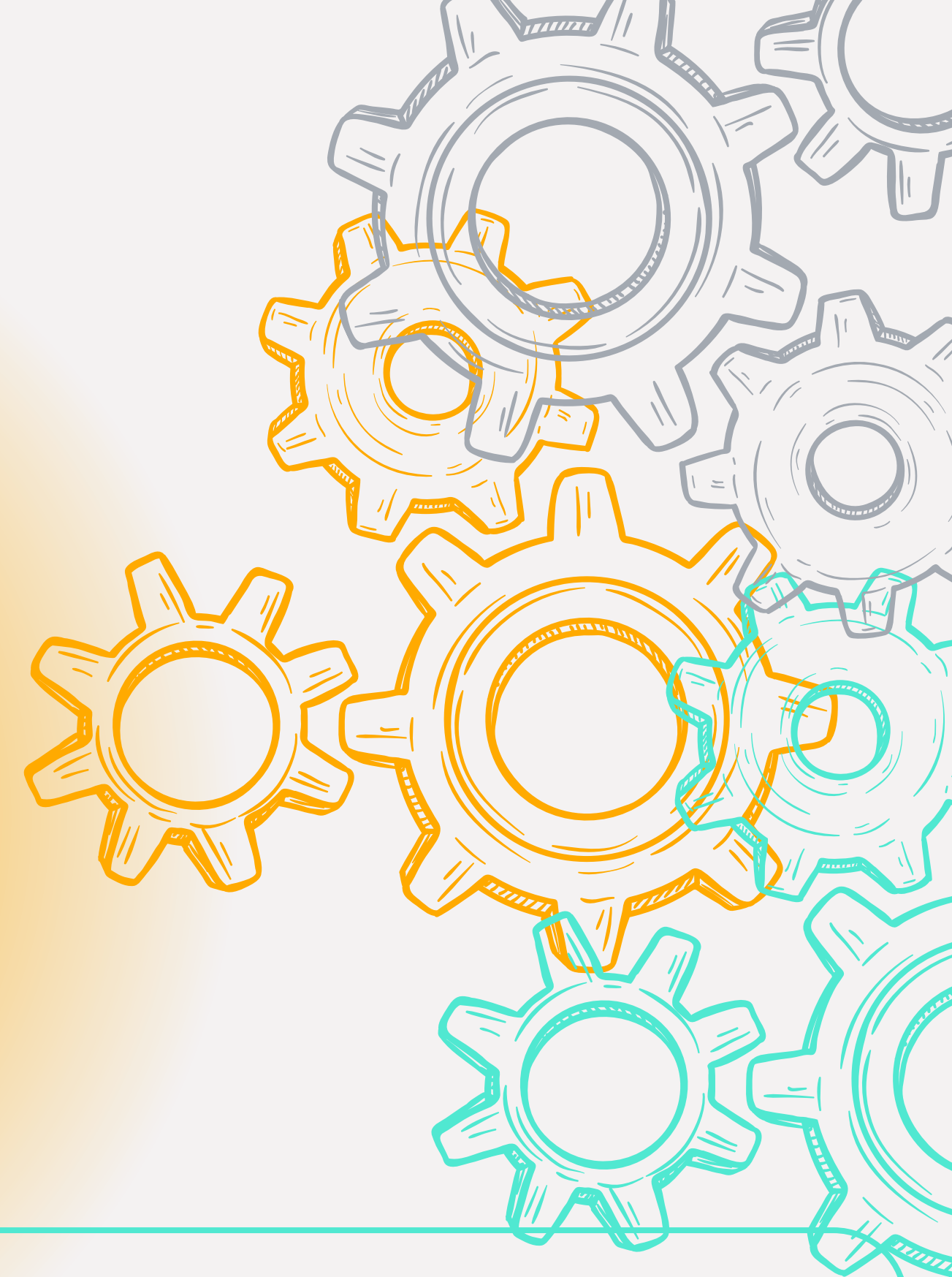


# Strategic litigation and collective bargaining in the platform economy: what interaction?

Enforcing workers' rights in Europe through strategic litigation

Frankfurt, 20 October 2023



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# Agenda

- Background
- On the definition of Strategic Litigation
- The Strategic Litigation-Collective bargaining nexus
- Insights from the Platform Economy
- Conclusions



Nothing new under the sun: no tool alone is effective enough!

**Foreword and  
Spoiler!**

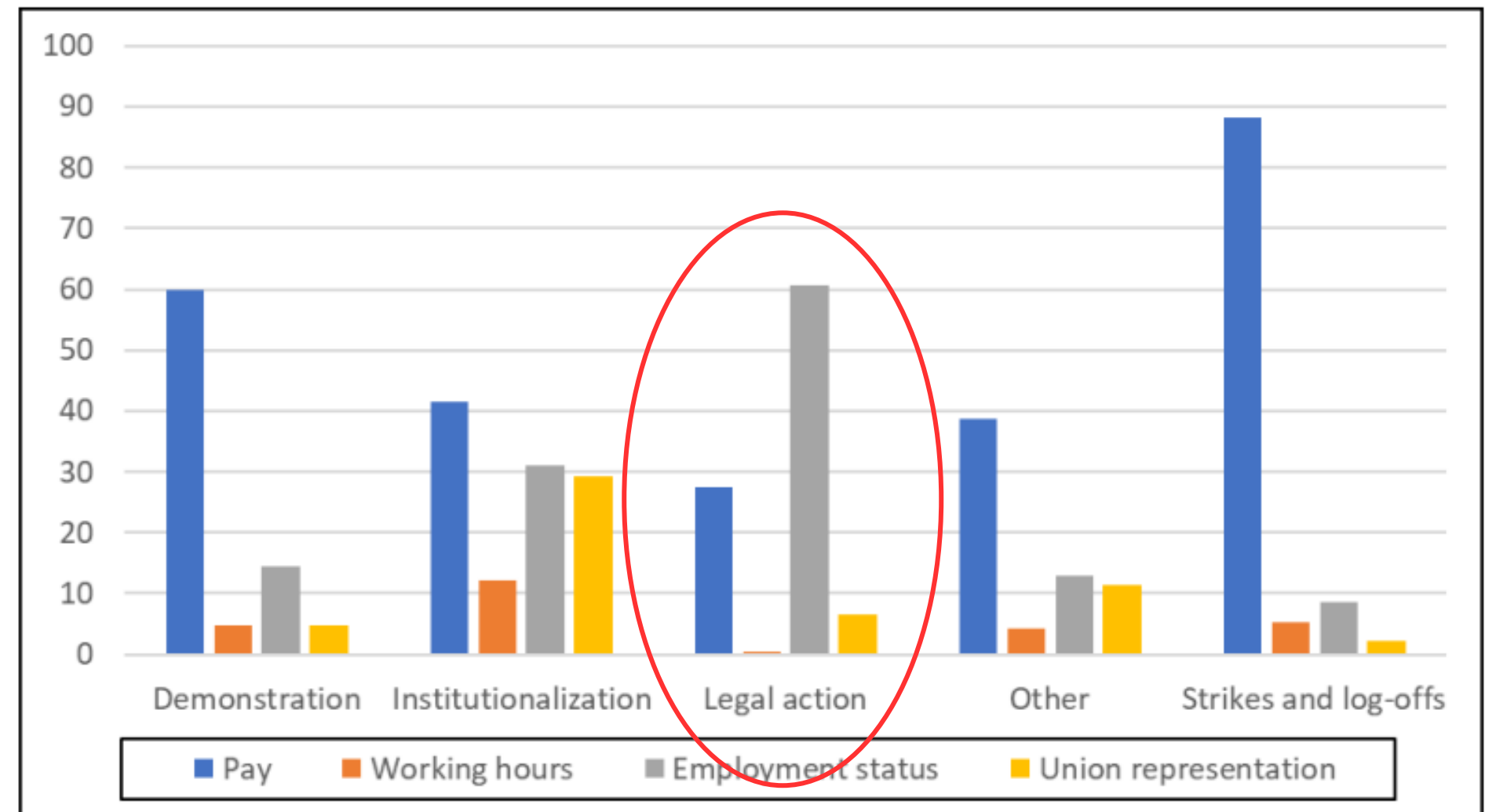
# 1. Background: Litigation in the Platform Economy

► Annex Table 3. Types of protest event

Type of protest	Frequency	Percentage
Demonstration	457	36
Institutionalization	58	4.6
Legal action	201	15.8
Other	70	5.5
Strike and log-off	483	38.1
<b>Total</b>	<b>1269</b>	<b>100</b>

Globally...

► Figure 10. Most common type of issue by type of protest (%)



**Bessa, I., Joyce, S., Neumann, D., Stuart, M., Trappmann, V., Umney, C.** 2022. *A global analysis of worker protest in digital labour platforms*, ILO Working Paper 70 (Geneva, ILO).

# 1. Background: Litigation in the Platform Economy

► Annex Table 4. Collective organizations in protest events

Collective organization	Frequency	Percentage
New union	166	13.1
Traditional union	218	18.3
Worker collective	247	20.4
Informal group of workers	1011	79.7
Law firm	27	2.2
Other	113	9.1

Note: Percentages do not total 100 because events may involve multiple actors.

**Bessa, I., Joyce, S., Neumann, D., Stuart, M., Trappmann, V., Umney, C.** 2022. *A global analysis of worker protest in digital labour platforms*, ILO Working Paper 70 (Geneva, ILO).

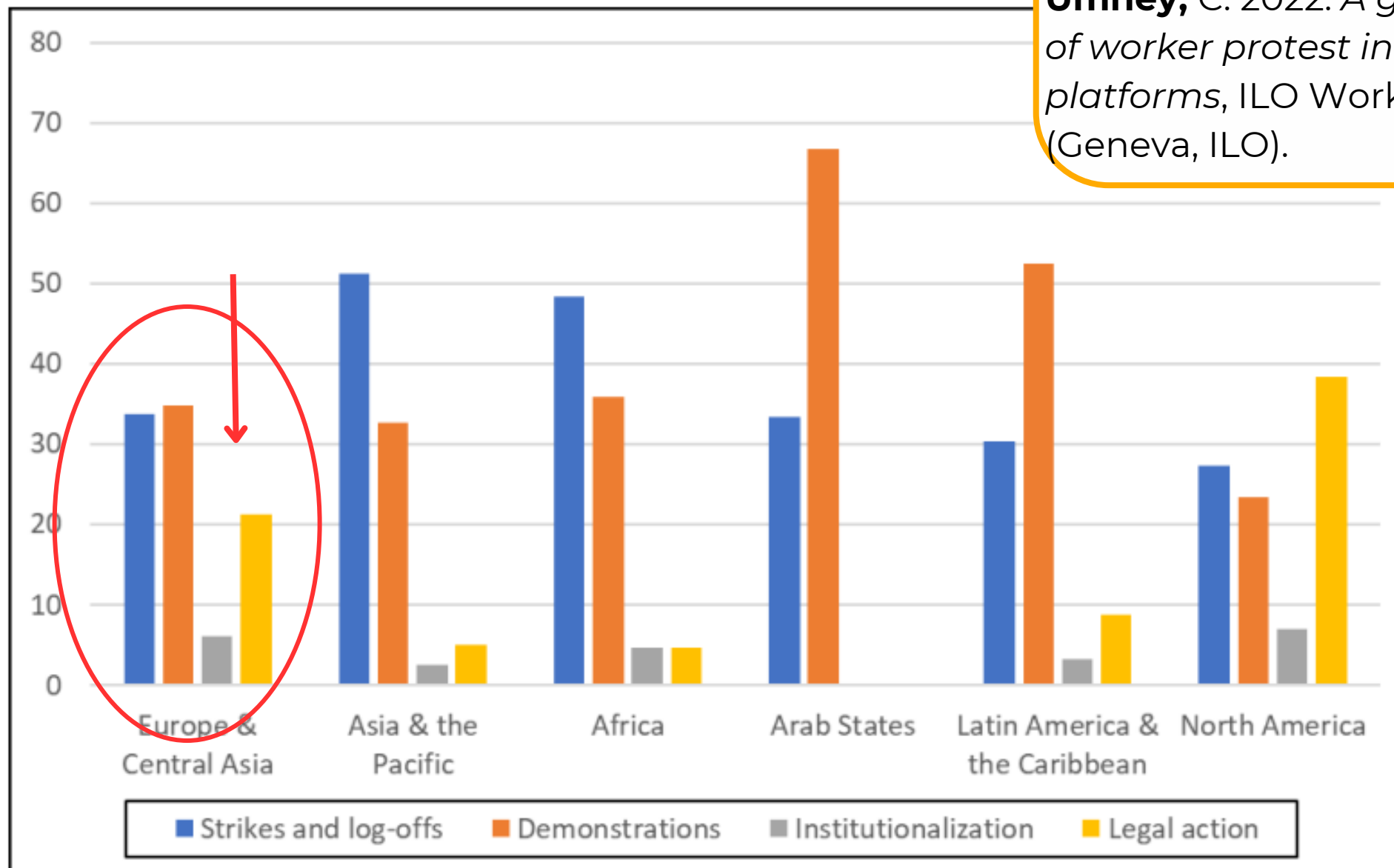
“Protests where self-organized groups appeared to be absent tended to be those where trade unions were using formal institutional means to contest platform practices, such as by **challenging the legal status of workers through the courts** or seeking regulatory rulings on collective bargaining arrangements [...] Legal actions also included cases where individual workers – rather than unions – have challenged a platform through the courts independently of any collective organization. Protest events of this type are most likely in countries with established institutional and legal frameworks for managing labour relations and with clear and enforceable individual labour rights. **Across all the legal cases that we found, traditional unions, new unions and worker collectives all featured in between 15 and 20 per cent of cases.**” (p. 21)

# 1. Background: Litigation in the Platform Economy

... and in Europe

Bessa, I., Joyce, S., Neumann, D., Stuart, M., Trappmann, V., Umney, C. 2022. *A global analysis of worker protest in digital labour platforms*, ILO Working Paper 70 (Geneva, ILO).

► Figure 6. Variation in type of protest, by region (%)



“Effectively, **a majority** or even all of the platform work-related cases decided so far have not been brought by the individual workers concerned (but rather institutional actors, **trade unions** or competitors) in countries such as Austria, Denmark, Ireland, Luxembourg, Norway, Sweden and Switzerland”

**Christina Hiebl**, *The legal status of platform workers: regulatory approaches and prospects of a European solution*, Italian Labour Law e-Journal, Issue 1, Vol. 15(2022), p. 15

# 1. Background: Collective bargaining in the Platform Economy in Europe

Figure 2 Geographical distribution of the initiatives

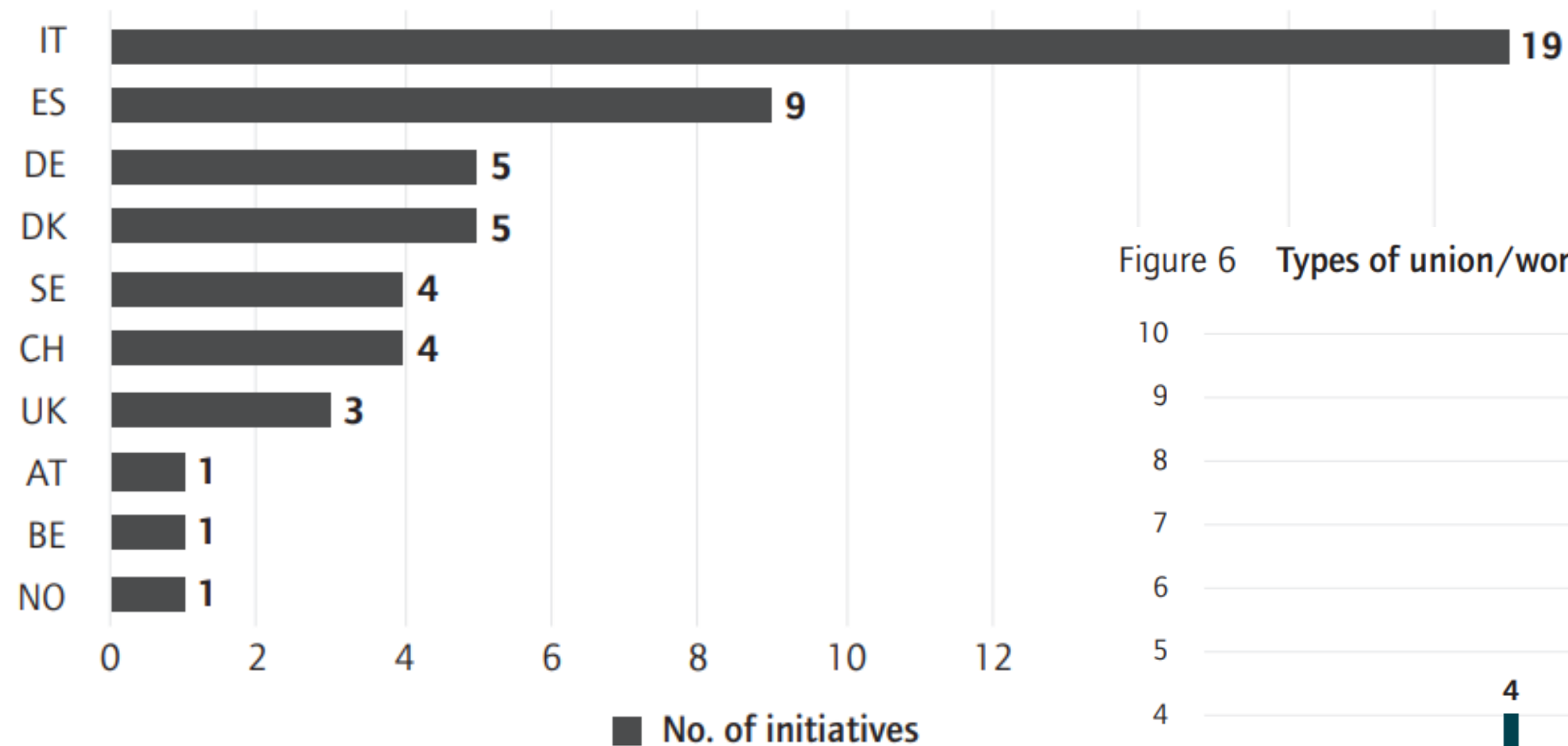
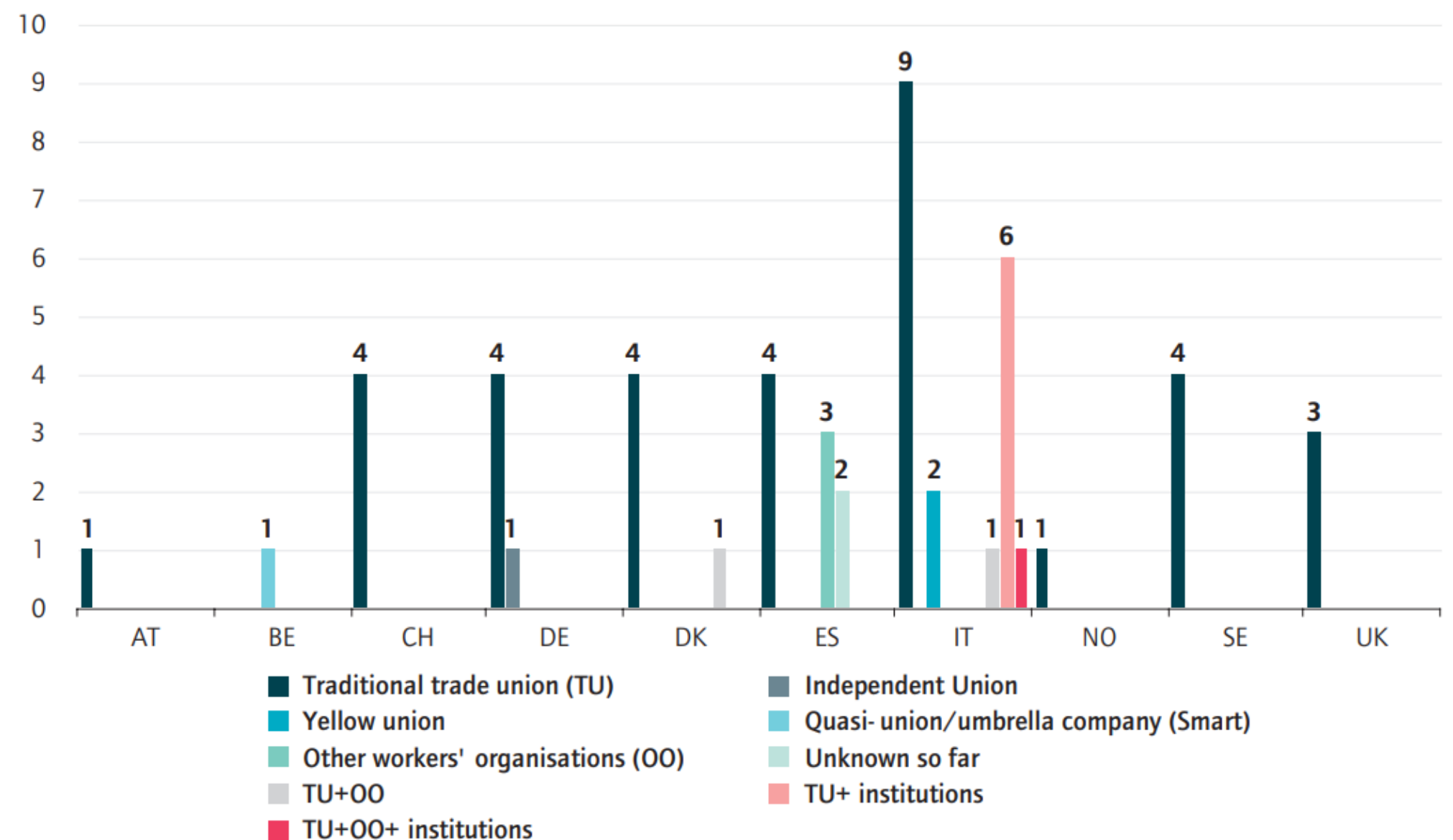
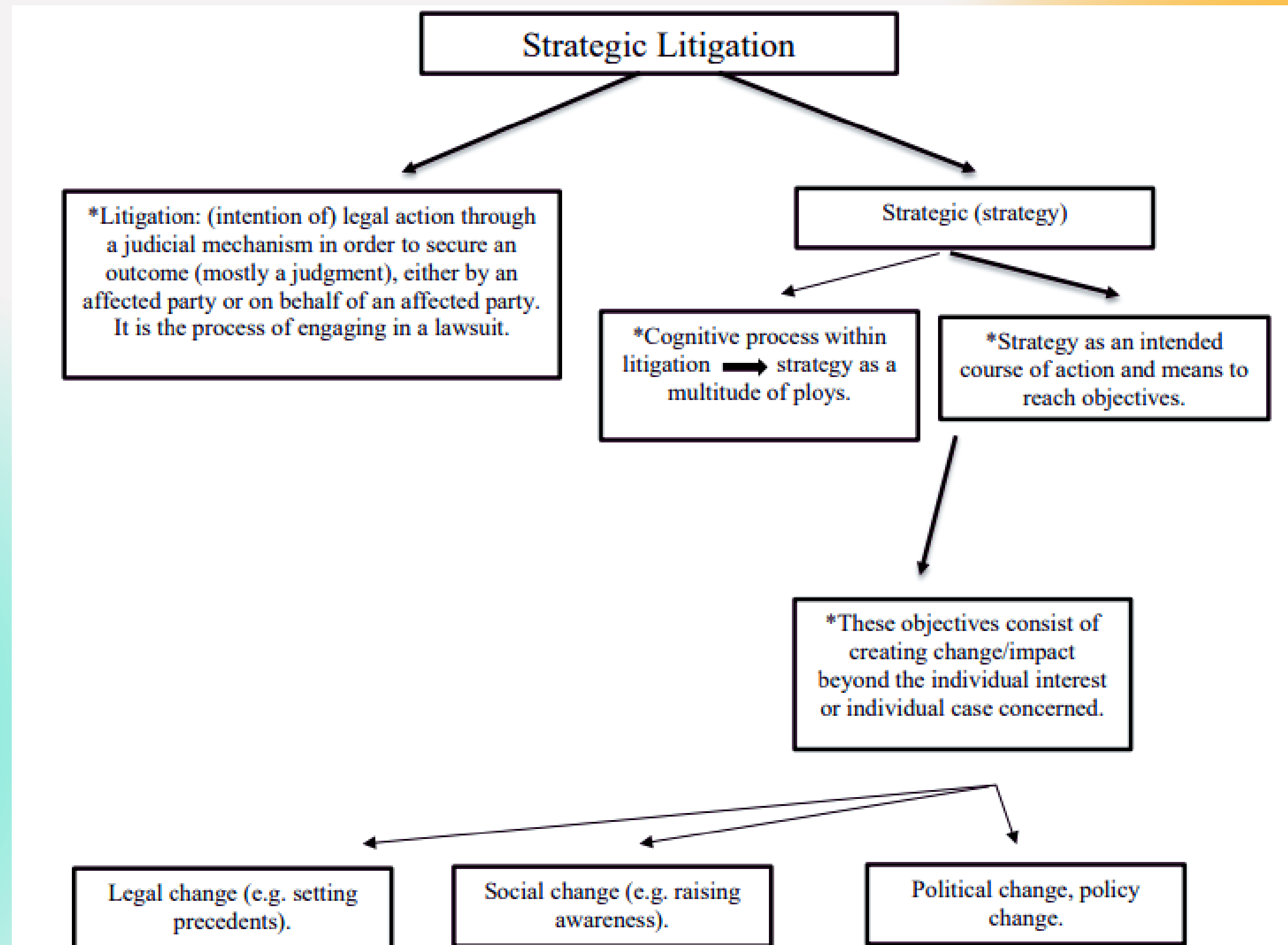


Figure 6 Types of union/workers' organisations and institutions involved per country



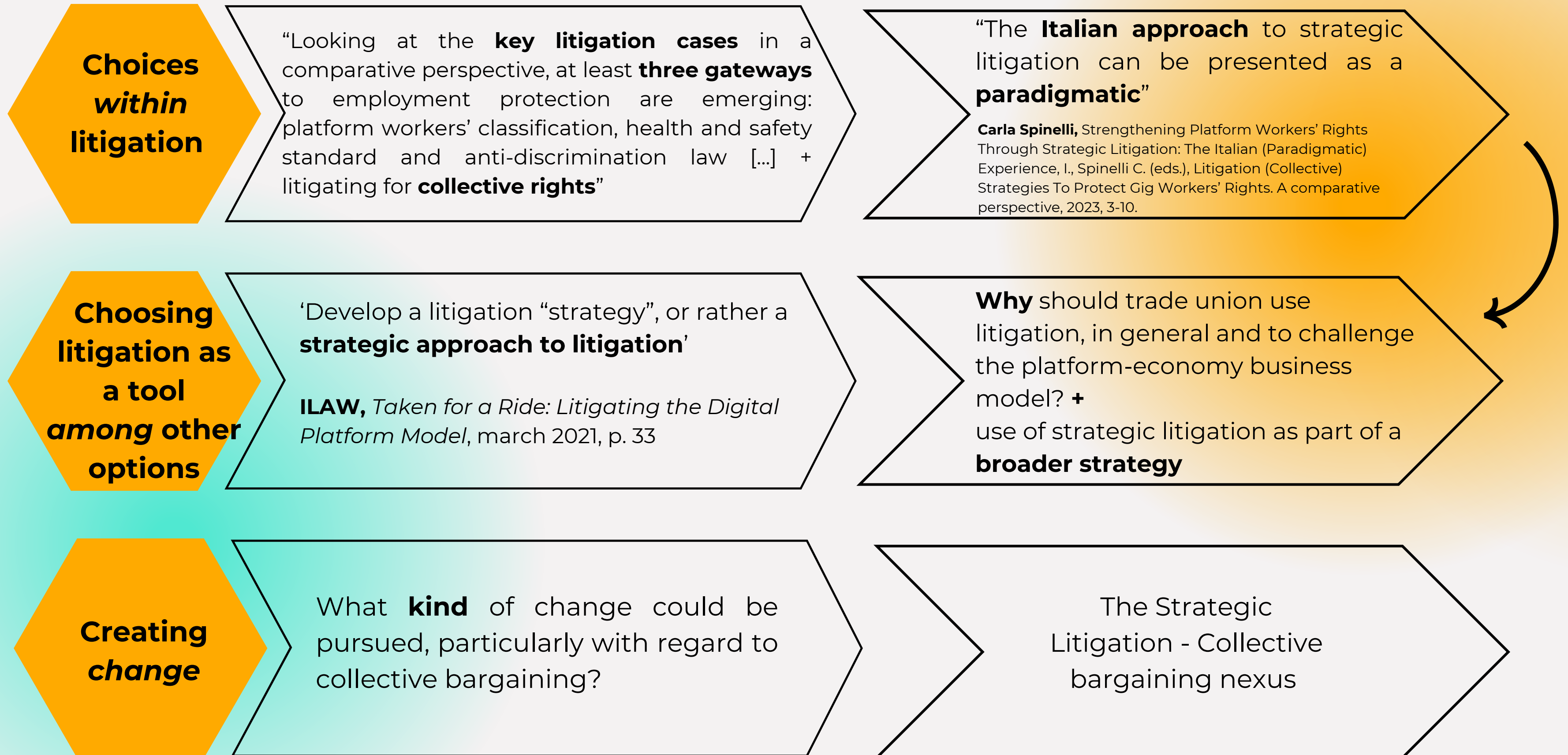
**Mariagrazia Lamannis,**  
*Collective bargaining in the platform economy: a mapping exercise of existing initiatives,*  
 ETUI, Report 2023.02

## 2. On the definition of Strategic Litigation: the reference definition



**KRIS VAN DER PAS,**  
*Conceptualising strategic litigation*, OÑATI SOCIO-LEGAL SERIES, VOLUME 11 ISSUE 6(S) (2021), p. S126

## 2. On the definition of Strategic Litigation: ... looking at Labour Law and the Platform Economy





### 3. The Strategic Litigation- Collective bargaining nexus

#### Collective dimension

Both want to achieve 'collective claims', aimed at a change that goes beyond the individual interest/ case: e.g.,

- changing the working conditions of the workers of an industry/firm/area;
- impacting the relationship between social partners;
- affecting the awareness/interest of legislator, public opinion, other workers on one/more issue/issues, etc.

**DON'T FORGET**

1. Possible negative effects of resorting to strategic litigation;
2. Importance of a Judicial/IR system conducive/not conducive to Strategic Litigation

#### Possible concrete goals to pursue in relation to collective bargaining

- Threat of litigation/litigation to make parties seat/seat again at the negotiating table;
- Gaining some protection while waiting for the conclusion of a collective agreement, especially when difficult to reach;
- Enforcing the implementation of a collective agreement;
- Clarifying the interpretation of one or more clauses of an agreement ...
- ... and maybe also prompt its modification when the interpretation is not appreciated by employers;
- strengthening the position of trade unions in terms of bargaining power, also by increasing their representativeness among workers etc.

## 4. Insights from the Platform Economy

**Challenging the enforcement and/or interpretation of a collective agreement:**

the *UGL-Assodelivery* 'case'  
(Italy)

**Successful litigation (on the workers' side) as a driver for collective bargaining:**

*Takeaway.Com Express Italy agreement*

*'We believe the Scoober employed courier model is the most sustainable, as evidenced by court judgments against the independent contractor model in these countries'*

*Uber Eats agreement in Switzerland*

**Case law establishing the application of a collective agreement as a consequence of the (correct) qualification of the employment relationship:**

*Many cases across the EU, e.g., Amsterdam Court of Appeal in 2021: the collective agreement for professional freight transport, applies to Deliveroo riders, since they were found to be employees*

**Threat of litigation/litigation to make parties seat/seat again at the negotiating table**

+

**strengthening the position of trade unions in terms of bargaining power:**

the *GMB-Hermes* agreement and the *IWGB* strategy



**Collective bargaining to prevent litigation, both in a positive and negative way:**

- changing working conditions to avoid future litigation;
- circumventing case law and/or preventing the application of another CA by signing a new CA.

## 5. Conclusions

- **Not** a “hollow hope” (there have been some major successes)....
- .... **but** measuring the impact of legal strategies in a **broader context** (social, political, IR): which goals did the workers and their representatives want to pursue *more generally* (i. e., not only through litigation)?
- This means **not forgetting** the integration of social and legal dynamics: strategic litigation to ‘mobilise the law’ and to ‘collectivise’ and mobilise workers ----> legal and para-legal goals of SL

### In any case...

No tool alone is effective enough for a **structural** change:

- 1.(still) need for **regulatory intervention** by law and collective agreements;
2. (still) need for **other forms** of collective action (collective bargaining, political lobbying, media campaigning, pressure on local authorities etc.).



THANK YOU  
SO MUCH!

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