

TransFormWork 2 / Project 101145650



Social partners together towards a better and effective regulation of Artificial Intelligence for a just transition to the work of the future

The case of Italy

S. Leonardi, E. Como, D. Di Nunzio, C. Franchi (Fondazione Di Vittorio Italy)

**First European Round Table
Dublin, 15 October 2024**

Algorithmic Management and AI in the Italian context

The market

- In 2023, the AI sector reached a value of 760 million euros, marking a 52% increase compared to the previous year. There are about 700 start-ups, 120 of which were born in 2023, and important infrastructures of excellence, such as the Bologna's Technopole, where "Leonardo" was inaugurated in 2022.
- The growth of AI is still largely linked to 'traditional AI' and the companies interested are mostly those that had already adopted digital innovation processes and AI projects
- The main obstacle to the full development of AI is the relevant presence of SMEs. The AI market is mostly concentrated in larger companies (90%). Among medium and small enterprises and in the public administration the percentage is much lower: only 18% have AI projects under their belt. Only 6.2% of Italian companies with at least 10 employees have introduced AI-based solutions.

The employment

- A sudden labour substitution effect seems now unlikely, due to the strong presence of SMEs. Only 23% of the workforce is employed in large companies and only 6% of them have so far been replaced by AI.
- Looking ahead, the *Politecnico* of Milan estimates that 3.8 million jobs could be automated between now and 2033. About $\frac{3}{4}$ of Italians express fear of AI, especially because of the possible impact on employment. Only 17%, however, are firmly against the use of AI in the world of work.
- The number of platform workers is increasing: 565.000 people (1.5% of the population aged between 15 and 64), usually self-employed, precarious and low paid. Less than 17% have an employment contract.
- Just under half of the population aged 16 to 74 in Italy has basic digital skills (45.7%), and so the workers. The gap with other European countries is quite significant, placing Italy among the lowest-ranking countries in Europe.

Relevant legal framework and Government's plans for the implementation of the EU AI Act Regulation

Art. 4, Law 1970, n. 300 (Workers' Statute), modified by art 23, Decree-Law 2015, n. 151

- before modification: absolute prohibition of remote controls
- Then allowed *"for organizational and production requirements, work safety and the protection of company assets and may be installed by collective agreement with trade unions"*
- still not allowed for 'work performance' and for 'entry and exit'

Law Decree 3 September 2019, n. 101

- labor protections and presumption of subordinate employment relationship for digital platform workers

Law 11 September 2020, n. 120

- digital identity
- digitalisation of public administration

AI Act

- still not transposed/applied

Bill 1146 Provisions and delegation to the government regarding Artificial Intelligence

- no additional cost
- no involvement of TU
- data collection permit
- National Agency in control

National social partners' policies related to AI and algorithmic management

Employers

- A “cultural renewal” is needed, as *“it is no longer possible to imagine the managing the Fourth Industrial Revolution with the old tools of Fordism and its industrial relations, standardized on a sectoral or cross-sectoral basis”* (Federmeccanica).
- The importance of an “anthropocentric” perspective (Confcommercio)
- Promoting the training of workers and employers on all this matter
- *“Avoiding that the classic models of concertation of national sector contracts and industrial relations hinder the development of AI, identifying it as a battleground between the social parties”* (Confindustria)

Trade Unions

- *“Let’s negotiate the algorithms”* (CGIL, 2018); let’s negotiate their impacts (CISL, 2024)
- To update the sectoral agreements where relating to I&C rights, adapting them to the new challenges of the IA;
- To update the classification of professional profiles, regulating the figures included in the process of development, construction and work with the algorithm;
- To monitor, through union reps in the workplace, the programming phase of the algorithms, to avoid the risk of discriminatory applications
- To designate a workers’ delegate for the data issues
- To affirm everywhere the human in control principle
- To oblige companies to inform workers about the use of AI systems, as a decision-making support for the employer
- To negotiate the redistribution of the increased productivity and benefits (often huge), driven by the AI and the workers’ data elaboration

Company-level practices and workplace outcomes: benefits, opportunities and challenges of AI and algorithmic management

- **Work monitoring, individual assessment and responsibility.** Since the *Workers' Statute* of 1970 (Article 4), the workers are protected from the use of technologies which might represent an intrusion and a remote control, considered offensive of their privacy and dignity. All employers adopting work systems or ICTs potentially at risk of such a direct or indirect intrusion will be obliged to inform and consult the shop stewards, till negotiating its installation and use. This is in line with the Platform Workers Directive (Articles 9, 10, 13, 17, 20) and with the GDPR (Article 88).
- **Work intensification and workloads.** This is one of the main concerns for unions in the workplace: disclosure, transparency and involvement. The so-called “Transparency Decree” (2022) and “Work Decree” (2023) give the workers and the unions the right to be informed – but not consulted or empowered of codetermination prerogatives – about the functioning of the “integrally” automatized decisional systems, that is when the *human-in-control* principle is not applied.
- **Algorithmic power, management and support.** The AI is largely based on impersonal work management, through rating and ranking the workers' performances. In 2021, a sentence of the Court of Bologna has ruled that the algorithm used by Deliveroo to schedule riders' work sessions, was anti-union discriminatory, having counted a strike in lowering the rankings. Another sentence from the Court of Palermo (2023), on initiative of the CGIL atypical workers union (NiDIL), contested the algorithmic management used Glovo-Foodinho, for a religious discrimination affecting Jewish workers, unavailable to work on Saturday
- **New digital technologies and new risks.** The use of new technologies implicates new physical and psychosocial risks. This is in Italy object of a dense, stratified and broad legal and contractual protection; with workers' reps specialized on that, in every workplace
- **New tools, new skills, new professions.** The relation between digitalization and employment is difficult to analyze in its long-term impacts and most part of the studies underlines several degree of changes, with risks and opportunities related to the new competences, new professions and, also, the risk of reduction in the number of workers in some sectors.

Existing collective agreements, practices and algorithmic management

National industry-wide collective agreements

- All NCLAs rule the working from remote, volunteer and with the right to disconnection
- The 2022 TLC NCLA provides training courses to inform the workers about the data generated by AI models, aimed at identifying and evaluating the level of service offered to customers
- The 2023 NLCA in the chemical-pharmaceutical sector has a chapter with guidelines to facilitate investments in digital innovations and accompany the changes
- The 2023 NLCA in the banking sector last 2023, has established a bilateral and joint national committee (“*Cabina di regia*”) on the impact of new technologies/digitalization in the sector. The at the EU level Joint Declaration about IA,
- The 2024 NCLA for the “shoppers” introduce the obligation for the client to inform shoppers and trade unions of the use of automatic decision-making designed to provide relevant information, with the foreseen possibility of starting a discussion between the parties on the merits.
- The TLC unions ask, for the new NCLA, the workers’ right to designate a delegate specialized in the data management

Company-level collective bargaining

- From the sample of 1.400 texts examined in the 4th Report on decentralized collective bargaining, edited by CGIL and FDV (9/2024) , those evoking explicitly the AI systems are very few.
- According to another CGIL survey (2021), various experiences have concerned AI applications, like: autonomous vehicle, autonomous robot, intelligent objects, virtual assistant and chabot, intelligent data processing; image and language processing.
- Some agreements (ENEL, Wind, Tim) refer to the consensual adoption of software potentially at risk of remote control and intrusion over the workers,
- In logistics (Fedex), the geo-localization systems cannot be used to exert pressure on employees to push a faster performance or for constantly tracking road itineraries
- In call centers (Afiniti), an agreement was signed for regulating the use of AI where the algorithm search the fittest operator for the already profiled customer
- The correlation between IA, data protection and H&S issues is quite widespread in a number of CLAs in the energy sector

Some conclusions

- Traditional actors of social dialogue and industrial relations represent a key factor in managing the digital transition (AI included) that are massively affecting the ways goods and services are produced and marketed.
- Both social partners are required to update their strategic repertoires, with more collaborative and *win-win* approaches, based on the workers' and unions' involvement. This is fundamental to prevent the companies from a use of the AI disruptive for employment and detrimental for working conditions.
- Collective bargaining and participation – through reliable, exhaustive and timely I&C rights – play a crucial role in the consensual management of technological innovation and its consequences. Anticipation of changes and codetermination.
- The big issue of the bogus self-employed in the Gig/Platform economy. Italian trade unions are also making extensive use of strategic litigation, through recourse to the Courts, especially for the recognition of the status of subordinate workers, for those who are falsely self-employed (see the food delivery riders and platform workers), and for the full application of legal and contractual rights, of information and consultation.