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Timeless Rights, New Tools: Technological Transformations of Trade Union Activity in the Italian Private Sector

Marianna Russo [*]

Abstract. Even from a collective perspective, the combination of technology and work is significant. Trade unions play a key role in improving the labour conditions of remote workers through collective bargaining. They are also called upon to be protagonists of change, using technology themselves to carry out their activities and prerogatives in the workplace. In this context, the effectiveness of the digitalisation of trade union organisations may serve as a litmus test for the level of technologisation in the workplace. This paper aims to analyse the stakeholders, regulations, and tools involved in the technological transformation of trade union activity in the Italian private sector, identifying both its potential and the most insidious challenges.

Keywords: *Trade union activities; Italian Private Sector; Technological Transition; Remote Work; Digital Tools.*

1. New Technologies and the Collective Dimension of Work: Players, Rules, and Tools

The technological transition is reshaping our lives and, consequently, the way we work. This is not necessarily a negative development, as the interplay between work and technology holds considerable potential. Digitalisation paves the way for new forms of work organisation and job opportunities, fostering emerging sectors and enhancing work-life balance through innovative technological tools. However, it simultaneously raises a number of concerns

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regarding labour rights, psychosocial risks[1], social protections, and extensive technological unemployment[2]. In this context, technological work serves as both a catalyst for opportunities and a source of stress for established legal concepts[3], as evidenced by academic discourse and jurisprudence in recent decades[4].

The very notion of technological work remains contentious. The concept, as gleaned from various international documents[5], traditionally pertains to employees who utilise integrated telecommunications systems and, at least occasionally, perform their duties outside company premises, that is, teleworkers. Nonetheless, its scope should be much broader, encompassing all workers who primarily rely on digital devices, regardless of the legal classification of their employment relationship[6], even if they carry out their work on company premises.

A noteworthy advancement in this regard is found in the European Parliament's resolution on the right to disconnect[7]. Although the preamble of this resolution contains numerous references to telework, Article 1 of the accompanying directive proposal stipulates that its provisions apply to all workers who use digital tools for work-related purposes in both the public and private sectors, irrespective of their employment status or work arrangements. This could arguably be interpreted as a significant shift in trend.

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[1] EUROFOUND, ILO, *Working anytime, anywhere: The effects on the world of work*, Publications Office of the European Union, Luxembourg, and the International Labour Office, Geneva, 2017, p. 37.

[2] OECD, *Automation and independent work in a digital economy*, in *www.oecd.org*, 2016; A. MCAFEE, E. BRYNJOLFSSON, *The Second Machine Age: Work, Progress, and Prosperity in a time of brilliant technologies*, New York, 2016; E. LACKOVA, M. RUSSO, *Regulating (Un)Employment Effects of Automation. Challenges For Employee-Oriented Technological Transition*, in *Hungarian Labour Law E-Journal*, 2022, no. 2, p. 25.

[3] "The relationship between innovation and employment is a 'classical' controversy, where a clash between two views can be singled out": V. VAN ROY, D. VÉRTESY, M. VIVARELLI, *Technology and employment: Mass unemployment or job creation? Empirical evidence from European patenting firms*, in *Research Policy*, 2018, no. 47, p. 1762. See also A. DONINI, *Il luogo per l'esercizio dei diritti sindacali: l'unità produttiva nell'impresa frammentata*, in *Labour & Law Issues*, 2019, no. 2, p. 100.

[4] For a broader overview and references see M. RUSSO, *Twenty years of EU agreements on remote work from 2002 to 2022. What next?*, in *Freedom, Security & Justice: European Legal Studies*, 2023, n. 3, p. 215.

[5] See EUROFOUND, ILO, *Working anytime, anywhere*, *cit.*; ILO, *Teleworking during the Covid-19 pandemic and beyond. A practical guide*, ILO publications, Geneva, 2020; ILO, *Working from home: from invisibility to decent work*, ILO publications, Geneva, 2021.

[6] Subordinate or self-employed workers.

[7] Issued on 21.01.2021.

However, it is important to acknowledge that remote work—in its various forms and methodologies[8]—plays a crucial role in the technologisation of work. While in 2019 only 11% of European employees worked from home[9], this figure rose dramatically during the Covid-19 pandemic, as remote work was viewed as the most effective means of maintaining operations while mitigating the spread of contagion in the workplace. Consequently, during the health emergency, nearly 70% of full-time workers across Europe were working from home[10]. Although there was a slight decline in 2022[11], many employees wish to continue working remotely, at least in part[12], in the future[13]. This upward trend in teleworking is thus poised to continue as technological advancements increase the availability of telework-compatible jobs, and both employee and employer preferences gravitate more towards remote work.
In the years ahead, work will become increasingly technological, necessitating careful consideration not only of individual employment relationships but also

[8] In the EU Framework Agreement, signed on the 16th of July 2002, remote work took the name of telework to emphasize the use of integrated telecommunication systems. It covers a wide and fast-evolving range of circumstances and practices., since it is "a form of organising and performing work, using information technology, in the context of an employment contract/relationship, where work, which could also be performed at the employer's premises, is carried out away from those premises on a regular basis" (art. 2 of the framework agreement).
[9] See EUROFOUND, *The rise in telework: Impact on working conditions and regulations*, Publications Office of the European Union, Luxembourg, 2022, p. 7.
[10] EUROPEAN COMMISSION, *Telework in the EU before and after the COVID-19: where we were, where we head to*, 2021, *https://joint-research-centre.ec.europa.eu/system/files/2021-06/jrc120945_policy_brief_-_covid_and_telework_final.pdf*.
[11] Because "remote work is often seen as anathema by some who associate it with laziness, low productivity and the degradation of the social fabric of firms and of their creative and collaborative potential": N. COUNTOURIS, V. DE STEFANO, *Out of sight, out of mind? Remote work and contractual distancing*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE, *The future of remote work*, ETUI, Brussels, 2023, p. 147.
[12] See the experience of hybrid work (I. DE CLERQ, *Hybrid work. A Manifesto*, Die Keure, Brugge, 2021; VV.AA., *Hybrid workplace*, Harvard Business Review Press, Boston, 2022) and the Italian agile work or, as it is commonly named, smart work (art. 18 and ff. Law 22.05.2017, no. 81. On the topic see, *ex multis*, C. SPINELLI, *Tecnologie digitali e lavoro agile*, Bari, 2018; M. TUFO, *Il lavoro digitale a distanza*, Napoli, 2021; M. RUSSO, *Il datore di lavoro agile. Il potere direttivo nello smart working,* Edizioni Scientifiche Italiane, Napoli, 2023). Hybrid work is characterised by wide freedom of modulation of flexibility of time and place, as it includes both the possibilities to work within the company premises or remotely, from any place where there is an internet connection through digital devices, such as smartphone, tablet or personal computer. The regulatory source of the organisational method is made up of company policies. Similarly, Italian agile workers carry out their performance, partly within company premises and partly outside, without a fixed location, within the limits of maximum duration of daily and weekly working hours, using technological tools.
[13] EUROFOUND, *The rise in telework, cit.,* p. 65.

of the less-explored "collective" dimension of work. We cannot overlook the fact that the freedom of association and the effective recognition of the right to collective bargaining are considered fundamental principles and rights at work[14], on par with the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, the eradication of discrimination in employment and occupation, and, more recently, the establishment of a safe and healthy working environment[15].

From a collective perspective, the intersection of technology and work is also significant. Trade unions play a vital role in improving the working conditions of remote employees through collective bargaining[16], and their involvement is essential in training initiatives. Assisting workers in maximising the potential of the digital technologies being introduced should rank among the most important tasks for trade unions, as highlighted in the European Social Partners' Agreement on Digitalisation[17].

Although these responsibilities are challenging, they are insufficient on their own, as trade unions are also expected to actively embrace change by applying technologies in their operations. In this respect, the effectiveness of the digitalisation of trade union organisation could serve as a litmus test for the level of technologisation in the workplace.

Therefore, this paper aims to analyse the players, rules, and tools involved in the technological transformation of trade union activity within the Italian private sector, identifying its potential as well as its most insidious challenges. The scope of this investigation primarily focuses on the activities conducted by trade union representatives within companies, known in Italy as RSA[18] or RSU.[19] Consequently, attention will be directed towards the technologisation of "traditional" union activities in the Italian private sector.

2. Trade Unions Facing Technological Transition

As remote work has grown exponentially across many sectors since the Covid-19 pandemic, it has become increasingly necessary to regulate this form of

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[14] See ILO, *Declaration on fundamental principles and rights at work*, adopted in 1998.

[15] It has been added in 2022.

[16] Especially in Western European countries, where collective bargaining is more developed. At European level, in addition to the Framework agreement of 2002, see, lately, the Joint work programme 2022-2024, signed by the European social partners on 28.06.2022. See D. MANGAN, *Agreement to discuss: the Social Partners Address the Digitalisation of Work*, in *Industrial Law Journal*, 2021, no. 4, p. 689.

[17] Signed in June 2020. See T. TREU, *La digitalizzazione del lavoro: proposte europee e piste di ricerca*, in *Federalismi*, 2022, no. 9, p. 190.

[18] See art. 19 of the Italian Workers' Statute.

[19] See Interconfederal Agreement of 23.07.1993.

work carefully to guarantee the fundamental rights of employees, including trade union rights. If remote work is not collectively negotiated and adequately implemented, it may compromise freedom of association, collective bargaining, and trade union organisation. Therefore, the role of social partners is essential in responding to this new form of work organisation by defining and implementing policies related to remote work and negotiating strong provisions in collective bargaining agreements[20] to ensure workers' rights and conditions.
At the same time, trade unions are affected by the challenging consequences of digitalisation and face the significant task of growing and maintaining their capacity to represent the interests of workers when the physical workplace diminishes in importance[21] or ceases to exist altogether. Indeed, physical co-presence is crucial for union membership, and remote work threatens the daily union activities of advocacy and representation, as teleworkers are less exposed to unions compared to traditional employees who work on company premises[22]. Essentially, "remote work is challenging for trade unions in their efforts to recruit and organise members,"[23] potentially paving the way for alternative forms of self-representation[24], which increases the risk of disintegration or, as it has been termed, "trade union disintermediation"[25]. Such disintermediation could destabilise the already fragile collective balance, affecting not only Italy but also Europe and the United States[26]. This

[20] On the point, see B. DEDDEN, S. DE SPIEGELAERE, M. HICK, *Remote work: ensuring trade union and workers' rights through collective bargaining*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE (edited by), *The future of work, cit.*, p. 127.
[21] See L. IMBERTI, *La nuova "cassetta degli attrezzi" del sindacato tra spazi fisici e luoghi digitali: l'esperienza di Toolbox Cgil di Bergamo*, in *Labour & Law Issues*, 2019, no. 2, p. 117.
[22] K. VANDAELE, A. PIASNA, *Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic*, in N. COUNTOURIS, V. DE STEFANO, A. PIASNA, S. RAINONE (edited by), *The future of work, cit.*, p. 103.
[23] K. VANDAELE, A. PIASNA, *Sowing the seeds of unionisation?, cit.*, p. 105.
[24] M. MAGNANI, *Nuove tecnologie e diritti sindacali*, in *Labour & Law Issues*, 2019, no. 2, p. 4; S. BINI, *Il social network: da luogo a soggetto della rappresentanza sindacale digitale?*, in *Labour & Law Issues*, 2019, no. 2, p. 19; B. CAPONETTI, *Social media e rappresentanza sindacale: quali scenari?*, in *Labour & Law Issues*, 2019, no. 2, p. 31.
[25] B. CARUSO, *La rappresentanza delle organizzazioni di interessi tra disintermediazione e re-intermediazione*, in *Biblioteca 20 Maggio*, 2017, no. 1, p. 232. See also S. CIUCCIOVINO, *Le nuove questioni di regolazione del lavoro nell'industria 4.0. e nella gig economy: un problem framework per la riflessione*, in *Diritto delle relazioni industriali*, 2018, no. 4, p. 1043; B. CARUSO, *Il sindacato tra funzioni e valori nella "grande trasformazione". L'innovazione sociale in sei tappe*, in B. CARUSO, R. DEL PUNTA, T. TREU (edited by), *Il diritto del lavoro e la grande trasformazione*, Il Mulino, Bologna, 2020, p. 145; L. ZAPPALÀ, *Intelligenza artificiale, sindacato e diritti collettivi*, in M. BIASI (edited by), *Diritto del lavoro e intelligenza artificiale*, Giuffrè, Milano, 2024, p. 173.
[26] ILO, *Trade unions in the balance*, ILO publications, Geneva, 2019.

phenomenon poses a risk of the marginalisation of trade unions or, at the very least, dualisation, as evidenced by work-based online communities that emerged in Europe during the Covid-19 pandemic[27]. Through these spontaneous communities, workers utilise online communication channels, such as social networking sites, to interact regarding their employment conditions, share ideas and information, and seek mutual aid. These grassroots communities are a direct consequence of the loss of in-person interactions among workers in traditional work environments.
However, the excessive fragmentation and individualisation of interests could conflict with the principle of solidarity[28] upon which the Italian Constitutional Charter is founded, and which is expressed[29] in Article 39 of the Constitution—and, consequently, the Italian Workers' Statute[30].
Conversely, online communities may act as substitutes for unions where their presence is absent or weak, generating a form of replacement for established trade unions. They may also complement existing unions by playing a "supplementary role"[31]. Practically, online communities can create a "virtual workplace" alongside the physical and traditional one.
From another perspective, technological changes and their associated challenges could be viewed as opportunities for union revitalisation. The greater utilisation of technological tools in the exercise of trade union activities may significantly expand the capacity of trade unions to aggregate and mobilise support, thus more easily engaging younger workers[32] and those whose work does not follow traditional patterns[33], while simultaneously garnering public

[27] K. VANDAELE, A. PIASNA, *Sowing the seeds of unionisation? Exploring remote work and work-based online communities in Europe during the Covid-19 pandemic*, *cit*., p. 105.
[28] Art. 2 of the Italian Constitution: "The Republic recognises and guarantees the inviolable rights of human beings, both as an individual and in the social formations where their personality develops and requires the fulfilment of the mandatory duties of political, economic and social solidarity".
[29] On the point, Constitutional Court 5.02.1975, no. 15, in *www.cortecostituzionale.it*. See also Constitutional Court 24.03.1988, no. 334, in *Massimario di Giurisprudenza del Lavoro*, 1988, p. 186; Constitutional Court 26.01.1990, no. 30, in *Giurisprudenza Costituzionale*, 1990, p. 103.
[30] See next paragraph.
[31] Constitutional Court 5.02.1975, no. 15, *cit.*
[32] Who use digital devices more frequently.
[33] The use of new technologies increases the attractiveness of the unions also towards workers in the Gig Economy: M. FORLIVESI, *La sfida della rappresentanza dei lavoratori 2.0*, in *Diritto delle Relazioni Industriali*, 2016, no. 3, p. 662; A. LASSANDARI, *Problemi di rappresentanza e tutela collettiva dei lavoratori che utilizzano le tecnologie digitali*, in *Quaderni della Rivista Giuridica del Lavoro*, 2017, no. 1, p. 59; M. FORLIVESI, *Alla ricerca di tutele collettive per i lavoratori digitali: organizzazione, rappresentanza, contrattazione*, in *Labour & Law Issues,* 2018, no. 1, p. 38; G. RECCHIA, *Alone in the Crowd? La rappresentanza e l'azione collettiva ai tempi della sharing economy*, in *Rivista Giuridica del Lav*oro, 2018, no. 1, p. 141; P. TULLINI, *L'economia digitale alla prova dell'interesse collettivo*, in *Labour*

support. Indeed, the use of social media can serve as a "sounding board," not only for disseminating actions taken but also for attracting solidarity and support for their claims, thereby influencing the choices of users/consumers and significantly increasing the "contractual" strength of trade unions in their negotiations with employers.
It is evident that the various scenarios prompted by the multiple possibilities afforded by technological progress could displace trade unions as traditionally understood. However, this shift need not entail a rejection of these tools, nor should there be an inclination to remain entrenched in the complacency of "it has always been done this way"[34]. Such reactions are understandable, particularly in light of the sudden and overwhelming acceleration of digitalisation brought about by the Covid-19 pandemic. This may explain the hesitancy to fully harness the potential of available technology. The lack of case law[35] on this issue, coupled with the limited regulation concerning the use of technology in trade union activities through collective bargaining at both national and company levels, further highlights this shortage of technological adoption.
Nevertheless, this inertia—or, worse, an attempt to revert to the pre-pandemic status quo, disregarding the technological advancements made during that time—cannot be justified. Therefore, it is both necessary and urgent to identify how trade unions can fulfil their fundamental role in this new work reality through the adoption of available technological tools.

3. The Italian Workers' Statute Tested by New Technologies

In Italy, the Magna Carta of trade union activity is the Workers' Statute[36], which serves as the concrete implementation of the principle of freedom of

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& Law Issues, 2018, no. 1, p. 4; M. MAGNANI, *Nuove tecnologie e diritti sindacali*, *cit.*, p. 4; M. MARRONE, *Rights against the machines! Il lavoro digitale e le lotte dei riders*, Mimesis Edizioni, Milano, 2021; F. MARTELLONI, *Quali diritti sindacali per le Unions dei riders?*, in *Labour & Law Issues*, 2021, no. 1, p. 213; L. MONTEROSSI, *Tecnologie digitali, nuovi modelli di organizzazione del lavoro e sfide per il sindacato*, in *Federalismi.it*, 9.08.2023, p. 241.
[34] See M. RUSSO, *L'attività sindacale nel prisma della transizione tecnologica: il punto sulla giurisprudenza*, in *Argomenti di Diritto del Lavoro*, 2023, no. 5, p. 1088.
[35] There is little case law on the matter: see Court of cassation 21.06.2019, no. 16746, in *DeJure*; Court of cassation 5.12.2022, no. 35643 and 35644, in *DeJure*; Court of cassation 17.03.2023, no. 779, in *DeJure*.
[36] Law 20.05.1970, no. 300. See G. GIUGNI, *Diritto sindacale*, Cacucci, Bari, 2015; F. LUNARDON, M. PERSIANI, *Diritto sindacale*, Giappichelli, Torino, 2021; F. CORSO, *Il diritto sindacale*, Giappichelli, Torino, 2022; G. SANTORO PASSARELLI, *Diritto dei lavori e dell'occupazione*, Giappichelli, Torino, 2022, p. 65 ff.; M.V. BALLESTRERO, *Diritto sindacale*, Giappichelli, Torino, 2023.

trade union organisation enshrined in Article 39 of the Constitution[37]. This significant law recognises and ensures the freedom of association[38] and the freedom of trade union activity in the workplace, particularly in its third section[39], which encompasses Articles 19 to 27. Although it was enacted in 1970, the Statute remains surprisingly innovative due to its openness to technological progress. Furthermore, its regulatory provisions are characterised by broad wording. The rules pertaining to trade union activity—ranging from assemblies to referenda, from trade union permits to posters and proselytism[40]—exhibit an all-encompassing and wide-ranging formulation, reflecting a judicious balance between productive and collective interests. Consequently, these rights can be interpreted in a manner that accommodates technological developments without necessitating *de iure condendo* interventions. Additionally, the constant reference to collective bargaining for establishing "better conditions" or, more appropriately, "further modalities" fosters the active role of collective autonomy in the technological evolution of trade union activities, eliminating the need for legal modifications. Thus, these rules are prepared to facilitate the exercise of trade union rights through technological means.

4. Examining the Trade Union Tools in the Workplace

In accordance with the provisions of the third section of the Workers' Statute, it is pertinent to analyse the tools available for exercising trade union activity in the workplace[41], especially the most commonly used ones, such as assemblies (Article 20 of the Workers' Statute), referenda (Article 21), union permits (Articles 23 and 24), and the right to post (Article 25).

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[37] "Legal scholarship has always recognized in the Statute a 'constitutional' and a 'promotional soul': F. CARINCI, *Fifty years of the Workers' Statute (1970-2020)*, in *Italian Labour Law e-Journal*, 2020, no. 2, p. 4.
[38] Art. 14 law no. 300/1970.
[39] For instance, although this law was issued 54 years ago, it even regulated audio-visual surveillance at work in art. 4. However, this article has been modified by legislative decree 14.09.2015, no. 151 and legislative decree 24.09.2016, no. 185.
[40] See next paragraph.
[41] For a broad overview on the technologisation of trade union activity see V. ANIBALLI, *Diritti e libertà sindacali nell'ecosistema digitale*, ESI, Napoli, 2022. See also A. GABRIELE, *I diritti sindacali in azienda*, Giappichelli, Torino, 2017; M. MARAZZA, *Digitalizzazione dei diritti sindacali: spunti di riflessione*, in V. ANIBALLI, C. INANNOTTI DA ROCHA, R. NEI BARBOSA DE FREITAS FILHO, M. MOCELLA, *Il diritto del lavoro nell'era digitale*, Giapeto, 2021, p. 498 ff.

4.1. Assembly

Assembly[42] is the clearest demonstration of freedom of expression in the workplace[43] and simultaneously a measure of the effectiveness of trade union activities within a company, as guaranteed by Article 14 of the Workers' Statute. The regulatory provision concerning the right of assembly involves not only trade union representatives, responsible for convening meetings, but also the collaboration of the employer, who must provide the premises and accept the suspension of production activities, subject to the established annual limit of hours[44].
Assemblies are invaluable for forming and expressing workers' consensus. Therefore, the impact of new technologies on this intricate and delicate mechanism warrants particular attention.
First, we must acknowledge the significant advantages—particularly in terms of increased worker involvement and participation—that the digitalisation of this vital union activity can offer. In this context, it is important to highlight the essential role played by tele-assemblies (i.e., meetings conducted via video conferencing platforms) during the Covid-19 pandemic. These virtual meetings facilitated the continuation of dialogue and discussion among workers on matters of union and work-related interests, even during periods of enforced isolation (the so-called lockdown), thus overcoming or, at the very least, mitigating the risks of individualism and fragmentation of the collective fabric.
If we maintain the possibility of online or hybrid assemblies[45], we could more readily guarantee the active participation of individuals such as teleworkers who perform their tasks remotely in a consistent and stable manner. Although teleworkers are entitled to exercise their collective rights[46], no specific provisions have been established to facilitate their effective participation. Indeed, it is expressly stated that teleworkers "must be able to participate in the union activity carried out in the company," thereby reinforcing the significance of the "physical" workplace. However, examination of collective bargaining agreements concerning teleworking reveals that the categories targeted by this modality chiefly include disabled individuals, workers with disadvantaged family situations, pregnant employees, those with minor children, or workers

[42] Art. 20.
[43] Regulated in art. 1 of the Workers' Statute.
[44] The art. 20 of the Workers' Statute establishes no. 10 hours per year, but collective bargaining can provide for better conditions.
[45] Trade union meetings held in person, but with the aid of remote connection to allow the participation of workers who are not physically in the workplace.
[46] For the private sector see art. 11 of the Inter-confederal Agreement of 9.06.2004, which implements the European Framework Agreement on teleworking.

residing a substantial distance from the company headquarters. Consequently, it is objectively unlikely that teleworkers, even if interested in the agenda, will physically attend company premises for union meetings, thereby nullifying or considerably diminishing the effectiveness of their exercise of trade union rights.
Moreover, online or hybrid assemblies may also be beneficial for employees who are unable to attend in person on the day of the meeting due to reasons such as opting to work remotely, being on holiday, or being legitimately absent for other reasons. Regarding smart workers, the National Protocol on agile working[47] establishes that "performing work in an agile manner does not modify the system of individual and collective trade union rights and freedoms defined by law and collective bargaining"[48] and delegates the determination of the methods for exercising these rights, including their remote implementation, to the social partners. Furthermore, it confirms the right of remote workers to exercise their rights in person if they so choose.
However, in considering the organisation of assemblies in virtual or hybrid formats, several critical issues may arise. For instance, Article 27 of the Workers' Statute stipulates that the employer must provide premises for union meetings, either permanently or as required, based on the size of the company. But what should occur in the case of an online or hybrid assembly? Tele-assemblies require adequate hardware and software infrastructure, and hybrid meetings may prove even more burdensome for the employer, who must arrange for both a suitable location for in-person participants and ensure sufficient IT support, including a stable internet connection, computers, a video projector, and a large screen.
This aspect is pivotal, as demonstrated by a ruling from the Milan Court[49], which, even during the epidemiological emergency, ruled that the employer's failure to provide the necessary tools for hosting virtual meetings was not anti-union in nature, due to the absence of an explicit contractual provision. Article 20 of the Workers' Statute empowers the social partners to determine "better conditions"; however, currently, collective bargaining remains silent on this matter. Even during the Covid-19 pandemic, the shared protocol for regulating measures to combat and contain the spread of the virus in workplaces[50], as well

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[47] Signed on 7.12.2021.
[48] Art. 8, par. 1.
[49] Milan Court 30.07.2020, mentioned in S. CASSAR, *Lavoro 2.0 e diritti sindacali: spunti di riflessione e proposte operative su tele-assemblea e referendum sindacale on line*, in *Lavoro e previdenza oggi*, 2021, no. 7-8, p. 436, e da V. ANIBALLI, *Diritti e libertà sindacali, cit.,* p. 154.
[50] For the private sector it was signed on 14 March 2020 and updated on the 24th of April 2020, the 6th of April 2021 and the 30th of June 2022.

as the Prime Ministerial Decree of 24th October 2020[51], while encouraging the use of remote modes for all types of meetings, imposed no obligations on the employer.
Conversely, the agreement signed in the sector of supply agencies on 24th November 2020[52] stipulates that the IT platform should be provided by the RSA/RSU and/or trade unions requesting the assembly. Even if the employer were to furnish the necessary technological equipment, challenges could arise regarding the safeguarding of the privacy of trade union communication[53], as will be elaborated in the next paragraph.

4.2. Referendum

Critical issues concerning privacy can also be raised in relation to the digitalisation of the referendum[54], which is another valid tool governed by the Workers' Statute[55]. A referendum serves as an instrument of direct democracy, allowing all workers—regardless of their membership in a trade union organisation—to participate in consultations on matters pertaining to trade union activity and to express their votes, thereby contributing to the formation of collective will.
On one hand, the use of electronic systems facilitates the conduct of referendums, ensures maximum flexibility, and increases participation[56], thereby reinvigorating trade union activity within companies. On the other hand, however, challenges emerge regarding the protection of employee privacy, as well as the transparency and reliability of voting processes.
Key concerns revolve around the operational aspects of the referendum, particularly in ensuring the identification of participants and the secrecy and integrity of their votes. There is also a notable gap in collective bargaining, as these issues could be easily addressed through specific regulations, even at the company level. The adoption of established electronic democracy models[57],

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[51] Art. 1, par. 9, lett. o).
[52] It was signed by Assolavoro and trade unions.
[53] On the point see M. ESPOSITO, *La conformazione dello spazio e del tempo nelle relazioni di lavoro: itinerari dell'autonomia collettiva. Relazione alle Giornate di Studio AIDLASS 2023*, in *www.aidlass.it*.
[54] In doctrine, see F. BASENGHI, *Il referendum*, in C. ZOLI, C. CESTER (edited by), *Diritto del lavoro*, vol. I, *Le fonti. Il diritto sindacale*, Wolters Kluwer, Milano, 2007, p. 196 ff.; M. V. BALLESTRERO, *Diritto sindacale, cit.* p. 171; A. PESSI, *Referendum nei luoghi di lavoro*, in *Enc. Treccani online*, 2014.
[55] Art. 21.
[56] Just think of the possibility of expressing votes online or even via *WhatsApp*.
[57] On the point see D. A. GRITZALIS, *Principles and requirements for a secure e-voting system*, in *Computers & Security*, 2002, no. 6, p. 539; G. BUONANOMI, *Testo unico sulla rappresentanza e votazioni digitali. Questioni aperte e prospettive*, in *Federalismi*, 9 agosto 2023, p. 172.

which guarantee the immediacy and confidentiality of voting and scrutiny procedures, may prove effective. Furthermore, the electronic voting systems currently available in the marketplace are often based on blockchain technologies[58] and encompass all the organisational procedures associated with the electoral event—from the setup of the system to the distribution of credentials, from the collection of ballots to the counting of votes, and finally to the publication of results—thus relieving the organiser of the responsibility for ensuring vote anonymity and integrity.
Additionally, particular care is required when the employer provides the technological equipment, both hardware and, especially, software. In such cases, technical measures should be implemented to prevent the employer from gaining access to confidential information, thereby safeguarding the privacy of the workers.

4.3. Union Permits

Union permits[59] refer to the number of days or hours allocated for union leaders and company union representatives to engage in activities related to their mandate or to attend trade union conferences. The digitalisation of their use may present challenges from two different perspectives.
The first concern pertains to technology workers, such as teleworkers or, more complexly, employees who carry out their work in an agile manner, at least on days when they are required to work remotely rather than on company premises. If they are company union representatives, can they utilise these permits? If so, how can the actual duration of the permit hours be verified?
Collective bargaining could play a strategic role in addressing these critical issues by confirming that staff who are teleworking or working in an agile manner can use union permits and subsequently identifying the most effective system for detecting and recording the hours used. Currently, only a few collective agreements explicitly regulate this matter[60], and this uncertainty of management serves as a disincentive for the use of such permits.
Another aspect to consider is that, even when employees conduct their activities in a traditional manner on company premises, union meetings may still be organised online or in hybrid formats. Consequently, despite being physically present at work, union representatives might still use their union

[58] According to some studies on the matter, the use of blockchain technology could ensure adequate protection for the circulation of data: S. CASSAR, *Lavoro 2.0, cit.*, p. 437; S. DONÀ, M. MAROCCO, *Diritto di assemblea ex art. 20 St. Lav. e nuove tecnologie digitali*, in *Labour & Law Issues*, 2019, no. 2, p. 25.
[59] Regulated by art. 23 and 24 of Workers' Statute, depending on the fact they are paid or not.
[60] See the collective agreement signed by Sky Italia Srl with trade unions on 22.11.2022.

permits to participate in union activities remotely. This is another facet that should be addressed in collective agreements to prevent a simple regression to pre-pandemic practices, effectively sidelining the use of online formats and their potential to enhance participation and improve the circulation of ideas and information.

4.4. Right to Post

Article 25 of the Workers' Statute protects trade union freedom by guaranteeing the right to post communications from the RSA (or RSU). These are communications from a trade union organisation directed at all workers employed within a company. The right to post differs from the right to proselytise[61], which involves communications exchanged among workers, some of whom may hold trade union positions.
Communication is essential for the survival of trade union organisations, as it enables them to maintain contact with registered workers and keep them informed about matters of trade union and workplace interest, realigning the motivations of their membership while also fostering outreach to non-member workers to expand support for the ideas and demands being promoted.
In light of this, communication is fundamental[62] for trade unions. Simultaneously, it is one of the sectors most affected by technological transformation, with the advent of increasingly sophisticated and pervasive mass media. Trade union communication is not immune to such innovations, as evidenced by the emergence of virtual noticeboards alongside physical ones and the prevalence of mass emails containing union-related content directed at workers.
Since the mid-1990s, an evolving interpretation of Article 25 of the Workers' Statute has accepted the inclusion of an online noticeboard within a company's electronic system as a suitable means to enable wide dissemination of union information, particularly in companies characterised by high levels of digitalisation[63]. Initially, the opportunity for virtual posting via the internet was

[61] Regulated by art. 26 of Workers' Statute.
[62] The importance of trade union communications is also underlined in case-law: see Court of cassation 27.03.1994, no. 2808, in *Giustizia Civile*, 1994, no. 1, p. 225.
[63] On the point see Milan Court 3.04.1995, in *Mass. giur. lav.*, 1995, p. 337, commented by E. GRAGNOLI, *La comunicazione con strumenti elettronici nell'azienda e le prerogative dei sindacati*, and by A. BELLAVISTA, *Il diritto di affissione ex art. 25 St. Lav. e i sistemi aziendali di comunicazione elettronica con i dipendenti*, in *Rivista italiana di diritto del lavoro*, 1994, no. 4, p. 760 ff. See also Milano Court 2.07.1997, in *Orientamenti di giurisprudenza del lavoro*, 1997, p. 948; Modena Court 15.03.2005, in *DeJure*.

regarded as a "mere addition of a new communication channel,"[64] but over time, the immediacy and diffusion capacity of the internet has effectively transformed the traditional notions of posting and union proselytism. Recent case law confirms that the ability to publish trade union press releases online constitutes a fundamental expression of trade union rights and "must be protected."[65] This judgment also delineates the distinction between sending emails to all employees and posting communications on the company's electronic noticeboard. These obligations are not interchangeable, as they serve two distinct purposes. The former involves "individual transmission, albeit cumulative," rather than actual publication, which entails access and consultation by all interested parties without requiring prior identification. The judge[66] concluded that sending emails does not fulfil all the employer's obligations under Article 25 of the Workers' Statute and, thus, cannot replace the establishment of an online noticeboard for publishing union communications.

In the case reviewed, reference is made to the applicable collective agreement, which explicitly provides for an online noticeboard. However, what occurs if this matter is not addressed? Many collective agreements do not regulate this aspect, which consequently leaves the technological exercise of the union's right to post unaddressed.

Further, the increasing utilisation of social networks represents a powerful means of disseminating trade union propaganda. These platforms can raise awareness about trade union matters even outside the workplace, addressing not only employees but also public opinion.

The Italian Court of Cassation has clarified that if communications via social networks do not contain abusive, offensive, or defamatory content directed at the employer or company managers, such posts are deserving of protection[67]. The Court ruled that "union activity need not necessarily be exercised within the company nor must it be exclusively directed at workers."[68] Therefore, propaganda conducted via social media and the multiple opportunities to

[64] O. LA TEGOLA, *Social media e conflitto: i nuovi strumenti dell'attività sindacale*, in *Labour & Law Issues*, 2019, no. 2, p. 150.

[65] Cuneo Court 27.06.2019, in *https://m.flcgil.it/files/pdf/20190628/decreto-tribunale-ordinario-di-cuneo-402-del-27-giugno-2019-comportamento-antisindcale-dirigente-scolastico.pdf.*

[66] Cuneo Court 27.06.2019, *cit.*

[67] Court of cassation 18.01.2019, no. 1379, in *Rivista italiana di diritto del lavoro*, 2019, no. 2, p. 229, commented by P. TOSI, E. PUCCETTI, *Il diritto di critica nella rinnovata rilevanza del limite di pertinenza*.

[68] Turin Court 6.02.2023, in *https://www.wikilabour.it*.

"exploit the capacity of the web to amplify the echo of the claim"[69] are legitimate and permissible[70].
However, when carried out outside of physical company premises and away from the IT channels provided by the employer, and made accessible to all without distinction, these activities exceed the scope of Article 26 of the Workers' Statute and fall under the right to union criticism, safeguarded by Article 39 of the Italian Constitution.

5. Critical Issues, Challenges, and Prospects

Amidst this transition, it is challenging to draw fully formed conclusions; however, it is important to offer some points for reflection.
This overview clearly indicates that numerous and diverse interests are at stake and that striking a balance in the technologisation of trade union rights is not straightforward. As noted, initial resistance originated from the trade unions themselves, as they were not adequately prepared to confront the technological challenges. Nevertheless, the ongoing change is irreversible, and thus, there is an urgent need to embrace the variety of possibilities offered by technological advancements, particularly regarding the exercise of trade union rights. Trade unions should proactively anticipate technological innovations, for instance, by engaging with a new frontier of digitalisation: the metaverse[71].

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[69] O. LA TEGOLA, *Social media e conflitto, cit.,* p. 153.
[70] In recent years there have been numerous rulings on the right to criticize trade unions: Bari Court 4.03.2017, in *Rivista giuridica del lavoro*, 2018, no. 4, p. 477, commented by S. BINI, *Offese reali in contesti virtuali: social network e limiti al diritto di critica;* Court of cassation 27.04.2018, no. 10280; Court of cassation 10.09.2018, no. 21965; Parma Court 7.01.2019; Taranto Court 26.07.2021, in *Rivista italiana di diritto del lavoro*, 2021, no., 4, p. 699, commented by A. INGRAO, *Licenziamento disciplinare, libertà di espressione e social network: quando un post fa perdere ingiustamente il posto*. See also F. D'AVERSA, *Il diritto di critica (anche sindacale) nell'epoca dei Social Media*, in *Labour & Law Issues*, 2019, no. 2, p. 58; G. BANDELLONI, *Il diritto di critica alla prova dei social network*, in *Labour & Law Issues*, 2022, no. 2, p. 3.
[71] On the metaverse, see M. BALL, *Metaverso*, Garzanti, 2022; H. NARULA, V*irtual Society. The Metaverse and the new frontiers of human experience*, Crown Publishing, 2022; V. DE STEFANO, A. ALOISI, N. COUNTOURIS, *Il Metaverso è una questione di diritto*, 2022, in *www.socialeurope.eu*; A. DONINI, M. NOVELLA, M.L. VALLAURI, *Prime riflessioni sul lavoro nel metaverso*, in *Labour & Law Issues*, 2022; L. LAZZERONI, *Metaverso*, in AA.VV., *Lavoro e tecnologie. Dizionario del diritto del lavoro che cambia*, Giappichelli, Torino, 2022, p. 162; M. LOMBARDI, *Il lavoro nel metaverso: uno spazio indefinito del possibile*, in *Labour & Law Issues*, 2022, p. 28; M. MARTONE, *Prime riflessioni su lavoro e metaverso*, in *Argomenti di Diritto del Lavoro*, 2022, p. 1131; M. PERUZZI, *"Almeno tu nel metaverso". Il diritto del lavoro e la sfida dei nuovi spazi digitali*, in *Labour & Law Issues*, 2022, p. 64; N. ROSA, *Understanding the Metaverse: a business and ethical guide*, Wiley, 2022; M. BIASI, *Il decent work e la dimensione virtuale: spunti di riflessione sulla regolazione del lavoro nel Metaverso*, in *Lavoro Diritti Europa*, 2023; M. BIASI*, Guest Editorial. The labour side of the Metaverse,* in *Italian Labour Law e-Journal*, 2023, no. 1, p. VII; M. BIASI, M. MURGO, *The virtual space of the Metaverse and the fiddly identification of the*

The metaverse comprises interconnected and interoperable virtual worlds, wherein the fluidity between the real and the virtual creates a form of "on-life".[72] The relevance and urgency of this issue are underscored by the keen interest of the European Commission, which is closely monitoring the phenomenon[73], particularly in light of its significant economic implications[74]. Owing to its increased interactivity compared to mere video meetings, the metaverse could facilitate and enhance worker participation in union activities—from assemblies to proselytism—as well as in managing collective bargaining[75]. Furthermore, it may serve as an effective tool for training workers and introducing them to the proper and informed use of new technologies. The EU Framework Agreement on Digitalisation, articulated in 2020, emphasises that union involvement in training is one of the most pressing challenges to address during this technological transition.
Since "the very existence of the social partners and the subsequent role they are called to play is invariably correlated to their ability to address collective interests" [76] the digital challenge is a risk they cannot afford to overlook, both as users of digital technologies and as regulators thereof through collective bargaining.
Although existing regulations permit interpretations of various tools in line with contemporary requirements, it remains crucial to address the more technical aspects and resolve management issues through collective

applicable labor law, in *Italian Labour Law e-Journal*, 2023, no. 1; F. COSTANTINO, *Il lavoro nel metaverso*, in G. CASSANO, G. SFORZA (edited by), *Metaverso*, Pacini, 2023, p. 381; H. R. Ekbia, *Parallel universes: the future of remote work and the remoteness of future work*, in AA.VV., *The future of remote work*, ETUI, 2023, p. 221; C. GHITTI, *Il lavoro nel metaverso*, in M. PICCINALI, A. PUCCIO, S. VASTA (edited by), *Il metaverso. Profili giuridici e operativi*, Giuffrè, Milano, 2023, p. 209; M. NOGUEIRA GUASTAVINO, D. MANGAN, *The metaverse matrix of labour law*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 13; I. RÁCZ-ANTAL, *Labour law and Metaverse - can they fit together?*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 29; C. ROMEO, *L'avatar, il metaverso e le nuove frontiere del lavoro: traguardo o recessione*, in *Il Lavoro nella giurisprudenza*, 2023, no. 5, p. 471; M. RUSSO, *Le sfide nella regolamentazione del lavoro tecnologico: dal lavoro agile al metaverso*, in A. FUCCILLO, V. NUZZO, M. RUBINO DE RITIS (edited by), *Diritto e universi paralleli. I diritti costituzionali nel metaverso*, ESI, Naples, 2023, p. 71; P. SIPKA, *Potential challenges of working in a virtual space*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 53.
[72] L. FLORIDI, *The Onlife Manifesto. Being human in a hyperconnected era*, Springer, 2015.
[73] See *https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13757-Virtual-worlds-metaverses-a-vision-for-openness-safety-and-respect_en.*
[74] It is calculated between 259 and 489 billion euros per year, by 2035, within the European Union. On the point see *https://www.ansa.it/sito/notizie/tecnologia/hitech/2023/05/09/metaverso-in-italia-impatto-economico-fino-a-52-miliardi_d2ccfcea-8956-443b-935f-72a9f4cb6f97.html.*
[75] F. PISANI, *Collective labour relations in the Metaverse*, in *Italian Labour Law e-Journal*, 2023, no. 1, p. 41.
[76] U. GARGIULO, P. SARACINI, *Riflettendo su parti sociali e innovazione tecnologica: contenuti, ratio e metodo*, in *Quaderni di Diritti Lavori Mercati*, 2023, no. 15, p. 10.

agreements; for instance, the provision of an electronic noticeboard on the company website, the online retention periods of trade union communications, the methods of convening and conducting tele-assemblies, the organisation of electronic voting operations in referendums, and the use of blockchain technology.
Although the role of jurisprudence has been significant, intervening during periods of heightened collective conflict and providing clear analyses of the signals and impacts of technological phenomena on the exercise of union rights while proposing case-specific solutions, the mission of collective bargaining is even more vital, as it can effectively facilitate a comprehensive integration of the practical exercise of trade union rights and the appropriate use of new technologies.

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Technological Transformations of Trade Union Activity in the Italian Public Sector

Giovanna Pistore *

Abstract: Even in the public sector, the advancement of new technologies is reshaping the organisation of work, necessitating that trade unions reconsider their role and actions. Social partners are called upon to face new challenges, which aim not only at redefining their roles but also at modelling digital work practices. The proliferation of information and communication technology (ICT) requires, first and foremost, new forms of union participation. However, to an even greater extent, digitalisation affects the very content of unions' actions in protecting workers from the exercise of employer powers. In this context, the public interest upheld by the administration significantly influences unions' actions to some degree.

Keywords: *Trade unions; public sector; workers' rights; digitalisation; public interest; public administration.*

1. Introduction

International bodies such as the United Nations[1], the Organisation for Economic Co-operation and Development[2], and the European Commission actively promote the digitalisation of public services to enhance efficiency as well as to improve their quality and accessibility. As early as 2003, the European Commission advocated for the full-scale implementation of

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[1] Recently, United Nations, Department of Economic and Social Affairs, *E-Government Survey 2022, The Future of Digital Government*, 2022, available at *publicadministration.desa.un.org*.

[2] Many reports on the topic are available at *oecd-ilibrary.org*. See OECD e-Government Studies, *Rethinking e-Government Services. User-centred approaches*, 2009; Id., *e-Government for Better Government, 2005*.

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eGovernment, defined as "the use of information and communication technologies in public administrations, combined with organisational change and new skills to improve public services and democratic processes and strengthen support for public policies."[3]
The internal debate in Italy aligns with this perspective. In 2005, the introduction of the Digital Administration Code (Legislative Decree No. 82 of 7 March 2005) systematised the use of ICT in relation to the organisational and procedural aspects of administrative activities[4]. Over the years, numerous governmental documents have emphasised the importance of a modern public administration, equipped to meet the challenges posed by demands for enhanced services from citizens and businesses[5].
However, the increasing digitalisation presents a flip side, as it fundamentally alters the manner in which work is performed. It is commonly asserted that digital technology and automation will improve working conditions, promote work-life balance, and enhance risk management in the workplace. Conversely, technologies associated with artificial intelligence can generate new risks, resulting in excessive workloads, isolation, and insufficient support[6].

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[3] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. The role of eGovernment for Europe's future*, 26 September 2003, COM(2003) 567 final. See also the subsequent Communication *The European eGovernment Action Plan 2011-2015. Harnessing ICT to promote smart, sustainable & innovative Government and Communication*, COM/2010/743 final and the Communication *EU eGovernment Action Plan 2016-2020. Accelerating the digital transformation of government*, COM/2016/0179 final.
[4] E. De Giovanni, *Il Codice dell'Amministrazione digitale: genesi, evoluzione, principi costituzionali e linee generali*, in *Rassegna avvocatura dello stato*, 2018, 3, 155; B. Carotti, *L'amministrazione digitale: le sfide culturali e politiche del nuovo Codice. Decreto legislativo 26 agosto 2016, n. 179*, in *Giornale di diritto amministrativo*, 2017, 1, 7; S. Gaetano, *Riforma del Codice dell'Amministrazione digitale (CAD), identità digitale, e-payment pubblico: la matrice europea di una nuova stagione dell'e-Government*, in *Rivista elettronica di Diritto, Economia e Management*, 2017, 1, 197; G. Duni, *Principi fondamentali del diritto amministrativo e codice dell'amministrazione digitale*, in *Diritto e processo amministrativo*, 2012, 2, 393; D. De Grazia, *Informatizzazione e semplificazione dell'attività amministrativa nel 'nuovo' codice dell'amministrazione digitale*, in *Diritto pubblico*, 2011, 2, 611; F. Ruggieri, *Comments on the Italian 'Code for the Digital Administration'*, in *Digital Evidence and Electronic Signature Law Review*, 2008, 5, 29.
[5] See the *Piano Triennale per l'informatica nella PA 2024-2026* (Tree-year plan for IT in public administrations), at agid.gov.it/it/agenzia/piano-triennale .
[6] Eu-Osha, *Worker Management through AI: From technology development to the impacts on workers and their safety and health*, 19 March 2024; Id., *Surveillance and Monitoring of Remote Workers: Implications for Occupational Safety and Health*, 9 November 2023, all at *healthy-workplaces.osha.europa.eu/en/tools-and-publications/publications*; C. Valenti, *La destrutturazione spazio-temporale del lavoro: quali rischi dalle tecnologie immersive?*, in *Diritto della Sicurezza sul Lavoro*, 2022, 2, 102; for a general overview, M. Tiraboschi (ed), *Il sistema prevenzionistico e le tutele assicurative alla prova della IV Rivoluzione Industriale. Volume I. Bilancio e prospettive di una ricerca*, Adapt University Press, 2021,

Needless to say, these evolving changes also impact trade unions, which are required to redefine their roles and actions. While this topic has already gained international attention, in Italy it is primarily discussed in relation to the private sector[7]. The public sector, despite significant digitalisation, still exists in a grey area. The reasons for this gap are difficult to ascertain, likely stemming from the particular cultural and legislative context that characterises Italian public employment. Although the Consolidated Law on Public Employment (Legislative Decree No. 165 of 30 March 2001) aimed to create a working relationship as similar as possible to the private sector, the authoritative dimension remains substantial, undeniably affecting the subsequent role of trade unions[8].
In light of these premises, this paper aims to analyse the Italian approach along two lines. The first aspect to consider is how the implementation of new technological systems has shaped interactions between trade unions and workers. More significantly, a further issue is how new technologies influence the content of unions' actions in protecting workers from the exercise of employer powers[9].

salus.adapt.it/il-sistema-prevenzionistico-e-le-tutele-assicurative-alla-prova-della-iv-rivoluzione-industriale-volume-i/ .
[7] See M. Russo, *Timeless rights, new tools: technological transformations of trade union activity in the Italian private sector*, in this *Journal*; F. Schiavetti, *Diritti sindacali e nuove tecnologie: tra effettività dei diritti e dovere di cooperazione del datore di lavoro*, in *federalismi.it*, 9 August 2023; M. Magnani, *Nuove tecnologie e diritti sindacali*, in *Labour & Law Issues*, 2019, 2, *labourlaw.unibo.it*. Regarding the public sector, A. Zilli, *Tecnologia e godimento delle prerogative sindacali nel lavoro pubblico contrattualizzato*, *in Lavoro Diritti Europa*, 2024, 2, *lavorodirittieuropa.it*.
[8] G. Pistore, *Il rapporto di lavoro nella Pubblica Amministrazione. Un tentativo di ricostruzione civilistica*, in M. Bianchini, E. Zamuner, E. Pasqualetto (eds), *Percorsi di ricerca del Dottorato in diritto internazionale, diritto privato e del lavoro*, Padua University Press, 2021, 157.
[9] R. Chiarini, *The Reform of Public Employment in Italy between Continuity and Change*, in *Rivista Trimestrale di Scienza dell'Amministrazione*, 2018, 4, at *rtsa.eu*; A. Corpaci, *Public Employment Reform: The Difficult and Controversial Abandonment of the Public Model*, in D. Sorace, L. Ferrara, I. Piazza (eds), *The Changing Administrative Law of an EU Member State. The Italian Case*, Springer, 2021, 257; F. Di Mascio, D. Galli, A. Natalini, E. Ongaro, F. Stolfi, *Learning-Shaping Crises: A Longitudinal Comparison of Public Personnel Reforms in Italy*, 1992–2014, in *Journal of Comparative Policy Analysis: Research and Practice*, 2016, 2, 119; B. Caruso (ed), *Il lavoro pubblico a vent'anni dalla scomparsa di Massimo D'Antona*, *WP C.S.D.L.E. "Massimo D'Antona".Collective Volumes* – 8/2019, in *csdle.lex.unict.i*t; M. Esposito, V. Luciani, A. Zoppoli, L. Zoppoli (eds), *La riforma dei rapporti di lavoro nelle pubbliche amministrazioni*, Giappichelli, 2018; L. Fiorillo, A. Perulli (eds), *Il lavoro alle dipendenze delle pubbliche amministrazioni*, Giappichelli, Torino, 2013; F. Carinci, *La privatizzazione del pubblico impiego alla prova del terzo governo Berlusconi: dalla legge n.133/2008 alla l.d. n.151/2009*, WP C.S.D.L.E. "Massimo D'Antona"- 88/2009.

2. New Forms of Trade Unions' Participation

The development of information technologies is also impacting how trade unions' prerogatives are exercised. Digital evolution naturally necessitates the exploration of new methods for exercising fundamental rights, while simultaneously posing risks and opportunities for misuse. This is especially evident concerning workers' rights, as traditional legal institutions grapple with technological innovations, thereby undergoing a significant transformation from an evolutionary perspective.
In Italian law, trade union rights are governed by Title III of the Workers' Statute (Law 20 May 1970, no. 300), which also applies to public employment in accordance with Article 2, paragraph 2, and Article 51, paragraph 2, of Legislative Decree no. 165/2001, alongside the mandatory provisions established by the decree and other regulations in the field.
In this context, it is crucial to address the peculiarities of public employment, particularly the subtle prominence of the public interest as expressed in law and regulations, or through case law. Recently, the Supreme Court traced back the powers of the administration as an employer to Article 97 of the Italian Constitution, which broadly refers to administrative functions and stipulates that they must be carried out according to "good performance and impartiality."[10] This understanding marks a significant departure from private employment regulations, validating certain shifts, although Article 5, paragraph 2, of Legislative Decree no. 165/2001 provides that measures concerning the management of employment relationships are undertaken "with the capacity and the powers of the private employer." Connected to this aspect is the fact that public administration cannot freely dispose of its assets, given the constraints imposed by the general interest. Hence, it is crucial not to overlook this distinctive framework going forward.

[10] Court of Cassation, United Chambers, 28 December 2023, no. 36197, in *aranagenzia.it/documenti-di-interesse/sezione-giuridica/corte-di-cassazione.html*; in *Rivista Italiana di Diritto del Lavoro*, 2024, 1, 105, with note of E. D'Avino, *L'inconfigurabilità del metus nel pubblico impiego contrattualizzato: i principi costituzionali (sempre) ritornano*; in *Diritto delle Relazioni Industriali*, 2024, 2, 470B, with note of F. Corbo, *La decorrenza della prescrizione dei crediti retributivi del lavoratore pubblico nell'ipotesi di reiterazione di contratti a termine seguita da stabilizzazione presso la pubblica amministrazione*; also in *Giurisprudenza Italiana*, 2024, 10, with note of G. Pistore, *Metus del lavoratore e tutela dei diritti nel pubblico impiego: le Sezioni Unite ribadiscono la decorrenza della prescrizione in costanza di rapporto*; Court of Cassation, Law Chamber, 9 June 2016, no. 11868.

2.1 Traditional Union Law Institutions in an Evolutionary Dynamic

Digitalisation primarily affects trade union dialectics regarding the collection of requests from workers and consensus building[11]. This necessitates a focus on two key areas of analysis. The first concerns the ways in which the traditional institutions envisaged by the Italian Workers' Statute are utilised in the light of new technologies. The second, on a more systemic level, requires reflection on the creation of new methods of dialogue between unions and workers.
From the first perspective, traditional legal instruments must adapt to technological evolution. Trade union law is undergoing a process of adaptation to new technologies, largely left to practical implementation. Both the law and collective bargaining currently lack a "digital" regulation of trade union rights, save for limited provisions. Management of these issues is essentially left to practice, regulations, or agreements at the level of each public body. Nonetheless, the reasoning applicable to public bodies is not dissimilar from that of the private sector, aside from certain specificities that will be elaborated on later.
The following analysis will focus on the prerogatives most influenced by digital evolution, specifically the rights to assembly, the use of noticeboards, and the issuance of union communications.

2.1.1 Right to Assembly

The right to assembly, as per Article 20 of the Italian Workers' Statute, encompasses the ability of employees to meet on the premises where they work, limited to ten hours per year, which can be extended by collective agreements. In the context of digitalisation, all public sector collective agreements stipulate that assemblies may also include those working in "agile" and remote modes[12]. These methods do not replace in-person meetings but certainly facilitate broader worker participation, particularly in fragmented labour settings[13].

[11] V. Aniballi, *Diritti e libertà sindacali nell'ecosistema digitale*, in *Quaderni de «Il diritto del mercato del lavoro»*, 2022, no. 27

[12] Art. 10, par. 3, collective agreement for Central functions; Art. 13, par. 4, collective agreement for the healthcare sector; art. 10, par. 2, collective agreement for Local functions; art. 31, par. 14, collective agreement for Education and research sector.

[13] See art. 10, par. 1 of the collective agreement for Local Functions; art. 12, par. 1 of the collective agreement for the Healthcare sector; art. 82, par. 2 of the collective agreement for Education and Research. Instead, art. 10, par. 1 of the collective agreement for Central Functions refers to the provisions of the CCNQ. In the Italian public employment, there are four areas (named "comparti") of collective bargaining: Funzioni centrali (Central Functions),

Questions arise regarding the locations, whether physical or virtual, where assemblies can be held. The law establishes that meetings must take place within the production unit. In terms of public employment, Article 4 of the National Framework Collective Agreement on the use of secondments, leave, permits, and other trade union prerogatives (CCNQ), signed in December 2017, as well as almost all sector contracts, specify that assemblies must be hosted in suitable premises agreed upon with the administration. It is debatable whether the venue may also be virtual, particularly if employees are permitted to connect via digital platforms owned by the administration and/or using the internet connection provided by the authority itself. Currently, public collective agreements do not encompass the option of holding meetings electronically, except in the healthcare sector. However, it should be noted that public administrations typically permit assemblies to be held through their video conferencing systems.
Nonetheless, certain challenges must be addressed. The platforms, or even the internet connection, are public assets. Therefore, a concern arises regarding whether, in the absence of specific provisions, the use of these resources is permissible for trade union purposes. A civil servant who temporarily misuses a public asset for personal reasons could be penalised under Article 314, paragraph 2, of the Penal Code. According to some case law, albeit controversial, this situation may also include instances where an employee utilises the administration's technological resources, such as web browsing, even in the absence of economic detriment[14]. Under Article 11-bis, paragraph 4, of the Code of Conduct for Public Employees (Presidential Decree 16 April 2013, no. 62), workers may use IT resources for personal tasks, provided such activity is brief and does not impede institutional duties.
An evolutionary interpretation of Article 20 of the Workers' Statute suggests that any legitimacy concerns must exclude virtual venues for meetings as suitable premises. Furthermore, the Agency for the Negotiating Representation of Public Administrations (ARAN – Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni) has recently clarified that "although the method of holding meetings on an IT platform is not regulated by the CCNQ, it is believed that the platform itself can be considered an agreed virtual venue and, therefore, analogously falls within the scope of the contractual provision. In any case, the assessment of feasibility must be sought at a local level, considering the peculiar characteristics of the administration and paying

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Funzioni Locali (Local Functions); Sanità (Healthcare); Istruzione e Ricerca (Education and Research). All the contracts can be read at *aranagenzia.it/contrattazione/comparti.html*.

[14] Court of Cassation, Criminal Chamber, 5 October 2023, no. 40702; *contra* Id., 16 March 2017, no. 26297.

attention to the need to identify the connected participants in monitoring the amount of hour permits assigned to each employee."[15]
However, this practice still encounters limits, given the necessity not to disrupt the employer's organisation. Evidence in this regard, though somewhat dated, can be found in Directive no. 2/09 of the Department of Public Function, which pertains to the use of the internet and institutional email accounts in the workplace[16]. This Directive clarifies that employees' use of ICT resources must not compromise the security and confidentiality of the information system. Additionally, it can be argued that such use must be deemed legitimate only if strictly associated with the union assembly itself, not for generic union communications. Otherwise, it may be classified as private use, which is prohibited not only by criminal provisions but also according to Article 11, paragraph 3, of the Code of Conduct, which states that "The employee uses the material or equipment at their disposal for office reasons, and the office's telematic and telephone services, in compliance with the constraints imposed by the administration."
From the workers' perspective, another consideration concerns the protection of confidentiality and the seclusion of meetings from the employer. In this regard, the employer cannot interfere in any manner; otherwise, such action would be liable under Article 28 of the Workers' Statute.

2.1.2 Noticeboards

The development of digital union noticeboards has also evolved, though this remains subject to agreements or regulations specific to each public body, thereby preventing widespread adoption to date. Article 25 of the Italian Workers' Statute states that "company-level delegates have the right to post publications, texts, and press releases pertaining to trade union and labour issues in designated spaces that the employer is obliged to ensure are accessible within the production unit." Outside of this, there are no collective bargaining provisions on the matter, aside from Article 5 of the 2017 CCNQ, which acknowledges that RSU (company-level delegates) and union managers belonging to representative organisations are entitled to post information through any available IT system. ARAN's Application Guidelines on the

[15] Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni (ARAN), Application criterion CQRS192, 13 May 2024, *aranagenzia.it/contrattazione/contratti-quadro/relazioni-sindacali/prerogative-sindacali/orientamenti-applicativi.html* .
[16] Dipartimento della Funzione Pubblica, *Direttiva n. 2/09 relativa all'utilizzo di internet e della casella di posta elettronica istituzionale sul luogo di lavoro*, in *funzionepubblica.gov.it/articolo/dipartimento/26-05-2009/direttiva-n-209-relativa-allutilizzo-di-internet-e-della-casella-di* .

CCNQ delve into this issue by stating it is possible to provide trade unions with additional tools beyond those outlined in collective agreements (question 2.2), such as the establishment of a window on the administration's intranet. However, it is also stipulated that the administration cannot incur increased costs or inconveniences[17]: "Therefore, the methods by which [digital] instruments are employed must be agreed upon at the workplace, in line with the aforementioned principle" (question 2.3).
Upon reviewing the contractual provisions concerning this matter[18], union noticeboards are generally envisaged as a space, identified by a specific icon on the home page of the administration's website, made available to trade unions and company-level representatives for sharing information in a manner analogous to traditional noticeboards. Sometimes, trade unions are required to designate a contact person, with training for managing the digital tool provided by the administration.
Such a framework raises concerns about potential employer interference, such as blocking postings, tampering with noticeboards, or removing material, all of which would be banned under Article 28 of the Workers' Statute[19].

2.1.3 Union Communications

When considering the right to send communications, questions arise regarding the use of institutional email accounts for union purposes, specifically whether union representatives could send messages through the same account they utilise as public officers to employees' institutional addresses.
This matter has been clarified by recent decisions of the Supreme Court, although regarding the private sector. These practices are legitimised under Article 25 of the Workers' Statute, alongside Article 26, which entitles workers to "proselytise on behalf of their union organisations within the workplace, without prejudice to the ordinary course of the employer's activities"[20].
It is noted that the use of company email accounts by union representatives falls within certain constraints. Specifically, this practice is prohibited if the employer establishes a channel solely for trade union information, employing

[17] In the same way, the note CQRS33, *aranagenzia.it/orientamenti-applicativi/contratti-quadro.html* .
[18] These experiences are mainly developed in the Education sector and in the Healthcare one. For an example, see the *Regolamento sull'utilizzo della bacheca aziendale e RSU online* (*Regulation on the use of the online union noticeboard)* of the Azienda per l'assistenza sanitaria 5 Friuli occidentale, at *asfo.sanita.fvg.it/it/amministrazione_trasparente/01_disposizioni_generali/02_atti_generali/atti_amministrativi_generali/?path=/categoria2/* (date of consultation, 12 September 2024).
[19] Court of Cassation, Labour Chamber, 23 March 1994, no. 2808.
[20] Court of Cassation, Labour Chamber, 7 March 2023, no. 7799; Id. 5 December 2022, no. 35644; Id., 2 June 2019, no. 16746.

technical solutions at their expense, such as email accounts allocated to each organisation or a virtual noticeboard. Indeed, some administrations have specified that trade union organisations must distribute content exclusively from the email addresses assigned to them and not through the address designated for use by union representatives in their capacity as employees, which is intended solely for service-related purposes[21].
From the perspective of recipients, case law equates the sending of emails to leaflet distribution, which falls within the realm of trade union freedom if it relates to labour issues and is reasonably measured to avoid inundating mailboxes[22]. Consequently, some authorities, within their email usage regulations, emphasise the material scope of these communications, alongside a prohibition against behaviours that could convert the IT system into a forum for debate[23].
However, this openness raises concerns regarding the protection of employees' privacy and their right to abstain from receiving any communications. Such factors seem not to be adequately recognised in judicial perspectives or in the management of employment relationships across administrations. Refusal to receive union communications has seldom been referenced in collective agreements[24], while matters of privacy do not appear to be considered at all.
From this standpoint, employees' email addresses constitute "common personal data"[25], whose disclosure outside the employer's organisation is permissible only if grounded in a viable legal basis under Article 6 of EU Regulation no. 2016/679 - General Data Protection Regulation (GDPR). If the worker is a union member, this relationship could legitimise the data exchange, thereby identifying legal bases in the "consent of the data subject to the processing of their personal data for one or more specific purposes" (Article 6, paragraph 1, letter a, GDPR), coupled with the necessity of processing for the performance of a contract to which the data subject is a party (Article 6, paragraph 1, letter b, GDPR).
However, complications arise in attempting to share the personal data of workers who are not union members. A potential legal basis may be identified

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[21] See the communication of the National Social Security Institute prot. no. INPS.0003.10/04/2018.0009195; likewise art. 8.12 of the Ministry of Environment *Regulation on the use of emails and the internet*, which can be read at *mase.gov.it* .
[22] Court of Cassation, Labour Chamber, 5 December 2022, no. 35643.
[23] In this way, art. 8.11 of the Ministry of Environment Regulation.
[24] A specifical provision is settled in art. 1 of the agreement between the Italian National Statistics Institute and trade unions on the use of email accounts, signed on 26 of July 2011, available at *istat.it/wp-content/uploads/2011/08/accordo-posta-elettronica.pdf* .
[25] Garante per la protezione dei dati personali (Italian Data Protection Authority), 31 July 2002, doc web no. 1065798, *garanteprivacy.it* .

in collective agreement provisions; however, in the absence of such provisions, references must be sought elsewhere. Two options can be considered. The first is ascribed to Article 6, paragraph 1, letter c, GDPR, concerning "compliance with a legal obligation to which the controller is subject." This obligation originates from Article 26 of the Workers' Statute, which permits union proselytism in the workplace. The second option stems from Article 6, paragraph 1, letter f) GDPR, which stipulates "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data", necessitating a balancing test.

2.2 New Forms of Trade Union Dialogue

Digital technologies also lead to a decentralisation and informalisation of the spaces and methods through which trade union action is executed, creating what has been described as the "emergence of parallel places (...) where collective willpower is formed."[26] For instance, within the CGIL Public Service union, each sector has established specific groups on platforms such as WhatsApp and Telegram, gathering workers, union managers, and the RSU. In these groups, news, decisions, documents, and negotiations are shared in real time, following a two-way flow: from the "centre" to the worker and vice versa, engendering a dynamic of information, discussion, and immediate action that would have been deemed "unthinkable" until recently[27]. This innovation helps to bridge the perceived disconnect between the exercise of unionists' mandates and grassroots demands.
Nevertheless, questions arise regarding how these new tools interact with the legal frameworks outlined in the Workers' Statute; for example, how might a survey conducted via WhatsApp be appraised in comparison to the outcomes of a traditional referendum regulated by Article 21?
In addition, the utilisation of new technologies necessitates a reconsideration of policies that could guide trade unionists in performing their duties through instant communication channels and social media. Beyond the interactions among union members, the unique nature of public employment requires further and more complex considerations, particularly regarding potential limits

[26] L. Imberti, *La nuova "cassetta degli attrezzi" del sindacato tra spazi fisici e luoghi digitali: l'esperienza di Toolbox Cgil di Bergamo*, in *Labour & Law Issues*, 2019, 2, 5.
[27] G. Saccoia, *Il sindacato digitale, prove tecniche di un nuovo modo di fare comunicazione*, in *bollettinoadapt.it* .

both to the right to express dissent and to the interactions of public employees on social media.
Regarding the implementation of such policies, all major confederations have established them across both public and private sectors. Indeed, the dynamics of internal expression remain consistent across the board.
More problematic is the use of social media, which is accessible to a vast audience, especially as a means to express dissent against the administration-employer[28].
Concerning the right to criticism, the prevailing jurisprudential stance asserts that a unionist, as a worker, is subject to the same constraints as any other employee, whereas in relation to trade union activities, they are on an equal footing with the employer[29]. This latter activity is indeed guaranteed under Articles 21 and 39 of the Italian Constitution, which address freedom of thought and expression, and the right of trade unions to organise and execute their activities, respectively. However, even criticism, no matter how robust, must remain within the bounds of formal propriety, thereby rendering a unionist liable for disciplinary action should they exceed these limits and defame the employer.
Additionally, there is a more nuanced question regarding the extent to which a public employee can engage with unions or union social media accounts. In this regard, recent changes to the Code of Conduct for Public Employees must be considered.
Specifically, the newly introduced Article 11-ter regulates the use of information technology and social media, mandating that employees exercise extreme caution to ensure that any statements made cannot be attributed to the public administration. In all circumstances, the employee is obliged to refrain from making comments that might undermine the prestige, dignity, or image of their administration or of public service in general. Furthermore, to uphold confidentiality, service-related communications must not be openly shared on digital platforms or social media, with the exception of those tied directly to an institutional necessity. Moreover, public administrations, within their codes of conduct, may implement a "social media policy" for each type of digital platform, aiming to adapt general provisions found in the Code according to their specific characteristics. These "social media policies" must delineate harmful behaviours based on employees' hierarchical levels and responsibilities, and to conclude, employees must not disclose or disseminate documents for reasons unrelated to their employment.

[28] Court of cassation, Labour Chamber, 10 July 2018, no. 18716; in the same way, Court of appeal of Rome, 1 October 2021, no. 3261.
[29] Amendments have been made by the Presidential decree 13 June 2023, no. 81.

The law enshrines pervasive limits, which may pose challenges to employees' freedom of association. The right to freely express oneself appears significantly restricted, if not wholly inhibited, particularly considering that the use of private accounts appears to fall within this scope[30]. Moreover, additional inquiries arise. Can a report or communication about trade union matters be construed as "any intervention or comment that could damage the prestige, dignity, or image of the administration"? Furthermore, what are the implications of the prohibition stating that "communications directly or indirectly related to the service must not normally occur in public discussions using digital platforms or social media," given that interactions regarding trade unions' matters inherently pertain to the service?

This scenario is likely explained by the weight of the public interest, which, as noted above, continues to exert significant influence. However, it is essential to highlight that the Council of State expressed a negative opinion on these recent changes, citing concerns regarding the obligations imposed on the protection of the administration's image in relation to the use of information technologies and social media[31].
In a press release dated 26 September 2023, the FLC CGIL union announced its intention to file legal action against the amendments, asserting that they would contravene Articles 21, 25, and 97 of the Constitution. Quoting the union's declarations, "There is no doubt that workers must pursue the public interest that the employing administration intends to achieve through their labour, yet fundamental constitutional freedoms, such as freedom of thought and its free expression, must not be stifled. This is particularly true since the public employment relationship has now been governed by legislation regarding its contractual conditions."[32] However, the complaint was dismissed by the Regional Administrative Court of Rome on 27 October 2023[33]. The ruling concluded that the contested provisions do not possess an immediately harmful nature, as their actual enforcement is left to the discretion of each administration.

[30] In general, on public employees' freedom of expression, V. Tenore, *La libertà di pensiero tra riconoscimento costituzionale e limiti impliciti ed espliciti: i limiti normativi e giurisprudenziali per giornalisti, dipendenti pubblici e privati nei social media*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2019, 2, 83; C. Bologna, *La libertà di espressione dei «Funzionari»*, Bononia University Press, 2020.
[31] Council of State, Legislative Activities Section, 19 January 2023, no. 93.
[32] The text of the release can be read at *flcgil.it* .
[33] T.A.R. (Tribunale Amministrativo Regionale) Lazio, Chamber Fourth-*Ter*, 27 October 2023, no. 15978.

3. New Contents for Trade Unions' Action

3.1 A Premise: The Spaces Available for Trade Unions in the General Framework of Italian Public Employment Law

In recent years, public administrations have increasingly relied on digital procedures to deliver their services. Effectively managing the impact of technological changes is therefore a primary objective in which social partners could play a pivotal role.

To begin with, the first point worthy of discussion is the definition of work performance itself, particularly in relation to the skills required of workers and the necessary training initiatives[34]. The second issue at hand is how trade unions can influence the exercise of employer-related powers, especially concerning workload distributions and the drafting of automated decision-making procedures.

However, trade unions' efforts are hampered by various constraints due to the unique nature of the employment relationship, which, as previously highlighted, exhibits a significant emphasis on public interest. This context also impacts the tools that unions possess to influence labour relations, particularly regarding collective bargaining. A brief overview of the overall legislative framework is therefore beneficial to understand the scope of trade unions' actions.

In the private sector, the contractual model is governed by rules established autonomously by industrial relations, with limited legal impact, in accordance with the protection of union freedoms granted by Article 39 of the Italian Constitution. Conversely, the public sector operates within a framework formalised by law, which significantly constrains unions' actions.

In summary, under Article 40, paragraph 1, of the Consolidated Law, collective bargaining is excluded from numerous issues relating to work organisation, which are under the purview of management[35]. Consequently, the effectiveness

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[34] T. Ciarli, M. Kenney, S. Massini, L. Piscitello*, Digital technologies, innovation, and skills: Emerging trajectories and challenges*, in *Research Policy*, 2021, 7, 104289; G. Brunello, Désirée Rückert, C. T. Weiss, P. Wruuck, *Advanced Digital Technologies and Investment in Employee Training: Complements or Substitutes?*, IZA Discussion Paper Series no. 15936, February 2023, *bollettinoadapt.it/wp-content/uploads/2023/02/dp15936.pdf* .

[35] See E. C. Schiavone, *Art. 40 D. Lgs. 30 marzo 2001, n. 165 – Contratti collettivi nazionali ed integrativi*, in D. Garofalo (ed), *Codice del pubblico impiego commentato*, in *Banca dati One PA*, *onepa.wolterskluwer.it*; U. Gargiulo, *La contrattazione integrativa nelle pubbliche amministrazioni: cronache dal bradisismo*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2019, 2, 57; F. Carinci, *Contrattazione e contratto collettivo nell'impiego pubblico "privatizzato"*, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2013, 3/4, 493; E. Menegatti, *L'amministrazione del contratto collettivo nel pubblico impiego "privatizzato": lo*

of unions' actions is greatly diminished and often relegated to non-binding initiatives, the implementation of which is ultimately determined by the administration. Social dialogue, which exists and can sometimes be contentious, is legally overshadowed by the presumption of correctness attributed to the employing administration under Article 97 of the Constitution. Notwithstanding this, unions have long advocated for a broader use of collective bargaining and co-management methods, albeit with little success.

Union involvement revolves around three instruments: Information, Discussion, and Joint Bodies for Innovation[36]. Information, recognised as a "prerequisite for the proper exercise of trade union relations," pertains to the transmission of relevant data regarding the issues being evaluated, allowing trade unions to provide their observations. Through Discussion, "in-depth dialogue is established to enable trade unions to express comprehensive observations and to participate in drafting measures that the administration is set to adopt on specified matters." The Joint Body for Innovation is the venue where "open and interactive relationships are consistently fostered concerning organisational and innovation projects, improvement of services, promotion of legality, quality of work, and organisational well-being," with the aim of formulating proposals for the administration or negotiating parties in collective bargaining.

As it stands, in many sectors, trade union dialogue is constrained to a preliminary phase prior to the adoption of the employer's decision. In the event of dissent, unions may only assert their positions through self-defence, given that the matters in question are non-negotiable.

3.2 New Skills for "Digitalised" Work Performances and Trade Unions

The performances of public employees are characterised not only by their internal dimension within the synallagmatic relationship with the administration but also by an external dimension concerning the services provided to citizens. Today's citizens are accustomed to quicker, simpler, and more satisfying experiences. As one of the largest employers, public administration plays a crucial role in fostering a well-functioning society and must accelerate the transformation of its workforce to create long-term value for citizens. Advanced technologies, such as analytics and artificial intelligence,

stato dell'arte, in *Il Lavoro nelle Pubbliche Amministrazioni*, 2012, 1, 57; G. Ianniruberto, *Il contratto collettivo nel lavoro pubblico dopo la legge Brunetta*, in *Rivista Italiana di Diritto del Lavoro*, 2010, 2, 221.

[36] For a more detailed analysis, G. Pistore, *Art. 9 D. Lgs. 30 marzo 2001, n. 165 – La partecipazione sindacale*, in D. Garofalo (ed), *Codice del pubblico impiego commentato*, in *Banca dati One PA*, *onepa.wolterskluwer.it*.

have long been integrated into administrative tasks. Article 12 of the Digital Administration Code already emphasises the utilisation of information technologies. Recently, Article 30 of the Procurement Code (Legislative Decree 31 March 2023, no. 36) mandates the automation of decision-making processes, including the use of AI. A bill concerning artificial intelligence and administrative activities is currently under discussion (DDL no. 1146 of 2024) [37].

Digital tools can be fully effective when employed by skilled and adaptable employees who are committed to continuous improvement. This opportunity was emphasised by the Pact for Public Work Innovation and Social Cohesion[38], signed by the Ministry of Public Administration and the three main union confederations, CGIL, CISL, and UIL. The restructuring of Public Administration depends significantly on valuing human resources, facilitating professional development paths, and reskilling efforts, combined with ongoing, effective, and continuous modernisation to meet the challenges of digital transition. Conversely, as noted by the European Public Service Union in a 2018 report, digital change can also benefit workers by relieving them of some of the standardised and repetitive aspects of their work that can be performed by machines[39]. Unions could serve as an intermediary between the administration's demands and those of the employees, aggregating needs, fostering consensus for digitalisation processes, and working on the training initiatives necessary for effectively executing new tasks.

Several challenges arise from the composition of the workforce. As highlighted by research presented at the Public Administration Forum in 2021[40], critical issues stem from the high average age of public employees, which is around 50 years. Individuals over 60 constitute 16.3% of employees, while those under 30 make up only 4.2%. This situation follows a well-known hiring freeze, now

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[37] The proceedings can be read at *senato.it/leg/19/BGT/Schede/Ddliter/58262.htm* .

[38] *Patto per l'innovazione del lavoro pubblico e la coesione sociale*, at *funzionepubblica.gov.it/articolo/dipartimento/11-03-2021/patto-linnovazione-del-lavoro-pubblico-e-la-coesione-sociale*.

[39] European Public Service Union, *How Trade Unions Can Use Collective Bargaining to Uphold and Improve Working Conditions in the Context of the Digital Transformation of Public Services*, in *epsu.org*. The Report outlined many possible instruments to face digitalization: using collective bargaining and social dialogue to develop frameworks for the digitalization of public services; the development of the collective bargaining model and of training programs to support trade unions in regulating new technologies, the establishment of a regular process to evaluate the impact of digitalization. The Report was adopted following a conference held in Berlin on 26-27 June 2018, which saw 55 representatives of 35 public service unions from 15 countries, including Italy, debate the topic.

[40] FPA Data Insight, *Lavoro pubblico 2021*, in *forumpa.it/riforma-pa/ricerca-fpa-lavoro-pubblico-2021-mai-cosi-pochi-dipendenti-pubblici-ma-la-pa-torna-ad-assumere/* .

partially addressed, which continues to generate a significant generational gap and a serious shortage of staff. Additionally, a decline in investments can be observed. According to the State Accounting Office, the total expenditure in 2019 – the last year analysed – was €163.7 million, €110 million less than a decade ago, equating to an average of 1.2 days of training per year per employee. In contrast, collective agreements express a general commitment to training, particularly in relation to digital transformation[41]. The collective agreement for the healthcare sector (Article 64) emphasises that "within the framework of reform and modernisation processes, staff training plays a crucial role in changing strategies aimed at achieving greater quality and effectiveness" of public action (paragraph 1) and that training activities aim, among other objectives, to "ensure professional updating concerning the use of new working methodologies or new technologies, as well as the continual adaptation of work practices to innovations that may have arisen, including those stemming from new legislative provisions" (paragraph 3). The same holds true for the collective agreement concerning "Local Functions" (Article 54).

Trade unions' actions, however, are largely limited to mere principles during negotiations, as they are not subsequently involved in training initiatives. Where initiatives do exist, they are often advisory and non-binding. The 2021 Pact for Public Work Innovation recognised a workers' right to training, yet the associated policies remain solely within the realm of discussions between the administration and trade unions.

For instance, Article 31, paragraph 13, of the collective agreement for "Central Functions" stipulates that within the Joint Innovation Body, "a) elements of knowledge relating to the training needs of staff can be acquired; b) proposals may be made to the administration (...); c) monitoring initiatives can be undertaken regarding the implementation of training plans and the usage of allocated resources."

This aspect frequently emerges when examining the various collective provisions on the matter. Another example is Article 52 of the collective agreement for "Central Functions," concerning strategic knowledge planning. The first paragraph states that "the parties recognise the importance of initiating courses tailored to specific target groups, aimed at addressing skill gaps across strategic areas common to all employees included in particular accreditation systems that ensure high qualification." Thus, responsibility

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[41] Legal and contractual provisions in the field have been analysed by A. Impronta, M. Tiraboschi, *Il diritto soggettivo alla formazione nel lavoro pubblico: una rassegna ragionata delle previsioni legali e contrattuali*, *CNEL, Casi e materiali di discussione: mercato del lavoro e contrattazione collettiva* 2024, 16, in *bollettinoadapt.it*.

should be shared by both unions and the administration. However, the article further establishes that the arrangement of these courses is solely at the discretion of the administration, with no provision for trade union involvement.
A representative instance of this approach is the 2022 plan "Ri-formare la PA. Persone qualificate per qualificare il Paese" (Re-training the P.A. Qualified People to Qualify the Country)[42]. The aim of the plan was to provide extraordinary training for 3.2 million public employees and was divided into two strands: the first focused on enhancing workers' skills and encouraging enrolment in university programmes; the second envisioned the launch of specific training programmes to support transitions in accordance with the National Recovery and Resilience Plan, starting with digitalisation. Notably, trade unions were not formally consulted.
Indeed, unions are often not included in the development of new digital procedures employed by employees. The design of work processes and the adaptation of new technologies to existing services is frequently addressed through direct worker involvement, without any intermediary or engagement from the unions.

3.3 The Involvement of Trade Unions in the Administration's Powers as an Employer

Digitalisation also opens up other avenues for trade union action, primarily from two perspectives. Firstly, there is the need to negotiate with the employer regarding the content of work performances, ensuring that the use of digital technologies does not result in undue burdens for workers. Secondly, there is a requirement for oversight concerning the exercise of the employer's powers, particularly in relation to artificial intelligence and, more specifically, algorithms.
As seen above, in the Italian public sector, trade union involvement is primarily restricted to non-binding activities, while decisions regarding the organisation of work predominantly lie with the administration.
Regarding workloads, one example includes the regulation of what is termed "agile work," as outlined in the "Guidelines for the Organisational Plan for Agile Work and Performance Indicators" prepared by the Public Function Department[43]. Agile work is characterised as a performance model that extends beyond traditional employer oversight, operating as an agreement of trust

[42] Further information is available at *funzionepubblica.gov.it/articolo/ministro/10-01-2022/parte-il-piano-strategico-%E2%80%9Cri-formare-la-pa-persone-qualificate*.
[43] Dipartimento della Funzione Pubblica, *Guidelines on the organizational plan for agile work and performance indicators*, in *funzionepubblica.gov.it*.

between the administration and the worker. Consequently, digital technologies necessitate a transformation in organisational culture, which should assume a strategic role in establishing, measuring, and evaluating work performance in new ways. In this context, Article 14, paragraph 1, of Law 7 August 2015, no. 124, mandates public administrations to develop an Agile Work Organisational Plan (POLA) as a specific component of the Performance Plan concerning necessary innovation processes to be implemented for work planning and management. Nevertheless, the decisions in this regard rest solely with the authority, as no references are made to trade unions.

The same applies to the second point mentioned earlier, regarding digital decision-making processes via algorithms. In this context, jurisprudence has established that the administration must clarify the criteria through which the algorithm has been designed, adhering to the principle of "algorithmic legality"[44]. This rule encompasses the "knowability of the algorithm," ensuring "the non-exclusivity of algorithmic decisions and the avoidance of discrimination."[45].

Administrative transparency implies that individuals affected by the relevant power must be fully informed about the decision-making framework utilised and the criteria applied. This knowledge should pertain to all characteristics of the algorithm: its authors, the development process undertaken, and the decision-making mechanism, including any priorities assigned in the evaluation process. Moreover, transparency requires that the algorithm be articulated in an intelligible manner, simplifying its multidimensional complexity through explanations of the technical, IT, and statistical aspects in line with the applicable legal provisions.

These guidelines enhance and complement the obligations set out in Article 1-bis of Legislative Decree 26 May 1997, no. 152, subsequently amended by Legislative Decree 27 June 2022, no. 104, which states that workers, including through trade union representatives, may request information regarding the use of automated decision-making systems.

Unions could certainly play a significant role in identifying the critical areas of algorithmic systems, despite the fact that existing experiences in this field have been hard to come by, primarily serving an advisory function. A notable case involved the allocation of fixed-term contracts to school teachers, which ultimately led to rulings affirming the principle of "algorithmic legality." This

[44] See G. Marchianò, *La legalità algoritmica nella giurisprudenza amministrativa*, in *Il diritto dell'economia*, 2020, 3, 229; E. Carloni, *I principi della legalità algoritmica. Le decisioni automatizzate di fronte al giudice amministrativo*, in *Diritto amministrativo*, 2020, 1, 273; S. Sassi, *Gli algoritmi nelle decisioni pubbliche tra trasparenza e responsabilità, in Analisi Giuridica dell'Economia*, 2019, 1, 109.

[45] Council of State, Chamber VI, 13 December 2019, no. 8474; Id., 13 December 2019, no. 8472; Id., 8 April 2019, no. 2270.

resulted in a meeting being convened between the Ministry of Education and Merit and trade unions to discuss the workings of the algorithm responsible for contract assignments.

4. Conclusions

Undeniably, digitalisation is having a significant impact on the functioning of public services for both users and public service workers, presenting new challenges for trade unions. The manner in which governments manage the digitalisation process will be crucial. It is imperative "to establish an adequate regulatory framework for the introduction and use of digital technologies in public services and their workplaces. Such regulation must be developed in close dialogue with public service workers and their trade unions through meaningful participation, information, and consultation, and by negotiating relevant wording in collective agreements."[46]

However, the development of a new role for trade unions is still in its embryonic stages, necessitating a shift in perspective regarding both how unions conceive their actions and the very structure of public employment.

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[46] Rosa Pavanelli, General Secretary of Public Services International, Introduction to E. Voss, R. Rego, *Digitalization and public services: a labour perspective*, Public Services International, 2019.

Are Platform Work Challenges Repurposing Trade Unions as we Know them? The Case of Italy

Eva Lacková *

Abstract. This paper examines the evolving role of trade unions in platform work, addressing transparency and accountability issues related to artificial intelligence and algorithms. It highlights the unexpected focus on "territoriality" over "virtuality" in platform unionism and the challenge of decoding the operations of digital platforms. The opacity of algorithms complicates transparency, making it essential for unions to act as regulatory intermediaries that address legislative gaps and protect workers' interests. Beyond utilising existing legal frameworks like Article 28 of the Workers' Statute, unions are adopting innovative approaches to educate workers, audit algorithms, and promote fair treatment in the digital era.

Keywords: *Trade Unions; Platform Work; Transparency; Algorithms.*

1. A Brief History of Union Activity in the Italian Platform Economy

The digital revolution has been reshaping the landscape of employment, presenting a myriad of novel challenges that demand innovative responses. Among these challenges, it has become essential to advocate—with an emphasis on collective action—for a specific category of non-standard workers, namely digital platform workers. This research paper endeavours to explore aspects of the dynamic evolution of Italian trade unions in the realm of platform-mediated labour, particularly as they navigate the distinct adversities faced by digital platform workers.
Traditionally entrusted with the task of negotiating collective agreements and addressing concerns about fair compensation and worker classification, trade

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unions are now confronted with the urgent need to adapt their roles[1] to the unique exigencies of platform-based employment. In addition to their conventional functions, trade unions are increasingly called upon to address emerging issues of transparency and accountability inherent in the deployment of artificial intelligence and algorithms by platform employers.

To gain a comprehensive understanding of the modern complexities surrounding unionism in the platform economy, it may be beneficial to revisit some key concepts from the historical evolution of trade unions.

First of all, what certainly does not represent a novelty is the conflict underpinning the surge of collective action among Italian food couriers working for digital labour platforms—so-called "riders"[2]. The emergence of riders in the labour market coincided with the general crisis of intermediary bodies and representative mechanisms typical[3] of the ongoing interregnum in industrial relations[4]. In a context where traditional unions were asked to consider themselves co-responsible for processes of flexibilisation (i.e. reduction) of workers' protections[5], and where their role was being reshaped into organisations with almost no conflictual agenda[6], the newly formed representatives of platform workers resembled the primordial forms of union organisation. Their initial collective actions clearly bore the mark of a conflict of interest—and thus an interest in conflict[7]—within the scope of contractual relationships aimed at achieving common goals, representing a typical case of

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[1] M. Tiraboschi, *Sulla funzione e sull'avvenire del contratto collettivo di lavoro*, in *Diritto delle Relazioni Industriali*, 2022, n. 3, 797.

[2] The Italian scholarly literature on the topic is endless, but to mention just a few: V. De Stefano, *The rise of the "just-in-time workforce": on-demand work, crowdwork, and labour protection in the "gig economy"*, in *Comparative Labour Law and Policy Journal*, 2016, Vol. 37; A. Aloisi, *Commoditized workers: case study research on labour law issues arising from a set of "on-demand/gig economy" platforms*, in *Comparative Labour Law and Policy Journal*, 2016, Vol. 36; A Donini, *Il lavoro attraverso le piattaforme digitali*, Bononia University Press, 2019; R. Voza, *Il lavoro e le piattaforme digitali: the same old story?* in *WP CSDLE "Massimo D'Antona".IT*, 336/2017.

[3]S. Bini, *Lavoro digitale e dimensione collettiva*, in *Sindacalismo*, 2021, n. 47 49. The author underlines that although the situation may seem to be arising from the recent impact of digitisation on work and the economy, the issue is actually the product of a long process of evolution, in which digital transformation is just one of the most emblematic phenomena of the recent phase.

[4] See, for instance F. Martelloni, *Presenza nel conflitto e rappresentatività, nell'interregno del sistema sindacale*, in *Lavoro e diritto*, 2014, n. 1, 57, who, citing Gramsci, describes interregnum as a time full of 'various morbid phenomena' where 'the old is dying and the new cannot be born'.

[5] M. Rusciano, *Contrattazione e sindacato nel diritto del lavoro dopo la l. 28 giugno 2012, n. 92*, in *Argomenti di diritto del lavoro*, 2013, 1285.

[6] M. Forlivesi, *La rappresentanza e la sfida del contropotere nei luoghi di lavoro*, in *Lavoro e diritto*, 2020, n. 4, 688.

[7] For the analysis of the meaning of the collective interest see M. V. Ballestrero, *Interesse collettivo e conflitto*, in *Lavoro e Diritto*, 2018, n. 3, 416.

de facto unionism[8]. At this stage—and echoing historical precedents[9]—the right of these workers to engage in conflictual action was not expressly recognised[10].
The platforms entered the labour market presumably envisioning a return to a century-old scenario marked by imperfect and compromised workers' rights. Multiple examples of this attitude can be found in Italian case law; one notable instance is the Deliveroo-owned algorithm "Frank," which the Court of Bologna declared to discriminate against riders in relation to their participation in strikes[11]. Consequently, labour platforms seem to operate under a regime of "self-constitutionalisation," where the enterprise establishes its own normative authority, thereby neglecting democracy and its most rebellious tool—conflict[12].
The new "digital precariat" is, therefore, driven by the same fundamental interests that historically spurred labour organisation during the industrial revolution, particularly focusing on wages, job security, and working conditions. Additionally, they share common forms of conflictual tools and tactics typical of emerging working classes struggling over the commodification of labour[13], namely demonstrations, strikes (e.g. net strikes or digital picket

[8]M. Forlivesi, *Interessi collettivi e rappresentanza dei lavoratori del web*, in P. Tullini (eds.), *Web e lavoro. Profili evolutivi e di tutela*, Giappichelli Editore, 2017, 190 -191. The author compares the situation of platform workers to the experiences of Italian sharecrop farmers, that, although not formally recognised as subordinate workers, were granted to right to strike and organise in unions given the intrinsic asymmetry of the contractual relationship.
[9] Almost hundred years ago, Italian lawmakers safeguarded freedom of association but deprived it of its adversarial aspect: the right to strike, criminally punishable under the Penal Code Rocco. In particular, articles 502-508 of the Real Decree from 19 October 1930, n. 1398 sanctioned as crimes against the public economy all means of trade union struggle (strike, lockout, boycott, arbitrary occupation of companies, sabotage); however, these criminal offenses were contained in the previously applicable regulations since 1926. In essence, freedom of trade union association ceased where collective conflict began, resulting in a distorted understanding of the link between freedom of association and freedom of action, despite its crucial importance in industrial relations. With the words of a distinguished member of Italian legal scholarship, «primitivism of such scenario» is clear to everyone today. U. Romagnoli, *La liberà sindacale, oggi*, in *Lavoro e Diritto*, 2000, n. 4, 658-659.
[10] At the time considered dubious even by some scholarship, see, for instance, E. Dagnino, Il *lavoro nella on-demand economy: esigenze di tutela e prospettive regolatorie*, in *Labour & Law Issues*, 2015, vol. 1, n. 2, 92, claiming that «the abstention from work carried out by participants in platform work does not seem to be able to be classified as a strike and, depending on the form it may take, could lead to retaliatory actions by the platform or clients».
[11] Court of Bologna, 30 December 2020.
[12] In this sense, tapping into the scholarship of G. Teubner, see V. Bavaro, *Lo sciopero e il diritto fra innovazione, tradizione e ragione pratica,* in *Lavoro e Diritto*, 2015, n. 2, 308.
[13] The above described state of tension is identified by Silver as Marx-type labour unrest, and it occurs as capitalism expands, creating new industries and concentrations of workers. This

lines), and other—less official—forms of labour withdrawal (e.g. log-offs). For instance, the first-ever strike of riders organised by their grassroots organisation in Turin in 2016 led to the immediate dismissal of eight platform workers, which ultimately resulted in the landmark Foodora case and the Supreme Court ruling in favour of the hetero-organised workers[14].
It can therefore be assumed that the exercise of *ius resistendi* by platform workers represents a reiteration of the socio-political movement against a new (digital) power-profit complex.
Secondly, not much seems to have changed regarding the behaviours and motivations of the two antagonists in the collective conflict. On one hand, there is the catastrophic techno-deterministic rhetoric[15] and obstructive attitude of the platform employers towards the emergence of collective workers' demands; on the other hand, the "social movement unionism"[16] of food delivery couriers creates a surprisingly strong counterbalance to platform capitalism, akin to the activism of factory workers in the late 1960s.
In the case of the former, the techno-deterministic narrative advanced by digital platform employers emerges from an ideology in which technological innovation is proposed as an impartial force, serving as a catalyst for societal transformation. This narrative operates on the fallacious assumption that technology alone drives social change—an idea reinforced by the gradual evolution of modern technologies culminating in new forms of employment

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unrest typically involves disputes over wages and working conditions. In contrast, Polanyi-type labour unrest arises in response to increased commodification and intensified global economic competition and it is often linked to traditional working classes facing the dismantling of established social arrangements. Depending on the location, both types of unrest have been alternating or cohabited simultaneously since the Industrial revolution. B. J. Silver, *Forces of Labor. Workers' movements and globalization since 1870*, Cambridge University Press, 2003, 16-19.

[14] The Italian Supreme Court with the ruling of 25 January 2020, n. 1663, along with the legislative revision of Article 2 of Legislative Decree No. 81/2015, intentionally disregarded the concept of hetero-direction and extended legal protections to hetero-organised workers. According to the Court, the principle of subordination also applies to work that are legally self-employed but exhibit 'hetero-organisation, accompanied by personality and continuity of performance, to the extent that the collaborator becomes comparable to an employee', thus justifying 'equivalent protection and, therefore, the remedy of full application of the discipline of subordinate work'. For the in-depth analysis of the Supreme Court ruling see, for instance: V. Nuzzo, *Il confine delle tutele lavoristiche, oggi*, in *Costituzionalismo.it – A cinquant'anni dallo Statuto dei lavoratori, nuove tecnologie e società della sorveglianza*, 2020, vol.1.

[15] The war of competing narratives is in progress: on one side, conventional narrative portrays platforms as agents promoting fairer labour markets, economic growth and flexibility, while on the other, a counter-narrative seeks to deflate the techno-deterministic bubble. F. Pasquale, *Two narratives of platform capitalism*, in *Yale Law & Policy Review*, 2016, vol. 35, n. 1, 309-320.

[16] See R. E. Chesta, L. Zamponi, C. Caciagli*, Labour activism and social movement unionism in the gig economy. Food delivery workers' struggles in Italy*, in *Partecipazione e conflitto*, 2019, vol. 12, n. 3.

characterised by what can be regarded as a distorted manifestation of technological expertise or a "perverse expression of *techne*."[17] Platforms, heavily reliant on AI and algorithms to orchestrate labour dynamics, are not only heralded as a novel business model but also celebrated as pioneers of a new labour paradigm[18].
A quintessential example of this narrative is the Italian Assodelivery Union. Assodelivery, the primary employers' association in the food delivery sector, was established on 7 November 2018, initially comprising Deliveroo, Glovo, Uber, and Just Eat. Despite early attempts at dialogue, Assodelivery appeared intent on obstructing sector regulation rather than reaching agreements. Eventually—shortly after the entry into force of Legislative Decree 81/2015—Assodelivery was compelled to pursue prompt self-regulation, ultimately forming an agreement with the UGL Union (known as the "CCNL Rider") which allowed platforms to maintain their business model by circumventing labour protections.
Regarding the riders' attitudes, the prevailing perception of the platform economy as a domain resistant to unionisation contradicts the actual sentiments and intentions of platform workers. Influenced by ideology and shaped by the rhetoric of digital labour platforms themselves, this perception portrays platform work as devoid of unions, with workers perceived as fiercely independent and uninterested or even hostile towards unionisation. However, not only is the general sympathy towards trade unions greater compared to other workers in the labour market[19], but the actual mobilisation undertaken across major Italian cities since 2016 counters bleak predictions about the difficulties of "organising the unorganised".[20]

[17] S. Žižek, *In defence of lost causes*, Verso, 2008, 447-452.
[18] A broad academic consensus exists about the nature of platform capitalism, where the orchestration and implementation of work through digital platforms are embedded within a context characterised by «monopolistic tendencies, concentrated economic and political authority, and entrenched culture of systematic regulatory evasion». J. Peck, R. Phillips, *The platform conjuncture*, in *Sociologica*, 2020, vol.14, n. 3, 73.
[19] According to a recent ILO survey, a significant majority of platform workers in Europe, approximately 69,2 percent, hold favourable views towards unions and more than one in four platform workers express willingness to join a union, in both cases surpassing the general population's inclination. Notably younger platform workers, those with migrant backgrounds, and individuals with lower educational attainment display particularly high levels of openness to future union membership. See K. Vandaele, A. Piasna, W. Zwysen, *Are platform workers willing to unionize? Exploring survey evidence from 14 European countries*, ILO Working Paper n. 106, 2024, 25, https://doi. org/10.54394/QWUL5553.
[20] Recent analysis confirms the tendency to platform workers to union mobilisation and ascribes three main causes for this phenomenon: the visibility of the riders in the urban landscape and the soft power they exercise on companies through the media, the mix of old and new repertoires of action made possible by the new information and communication

When it comes to the triggering factors for both unionisation and various forms of collective unrest, fair compensation emerges as the predominant motivator. Arguably, factors such as employment status and algorithmic control play a minor role, despite being extensively discussed in academic circles; last but not least, health and safety concerns constitute a significant proportion of protest motivations, with indications of an increase over time, potentially influenced by the Covid-19 pandemic[21].

2. Local Platform Unionism and Elements of Organisational Creativity

In the case of Italian mobilisation, traditional unions initially opted to remain on the periphery during the early years of riders' organising efforts, despite the existing institutional framework and available power resources. Instead, various forms of semi-mature[22] self-organisation among platform workers have flourished since 2016.

Even some Italian grassroots unions, such as Si Cobas and USB, which primarily have experience in the traditional logistics sector, faced challenges in adapting their established tactics—such as warehouse occupations and transport blockades—to the unique dynamics of gig economy food delivery platforms. This discrepancy between the action repertoires familiar to grassroots unions and those aligned with riders' own visions of the dispute hindered effective collaboration in the early years[23]. Therefore, rather than

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technologies and the availability of a social infrastructure through social-political spaces and direct social action. See R. E. Chesta, L. Zamponi, C. Caciagli*, op. cit.*

[21] C. Umney *et al.*, *Platform labour unrest in a global perspective: how, where and why do platform workers protest?,* in *Work, Employment and Society*, 2024, vol. 38, n. 1, 16-18. See also V. Trappmann *et al., Global labour unrest on platforms. The case of delivery workers*, Friedrich-Ebert-Stiftung, 2020, available online: https://library.fes.de/pdf-files/iez/16880.pdf.

[22] These practices were implemented thanks to past heritage of the autonomous precarious movement. Previous research on precarious workers' organising in Italy, focusing on movements like 'San Precario', demonstrates how collective identity formation among such workers evolved independently of traditional unions, drawing from existing informal organizations and local repertoires of contention. Additionally, they illustrate how these experiences inspired self-organisation in other sectors, highlighting the importance of local socio-political contexts and collective identities in shaping organisational forms and fostering enduring cultures of solidarity. See A. Murgia, G. Selmi, *Inspire and conspire: Italian precarious workers between self-organisation and self-advocacy*, in *Interface*, 2012, vol. 4 n. 2, 181–196.

[23] «Their [i.e. SI-COBAS'] method of fighting is based on blocking [firms'] gates, but what do I have to block here? Should I slash the tires of other [riders]?»

«We speak about apps, Facebook, shitstorming and mailbombing, and then they say 'yes let's go there and block the restaurants' strategically it seems a bit anachronistic to me». L. Cini, V. Maccarrone, A. Tassinari, With *or without U(nions)? Understanding the diversity of gig workers'*

commencing from institutional characteristics, mobilisation practices among precarious workers prioritised a novel approach—placing workers and their interactions with the surrounding environment at the forefront of their unionisation efforts[24].
In this context, it is certainly worth mentioning the experience of Riders Union Bologna, established in 2017 as an instance of metropolitan social unionism. Its objective was to alter the strategies employed by similar grassroots unions representing food delivery couriers in other cities. In contrast to demonstrations held in Milan (by Deliverance) and Turin (Deliverance Project), which focused on the headquarters of platform companies, the Riders Union Bologna opted for direct engagement with local institutions[25].
On 31 May 2018, the Charter of Fundamental Rights of Digital Labour in the Urban Context was signed by the Municipality of Bologna, Riders Union Bologna, CGIL, CISL, UIL, and, on the employer side, by the Bologna-based food delivery platforms Sgnam and MyMenù, which at the time employed over a third of the delivery riders operating within the municipal territory. In this instance, the local administration demonstrated that it possessed the governance structures necessary to foster collaboration among local stakeholders[26]„ acting as "a guarantor of the credibility of the negotiations process"[27].
Cities provide a new arena in which trade unions can take a leading role in advancing their core objectives of improving workers' well-being. Acknowledging the unions' role "not only as intermediaries between workers and employers, but more importantly as mediators between working citizens and public authorities"[28] increases the prospects of countering, or at least mitigating, the instability stemming from the fragmentation of labour markets.
Moreover, the element of territoriality is intricately linked to another organisational dimension of platform unionism. Territorial adherence serves as a criterion for delineating a perimeter within which to include workers marked

organizing practices in Italy and the UK, in *European Journal of Industrial Relations*, 2022, vol. 28, n. 3, 353.
[24] L. Cini, V. Maccarrone, A. Tassinari, *op. cit.,* 343.
[25] F. Martelloni, *Individuale e collettivo: quando i diritti dei lavoratori digitali corrono su due ruote*, in *Labour and Law Issues*, 2018, Vol. 4, No. 1, 21 -22.
[26] G. Croce, *L'irresistibile attrazione tra città e lavoro: analisi economica e cambiamento tecnologico*, in *Sindacalismo*, 2021, n. 47, 20-21.
[27] F. Martelloni, *Individuale e collettivo*, cit., 23.
[28] As well as allows the union to recover the spirit of mutualistic experiences from the late nineteenth century. See M. Forlivesi, *La rappresentanza e la sfida del contropotere nei luoghi di lavoro*, in *Lavoro e diritto*, 2020, n. 4, 690.

by substantial vulnerability derived from the precarious nature of their working conditions[29].
Urban meeting points for riders—initially designated by platform algorithms to enhance the efficiency of deliveries—facilitated camaraderie and discussions among workers, ultimately fostering a sense of collective identity that is indispensable for collective action[30].
It is also important not to overlook that the determination of certain territorial elements serves to identify the spatial entity from which workers' representatives derive their legitimacy and obtain their mandate to negotiate. In the Italian legal system[31], such fundamental organisational particles can be found in the "production unit," defined by a certain level of autonomy and complexity, as well as by dimensional thresholds established by Article 35 of the Law of 20 May 1970, n. 300 (hereinafter referred to as the Workers' Statute). Consequently, only such units attract the right to establish employee representation bodies[32] (in Italian, "RSA" or "RSU"), which hold numerous significant collective rights, including the right to receive information from the employer regarding the deployment of algorithmic management systems (see infra).
The peculiarities of platforms' entrepreneurial organisation also allow for the identification of production units, thanks to the adaptability of the concept emerging from rich jurisprudential and doctrinal discourse. Today's notion of the production unit extends beyond physical premises, especially in cases where tasks cannot be confined within the company's walls, as is often the case with fleeting and dispersed app-based platform work. In these instances, the production unit is defined by the geographic area where offline work is to be

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[29] S. Bini, *op. cit.*, 52.
[30] Such as Deliveroo riders in 2016 took over and repurposed the urban spaces for strike organisation and giving voice to their collective demands. F. Ferrari, M. Graham, *Fissures in algorithmic power: platforms, code and contestation*, in *Cultural Studies*, Taylor and Francis Online, 2021, Vol. 35, Iss. 4-5, 825.
[31] For a broader European overview see A. Aloisi, S. Rainone, N. Contouris, A*n unfinished task? Matching the Platform Work Directive with the EU and international "social acquis"*, ILO Working Paper 101, 2023.
[32] Passing over the issue of entitlement to establish the employee representation bodies – directly linked to the subordination/self-employment status of platform workers – suffice to say that some Italian riders fall under the status of subordination or its hetero-organised equivalent (protection-wise), for instance the employees of virtuous platforms such as Just Eat (applying supplementary collective agreement for logistics, freight transport and shipping – *Accordo nazionale integrativo del CCNL Logistica, Trasporto Merci e Spedizione*). Conversely, although those classified as coordinated and continuous workers are not legally entitled to collective representation rights in the workplace pursuing Article 19 of Workers' Statute, they may be able to do so should a collective agreement stipulate it.

performed, often represented by routes or territories designated for service delivery[33].

Thus, one could argue—in accordance with influential national legal scholarship[34] —that urban spaces hold special significance, as they serve as the territorial perimeter for the performance of services. This assertion is supported by Article 35 of the Workers' Statute, which allows for the formation of a production unit when several organisational nuclei, individually failing to meet the dimensional requirement, can be consolidated if they operate within the same municipal jurisdiction. Consequently, city or neighbourhood boundaries define organised structures with functional independence linked to the service delivery radius, fostering early forms of worker interest concentration for union objectives.

Indeed, further steps are needed to extend the concept of the production unit beyond the classification conundrum surrounding subordination[35] or to broaden regulation to encompass all local workers employed by different platforms. Choosing the city as a reference boundary has the potential to enhance collaboration and synergy among representation bodies of various digital service platform companies, leading to a genuine conceptual shift from a mere production unit to a bargaining unit[36].

3. The Notion of 'Meaningful' Information for Unions: From Transparency to Comprehension

In the following section, we will underscore the integral connection between information and genuine comprehension of its meaning[37]. Algorithmic management systems immerse workers and their union representatives in a

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[33] Cass. 30 luglio 2019, n. 20520; Cass. 6 agosto 1996, n. 7196.

[34] A. Donini, *Il luogo per l'esercizio dei diritti sindacali: l'unità produttiva nell'impresa frammentata*, in *Labour & Law Issues*, 2019, vol. 5, n. 2, 108 – 110.

[35] For a defence of the teleological interpretation in this sense see A. Bellavista, *L'unità produttiva digitale*, in *Labour & Law Issues*, 2023, vol. 9, n. 1, 105.

[36] For an American concept of appropriate digital bargaining unit see M. Faioli, *Unità produttiva digitale. Perché riformare lo Statuto dei lavoratori*, in *Lavoro Diritti Europa*, 2021, n. 3, 15.

[37] The etymology of the word "information" traces back to Latin roots. *Informare* signifies to give form, to instruct, and subsequently to give news. Furthermore, *informatio* refers to notion, idea, representation, and later evolved to connote instruction, education or culture. Similarly, the term *formare* emphasizes the process of nurturing and developing, particularly through education and training, signifying the role of education in moulding individuals and ideas into their matured forms. https://www.treccani.it/vocabolario/informare/; https://www.treccani.it/vocabolario/informazione/; https://www.treccani.it/vocabolario/formare/.

whirlwind of linguistic struggles and the dilution of informative context[38]. This means that not only may workers struggle to understand information about the algorithmic underpinnings of their working arrangements, but the technical jargon can also obscure the fact that any meaningful information is being conveyed at all.
Collective action among platform workers is tied to a broader understanding of the technological processes and the general functioning of the digital interfaces through which work is organised. If "the rapid pace of information dissemination exceeds the worker's legal and/or technological capacity to grasp the managerial rationale and/or changes, the comprehensive overview needed to understand the implications, the ability to request necessary clarifications, and ultimately to oppose decisions affecting them," then consequently, "the role of the worker as the subject of communications regarding their working conditions and the concrete management of the employment relationship is stripped of meaning due to the worker's incapacity to comprehend the information." [39].
It is therefore not surprising that some voices within the Italian academic community have expressed doubts about whether the deployment of AI and algorithms in employment could historically be equated to the abolition of slavery or if it resembles its reintroduction more closely.
From a legal perspective[40], we must contend with the indivisibility of two seemingly separate obligations, given that "comprehensibility is not an objective in itself but rather another manifestation of transparency." Thus, the question arises[41]: what effective mechanisms and procedural safeguards must be established to uphold the principles of transparency, comprehensibility, and accountability in algorithmic decision-making?
The only viable solution in the face of the opacity of algorithmic management systems appears to be the establishment of efficient transparency mechanisms, represented by the "normative twinning" between individual and collective profiles. Article 4, paragraph 1, letter b, of the Legislative Decree of 27 June 2022, n. 104 (hereafter: Transparency Decree) has reinforced existing information obligations concerning employment conditions, mandated by the transposition of EU Directive 2019/1152 of 20 June 2019, along with the

[38] L. Zappalà, *Appunti su linguaggio, complessità e comprensibilità del lavoro: verso una nuova procedimentalizzazione dei poteri datoriali*, in *WP CSDLE "Massimo D'Antona".IT*, 2022, n. 462, 2-3.
[39] L. Zappalà, *Appunti su linguaggio*, cit.,13.
[40] F. Costantini, *Intelligenza artificiale, design tecnologico e futuro del lavoro nell'UE: il caso di platform workers*, in *Il lavoro nella giurisprudenza*, 2021, n.12, 1124 ff.
[41] For analysis of the functional variety of the information obligation see: L. Tebano, *I diritti di informazione nel d. lgs. 104/2022. Un ponte oltre la trasparenza*, in *Lavoro Diritti Europa*, 2024, n.1, p.7.

obligation to inform workers about the use of automated decision-making or monitoring systems (Article 1-bis, Legislative Decree of 26 May 1997, n. 152). Employers must fulfil their obligations through transparent communication of the essential aspects related to such tools, particularly the elements listed in paragraph 2, which pertain to purposes, objectives, and operational logic[42]. According to paragraph 3, workers, via their union representatives, have the right to access data and request further information. The reform of the Transparency Decree reflects the spirit of the anticipated[43] European standard outlined in the subsequently adopted Directive of the European Parliament and of the Council on improving working conditions in platform work (hereinafter: Platform Work Directive), which includes not only individual workers but also employee representation bodies at the company level (in Italy, namely RSA/RSU), or the territorial offices of the most representative trade unions at the national level. Thanks to paragraph 6 of Article 1-bis, trade unions are no longer required to collect information on algorithmic management from individual workers; instead, they have direct access to the information necessary for the effective exercise of their protective functions. This national legislative intervention appears to create a sort of "toolbox" against rapid regulatory obsolescence[44] significantly involving social actors in the quest for a new balance between technology and legal safeguards.
The division of obligations between workers and their trade union representatives seems justified by the need to avoid information overload[45], which could arise from merely fulfilling legal obligations that convey meaningless communications to their recipients. While workers remain legitimate recipients, they could become overwhelmed with information devoid of concrete meaning, while collective entities have always been more suitable

[42] According to Article 1-*bis*, paragraph 2, Legislative Decree no. 152/1997, this disclosure covers various aspects of the employment relationship influenced by the utilisation of automated decision-making and monitoring systems. It includes their objectives, logic, and functionality, along with the types of data collected and the primary parameters employed for programming or training them. This encompasses mechanisms for evaluating performance, measures for controlling automated decisions, processes for correction, and the entity accountable for system quality management. Additionally, it evaluates the accuracy, robustness, and cybersecurity level, while also considering potential discriminatory effects.
[43] See G. Proia, *Trasparenza, prevedibilità e poteri dell'impresa*, in *Labor*, 2022, n. 6, 658.
[44] E. C. Schiavone, *Gli obblighi informative in caso di sistemi decisionali e di monitoraggio automatizzati*, in D. Garofalo, M. Tiraboschi, V. Filì, A. Trojsi (a cura di a cura di), *Trasparenza e attività di cura nei contratti di lavoro. Commentario ai decreti legislativi n. 104 e n. 105 del 2022*, ADAPT Labour Studies, n. 96, 216-217.
[45] J. Adams-Prassl *et al.*, *Regulating algorithmic management: a blueprint,* in *European Labour Law Journal*, 2023, n. 14, 3.

interlocutors for interpreting the sense of aggregated and technically complex data.
Moreover, both European and Italian legal frameworks concerning information and consultation rights emphasise the need to guarantee appropriate interlocutors in the execution of such rights, most frequently identifiable as the workers' representatives[46]. The recently approved EU Artificial Intelligence Act (AI Act) – Regulation 2024/1689 of 13 June 2024 – specifies in Article 26, paragraph 7 that "before putting into service or using a high-risk AI system at the workplace, deployers who are employers shall inform workers' representatives and the affected workers that they will be subject to the use of the high-risk AI system".
With the enactment of the Transparency Decree, legislators have created a coherent legal continuum[47], underscoring the strategic position of collective bodies endowed with workers' representation in studying and understanding this phenomenon, whether by training internal expert unionists or by consulting external professionals.
Through the government reform of the previous year—Legislative Decree of 4 May 2023, n. 48—an exception from the informational obligation for decision-making and monitoring systems was introduced in paragraph 8 of Article 1-bis. This exemption applies to all systems that are not "fully" automated or protected by industrial and commercial secrecy[48]. This provision quickly entered the jurisprudential spotlight, as the Court of Palermo affirmed that the aspects of an algorithm covered by secrecy under Article 98 of Legislative Decree No. 30 of 10 February 2005 (Industrial Property Code) are irrelevant to workers, who are primarily interested in the underlying logic of the algorithm rather than the computer code[49].

[46] Such interpretation – not always following a straightforward wording of the legal provisions – has been repeatedly confirmed by the scholarship. See, for instance: E. Ales, *Informazione e consultazione nell'impresa, diritto dei lavoratori o dovere del datore di lavoro? Un'analisi comparata*, in *Rivista Italiana di diritto del lavoro*, 2009, n. 2, 221 ff.; G. Verrecchia, *Informazione e consultazione dei lavoratori: i minimi inderogabili nel d.lgs. 25/2007*, in *Diritti Lavori Mercati*, 2008, n. 2, 365 ff.
[47] Art. 1-*bis* extends even the reach of obligation to inform by not limiting the field of application to occupational limits at the company level, as existing in the general information obligation *ex* Article 3 of Legislative Decree no. 25/2007.
[48] For extensive analysis of the reform see, for example, E. Dagnino, *Modifiche agli obblighi informativi nel caso di utilizzo di sistemi decisionali o di monitoraggio automatizzati (art. 26, comma 2, d.l. n. 48/2023, conv. in l. n. 85/2023)*, in C. Garofalo, E. Dagnino, G. Picco, P. Rausei (a cura di), *Commentario al d.l. 4 maggio 2023, n. 48 c.d. "decreto lavoro", convertito con modificazioni in l. 3 luglio 2023*, n. 85, Adapt University Press, 2023.
[49] Court of Palermo of 20 June 2023.

Since the informational obligations currently existing in the Italian legal system[50] do not constitute a condition of validity for exercised managerial prerogatives, they should be regarded as "soft interventions".[51] In contrast to the provisions of Article 9 of the Platform Work Directive, where collective information rights about the operational mechanisms of automated tools are envisaged as a preliminary step towards substantive consultations regarding the terms of algorithmic system utilisation, simply conveying such information risks failing to result in genuine dialogue or negotiations with the union. Therefore, without the legal proceduralisation of unions' capacity to gain a better understanding of algorithmic processes and associated business strategies, they risk remaining mere observers of the application and use of algorithms[52]. Conversely, if the information is comprehensible, it may catalyse a negotiation process aimed at refining or rectifying the automated system, thereby imposing additional constraints on the employer's digital authority beyond regulatory requirements[53].

Despite the aforementioned lack of proceduralisation of information rights, unions operating in the platform economy have found support in Article 28 of the Workers' Statute, which represents a historically effective and strategic mechanism against union obstructionism. According to recent case law on the matter[54], a company's failure to communicate to trade union organisations information regarding the use and functionality of automated systems, as stipulated in Article 1-bis of Legislative Decree 152/1997 as amended by the Transparency Decree, must be identified as anti-union conduct under Article 28 of Law No. 300/1970.

Although the legal framework described above technically guarantees access to information regarding the algorithmic logic behind working arrangements, one could argue that transparency alone is insufficient without the recipient's ultimate comprehension of the information's meaning.

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[50] *In primis*, those foreseen by Article 1-*bis*, Legislative Decree of May 26, 1997, no. 152, but also those set out in Article 47 of Law No. 428 of December 29, 1990, or in Legislative Decree No. 25 of February 6, 2007, as well as those defined by collective agreements.

[51] A. Donini, *L'informazione sui sistemi decisionali e di monitoraggio automatizzati tra poteri datoriali e assetti organizzativi*, in *Diritti Lavori Mercati*, 2023, n. 1, 85 ff.

[52] M. Corti, *Potere di controllo e nuove tecnologie. Il ruolo dei partner sociali*, in *Labour & Law Issues*, 2023, vol. 9, n. 1, 70.

[53] M. T. Carinci, S. Giudici, P. Perri, *Obblighi di informazione e sistemi decisionali e di monitoraggio automatizzati (art. 1-bis "decreto trasparenza"): quali forme di controllo per i poteri datoriali algoritmici?*, in *Labor*, 2023, vol. 1, 23-24.

[54] For the latest rulings see Court of Torino of 5 August 2023, Court of Palermo of 20 June 2023 and of 3 April 2023 n. 14491; see also E. Lacková, *Opacità degli algoritmi e Decreto Trasparenza: il sindacato fa la sua parte*, in *Rivista Italiana di diritto del lavoro*, 2023 n. 3. For a contrasting ruling, see Court of Milano of 9 February 2021.

Platform workers' representatives must therefore strive to obtain the relevant sectoral expertise—that is, the set of aptitudes, competencies, abilities, social skills, or know-how that can be developed, transmitted, and learned to empower actors to exercise authority effectively in specific contexts[55].
Article 13 of the Platform Work Directive places, under certain conditions, the cost of assistance provided to worker representatives by an expert of their choice regarding information and consultation on the platform. "The platform workers' representatives may be assisted by an expert of their choice, provided this is necessary for them to examine the matter subject to information and consultation and formulate an opinion. Where a digital labour platform has more than 250 workers in the Member State concerned, the expenses for the expert shall be borne by the digital labour platform, provided that they are proportionate. Member States may determine the frequency of requests for an expert, while ensuring the effectiveness of the assistance."
Notwithstanding that, for the moment, the adopted text of the Platform Work Directive still requires formal approval from the Council[56]. Numerous questions arise concerning the specific role, potential union-related origins, and professional backgrounds of these experts. Indeed, when finally approved and transposed, such provisions could at least assist with practicalities, such as ensuring the stability of collective subjects' financial resources, which are typically lacking among the "informal-ish" organisational structures of platform workers' representatives.
Assistance from experts could then presumably fit into the realm of union leaders' training. Acknowledge their lack of expertise in this area, various Italian unions have implemented training initiatives and distributed educational resources detailing the hazards and consequences of algorithmic management. For instance, Italy's CGIL launched Progetto Lavoro 4.0, an inclusive platform for research, dialogue, comprehensive examination, and strategy formulation aimed at informing collective bargaining. This innovative approach leverages the internet not merely as a space for disintermediation, but as a tool for fostering collective action[57].
Formal training for union leaders is both a legally guaranteed individual right[58] and an integral part of the Italian collective tradition[59]. An important role is

[55] See L. Cini, V. Maccarrone, A. Tassinari, *op. cit.*, 353.
[56] According to legislative train website, https://www.europarl.europa.eu/legislative-train/theme-a-europe-fit-for-the-digital-age/file-improving-working-conditions-of-platform-workers.
[57] https://www.cgil.it/strumenti/progetto-lavoro-40.
[58] In Articles 23 and 24 Workers' Statute provide for both paid and unpaid leave for trade union leaders, i.e., leaders of employee union representatives

also played by the European Trade Union Institute for Research, Education, and Health and Safety (ETUI-REHS) in providing a European dimension to trade union education[60].

However, when it comes to training individual workers, there currently exists no legal or contractual obligation linking education to algorithmic management and its impact on working arrangements. It is evident that, in general, training rights for workers in the gig economy exist in a state of limbo[61]. Pursuant to Article 2103 of the Civil Code, training obligations are meant to equip workers with the necessary new skills after significant changes to company assets that directly impact job performance; however, the skills in question do not necessitate mastery of the legal and technical knowledge required to understand the terms of an employment contract. Moreover, this provision is already weak due to its lack of enforcement mechanisms, and it applies only to those platform workers classified as employees.

To enable individual workers to take on the role of information holders and masters of digital language—rather than merely objects of information and algorithmic management[62]—the cooperation of union representatives seems the preferred approach[63].

3.1. Tools and Safeguards for Algorithmic Accountability

Some proceduralisation of algorithmic comprehensibility has been "forced" upon public employers by Italian courts, as a result of Council of State litigation—specifically, judgments no. 2270/2019 and no. 8472/2019—regarding the potentially discriminatory decision-making processes involved in the recruitment of school teachers[64]. In classifying the algorithm-driven

[59] Speaking about resurfacing of the original educational function of the trade unions in relation to the deployment of AI in the workplace E. Massagli, *Intelligenza artificiale, relazioni di lavoro e contrattazione collettiva. Primi spunti per il dibattito*, in *Lavoro Diritti Europa*, 2024, n. 3, 5-6.

[60] J. Bridgford, J. Stirling, *Trade union education in Europe – some latest developments. Strengthening the trade unions: the key role of labour education*, in *Labour Education*, 2007, vol. 1-2, n. 146-147, 65-70.

[61] L. Calafà, *La formazione oltre il contratto di lavoro*, in G. G. Balandi *et al.* (eds.), *I lavoratori e i cittadini. Dialogo sul diritto sociale*, Il Mulino, 2020, 162.

[62] L. Zappalà, *Appunti su linguaggio*, cit., 8.

[63] Even considering the limits of this efforts, in line with P. Iervolino, *Osservazioni sulla decodificazione algoritmica*, in *Rivista Giuridica AmbienteDiritto.it*, 2024, n. 2, https://www.ambientediritto.it/dottrina/osservazioni-sulla-decodificazione-algoritmica/.

[64] The appellants challenged the transfer to provinces further away from their residence or from the one indicated as their priority choice, emphasizing especially the fact that available positions existed in the aforementioned provinces; in particular, the workers complained about the absence of any administrative activity, as the mobility procedure had been entirely entrusted to the computerized procedure governed by a non-transparent algorithm, but above all not controlled by any human.

software as an "IT administration act," the Council of State highlighted the subsequent need for transparency and understandability of the process. For this reason, legal scholars have observed that, where algorithmic activities require discretionary assessments, these must be anticipated during the algorithm's development, thereby structuring in advance—during the pre-automation phase—the hierarchy of rights and interests at stake[65]. This approach would facilitate verification that the results of the automated procedure conform to the requirements and purposes established by law and ensure that the methods and rules underpinning the algorithmic procedure are clear and contestable if necessary. According to the Council of State, "the knowability of the algorithm must be guaranteed in all its aspects".[66]
While algorithmic decision-making in the public sector is classified as an administrative act and must therefore be "accompanied by explanations that translate it into the underlying legal rule, making it legible and comprehensible for both citizens and judges," private employment must rely on different legal techniques.
For example, the applicability of general legal clauses—particularly those concerning fairness and good faith as outlined in Articles 1175 and 1375 of the Civil Code—has been suggested as potentially useful in regulating algorithmically enhanced managerial prerogatives and the discretion (or rather, arbitrariness) of control platforms due to their ability to "permeate algorithmic management with a 'humanising' essence".[67]
Additionally, there is a growing focus on the role of algorithmic audits as a response to concerns regarding bias within algorithmic systems. In general, an algorithmic audit involves an impartial entity assessing the system for biases as well as other factors such as accuracy, robustness, interpretability, privacy features, and unintended consequences[68]. An audit concerning labour platforms would aim to identify issues and propose improvements or alternative approaches to the developers of algorithmic management systems. Moreover, making the results of algorithmic audits publicly available could help foster trust among stakeholders.

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[65] M. Simoncini, *Lo "Stato digitale", l'agire provvedimentale dell'amministrazione e le sfide dell'innovazione tecnologica*, in *Rivista Trimestrale di Diritto Pubblico*, 2021, Vol. 2, 264.
[66] Consiglio di Stato, 8 April 2019, No. 2270, point 8.3.
[67] L. Zappalà, *Informatizzazione dei processi decisionali e diritto del lavoro: algoritmi, poteri datoriali e responsabilità del prestatore nell'era dell'intelligenza artificiale*, in *WP CSDLE "Massimo D'Antona".IT*, 2021, n. 446, 17 ff.
[68] B. W. Goodman, *A step towards accountable algorithms? Algorithmic discrimination and the European Union General Data Protection*, 2016, available at: https://www.mlandthelaw.org/papers/goodman1.pdf.

Although auditing algorithms for labour platforms currently remains largely aspirational, some observations can be made about what the existing legal framework offers. The Digital Services Act (DSA)—Regulation 2022/2065 of 19 October 2022—is worth mentioning, although it specifically targets so-called "very large online platforms" and explicitly requires annual external audits to ensure compliance, as set out in Article 37. However, a delegated regulation[69], detailing the rules for its implementation is still in the works, and concerns have been raised about the independence of the auditors[70]. The AI Act proposes a risk-based approach to AI regulation[71]; according to Article 43, compliance evaluations related to employment and worker management necessitate only internal oversight, neglecting the involvement of entities such as social partners. Furthermore, the option to mandate external audits appears to be limited solely to very high-risk systems pertaining to biometric use, thereby excluding those classified as "merely" high-risk, like those related to working conditions[72].

Neither does the GDPR explicitly impose audit obligations; however, it offers alternative mechanisms for ensuring compliance and accountability. The right to an explanation of automated decisions can ensure the "unearthing" of previously unknown aspects of the algorithm[73], creating a necessary complementarity between ex ante and ex post knowability. Despite some reluctance within legal scholarship to interpret Article 22 of the GDPR as establishing such a right[74], the right to explanation appears to be the only

[69] Draft of Commission delegated regulation on supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council, by laying down rules on the performance of audits for very large online platforms and very large online search engines, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13626-Digital-Services-Act-conducting-independent-audits_en.

[70] Ibidem. See also: Algorithm watch, *A diverse auditing ecosystem is needed to uncover algorithmic risks*, 5 June 2023, available online: https://algorithmwatch.org/en/diverse-auditing-ecosystem-for-algorithmic-risks/.

[71] For a thorough analysis of two approaches – the right-based compared to the risk-based, see L. Zappalà, *Sistemi di IA ad alto rischio e ruolo del sindacato alla prova del risk-based approach*, in *Labour & Law Issues,* 2024, vol.10, n.1.

[72] E. P. Goodman, J. Trehu*, Algorithmic Auditing: Chasing AI Accountability*, in *Santa Clara High Technology Law Journal,* 2023, vol. 39, n. 3, 289-338.

[73] J. Burrell, *How the machine "thinks": Understanding opacity in machine learning algorithms, in Big Data & Soc.*, , 2016, vol. 3, n. 1, 1-12.

[74] For an excursus on the doctrinal discourse on the topic B. Casey, A. Farhangi, R. Vogl, *Rethinking explainable machines: The GDPR's 'right to explanation' debate and the rise of algorithmic audits in enterprise*, in *Berkeley Technology Law Journal,* 2019, vol. 34, n. 145. In favour of the existence of such a right, see for example B. Goodman, S. Flaxman, *EU Regulations on algorithmic decision making and a 'right to explanation'*, in *International Data Privacy Law,* 2017, vol. 7, n. 4, which draws from the experience of the pre-existing right to explanation in the EU directive on data

feasible path toward the (almost unattainable) goal of absolute transparency. By shifting the burden of the readability of the algorithm ex post to those exercising managerial powers through automated systems, employers will be required to foresee ex ante the organisational provisions that are knowable in all their future and possible effects[75].
The legally accessible defence mechanisms against employer misconduct lose their practical significance when illegitimate behaviours remain concealed within the complexities of algorithms. One could argue—albeit with some exaggeration—that employers empowered by algorithms assume a superior position, effectively obscuring their true intentions from workers. This notion bears similarity to the strategies outlined in Sun Tzu's *Art of War*, where the element of surprise and deception is emphasised as a tactical advantage.
Consequently[76], to conclude on a slightly different note, one could argue that the opacity of algorithms poses an obstacle to utilising lawful legal instruments. Surprisingly, it also hinders the more unorthodox methods since true knowledge of algorithms is crucial for workers to organise subversive resistance against the hegemony of platform employers. Evidence suggests that manipulation, subversion, and disruption are already being employed to some extent by workers to counteract algorithmic power[77]. The phenomenon known as "gaming the algorithm"[78] has gained popularity among Italian platform workers as well. For example, some migrant riders often access the gig economy with the help of so-called "ghost riders"—intermediaries who have emerged due to the opacity of platform processes, thus facilitating access to work for those lacking the necessary documentation. There have even been reports of Uber drivers abroad simultaneously turning off their ride-hailing app for a brief moment in a pre-arranged location to create an artificial price

protection that preceded the GDPR, directive no. 95/46/EC of the European Parliament and of the Council, of 24 October 1995, relating to the protection of individuals with regard to the processing of personal data and on the free movement of such data. In contrast, see also S. Wachter, B. Mittelstadt, L. Floridi, *Why a right to explanation of automated decision-making does not exist in the General Data Protection Regulation,* in *International Data Privacy Law*, 2017 vol. 7, n. 2, 78 ff.

[75] A. Aloisi, N. Potocka-Sionek, *De-gigging the labour market? An analysis of the 'algorithmic management' provisions in the proposed Platform Work Directive*, in *ILLJ*, 2022, vol. 1, n. 15, 40.

[76] Sun Tzu, *Art of war*, Allandale Online Publishing, 2000.

[77] F. Ferrari, M. Graham, *op. cit.*, 814-832.

[78] S. Vallas, J.B. Schor, *What do platforms do? Understanding the gig economy*, in *Annual Review of Sociology*, 2020, n. 46, 273–294.

boost[79]. The perceived "group-based injustice" has transformed the everyday work of these riders into a "laboratory of antagonistic subjectivities" [80].
However, it is important to note that these practices do not always address employer misconduct and may occasionally stray into legally questionable territory. Most crucially, their effectiveness relies on workers' understanding of algorithmic processes, as these practices mainly involve exploiting loopholes or circumventing known algorithmic rules. Thus, we have come full circle: even engaging in collective subversive actions as a defensive mechanism may lack practical efficacy in the absence of algorithmic transparency.

4. Concluding Remarks

Consequently, how do we extricate ourselves from the quagmire of incomprehensible algorithmic management by harnessing the collective action of platform workers to its full potential?
On one hand, the widely circulated media narrative points towards a form of "unionism 2.0," equipped with innovative practices within the digital context[81]. In tackling the unscrupulous behaviours of digital platforms, Italian representatives of food delivery couriers tend to adopt a proactive and dynamic stance rather than merely relying on outdated paradigms of representation. Some collective actors are demonstrating their ability to navigate and respond effectively to evolving contexts, particularly those shaped by technological advancements.
However, it is essential to avoid overemphasising the novelty of digital platforms. The experiences of informal and metropolitan unionism suggest that digitalisation processes have impacted workers' struggles not only through the emergence of new forms of union action but also through the utilisation of registers that have long characterised the struggles of the diverse and precarious workforce, which often lacks access to traditional representation tools.
That being said, regarding the issue of algorithmic obscurity, mobilisations within the rider community appear to serve as a central hub for "exploring,

[79] A. Mamiit, *Uber drivers repotedly triggering higher fares through Surge Club*, in *Digitaltrends.com*, 16 June 2019, available online: https://www.digitaltrends.com/cars/uber-drivers-surge-club-triggers-higher-fares/.
[80] G. Iazzolino, A. Varesio, *Gaming the system: tactical workarounds and the production of antagonistic subjectivities among migrant platform workers in Italy*, in *Antipode*, 09 January 2023, https://onlinelibrary.wiley.com/doi/full/10.1111/anti.12917.
[81] M. Marrone, *Rights Against the Machines! Il lavoro digitale e le lotte dei rider*, Mimesis Edizioni, 2021.

socialising, and codifying trade union practices".[82] There is a pressing need for a concerted effort to swiftly enhance skills and competencies within the trade union framework. Even amidst a limited understanding of the issue, algorithmic management is increasingly becoming a focal point for unions, alongside more immediate concerns such as fair compensation and job stability[83]. Only by keeping abreast of technological developments and embracing innovation can trade unions effectively advocate for the interests of workers in a rapidly evolving landscape marked by swift technological shifts and changing labour dynamics.

As privileged interlocutors, representatives of platform workers must equip themselves with the necessary technical skill set to interpret and evaluate algorithmic management systems. More importantly, they must learn to "reappraise the situation and make informed decisions in comprehensible terms"[84] translating complex information into an understandable format, thus enabling them to organise and assist more efficiently.

The current national legal framework provides a solid foundation for action through information and consultation obligations, accompanied by statutory enforcement under Article 28. However, proposed and existing European legislation on the topic offers greater resources to platform unionism.

It appears, therefore, that we must await future developments at the supranational level to gain clearer insights into what platform unionism could represent in terms of innovation. This is only fair, considering that, as Romagnoli as noted, labour law and trade union law represent "the most Eurocentric of laws".[85]

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[82] A. J. Avelli, M. Marrone, M. Pirone, *Che fine hanno fatto i rider?*, in *Jacobin Italia*, 4 August 2023, available online: https://jacobinitalia.it/che-fine-hanno-fatto-i-rider/.

[83] Some scholarship is still sceptical about unions prioritising the topic of algorithmic management in an ongoing economic downturn: M. T. Carinci, S. Giudici, P.Perri, *op. cit.*, 24. However, evidence about obscure algorithms being a serious concern is visible in the city squares and streets, see M. Mazzucchi, *Sciopero rider a Milano, Nidil Cgil in corteo*, in *Collettiva*, 16 October 2023, available online: https://www.collettiva.it/copertine/lavoro/sciopero-rider-a-milano-nidil-cgil-in-corteo-grsqf3p9.

[84] M. Veale *et al., Fortifying the algorithmic management provisions in the proposed Platform Work Directive*, in *European Labour Law Journal*, 2023, vol. 14, n. 2, 320.

[85] U. Romagnoli*, op. cit.*, 653 ff.

Some Reflections on "Environmental" Strikes in the Italian Legal System

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Abstract. In light of the growing focus among labour law scholars and trade unions on environmental sustainability, this paper seeks to provoke a critical examination of the potential for adapting the right to strike, as recognised within the Italian legal system, to address the imperatives of environmental protection. By exploring the intersections between labour rights and ecological concerns, this study aims to contribute to the discourse on how legal frameworks can evolve to better accommodate the pressing challenges posed by environmental degradation.

Keywords: *Just transition; Environmental sustainability; Right to strike.*

1. Introduction

In recent times, a shift in perspective appears to be consolidating, moving away from the longstanding emphasis on "growth" as the predominant indicator of progress. This new paradigm seeks to dismantle (or at least reconsider) the dichotomy between wealth accumulation and human well-being, while also taking into account the pressing concerns of environmental sustainability. The urgency of the climate crisis is, of course, not a novel development; since the 1970s, there has been a gradual accumulation of robust awareness regarding the collateral effects of progress[1]. The prevailing socio-economic model irrevocably compromises the Earth's ecological balance and the prospects for future generations, all in the name of the well-being of the current generation.

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[1] Since 1972, with the publication of the study *"Limits to Growth"* (D. H. MEADOWS, D. L. MEADOWS, J, RANDERS, W.W. BEHRENS III, *The limits to growth*, Universe books, New York, 1972.), the need to set limits on economic growth has been highlighted to avoid irreversibly compromising ecosystem balances.

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Concurrently acknowledged is the necessity for a decisive shift towards alternative development models that can effectively integrate human well-being with environmental integrity. Rethinking our lifestyles and the complex mechanisms governing the economy appears to be the only viable path to halting the countdown towards the extinction of Homo sapiens.
In the past decade, environmental sustainability has gained significant importance on national and international regulatory agendas. This is evidenced by a variety of measures adopted, including the Paris Agreement, the 2030 Agenda for Sustainable Development, and the European Green Deal. In Italy, the National Recovery and Resilience Plan allocates approximately €60 billion for the green transition. Compared to previous years, the current context demonstrates a more determined approach to addressing climate issues. The magnitude of the funds allocated and the progressive adoption of supportive measures—such as the Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive—are triggering profound socio-economic transformations that collectively represent one of the most significant challenges in history: the ecological transition.
The green transition, having a significant impact on the economic system, will also lead to substantial changes in the world of work. Labour regulation, traditionally aimed at balancing the capital/labour conflict, cannot overlook the transformations that businesses must undergo to align with sustainability goals[2]. The cross-cutting nature of the ecological transition necessitates that legislators address its inevitable social repercussions, particularly in relation to the labour market. It will be essential to envision a variety of measures to achieve a just transition that does not exacerbate existing inequalities or impose negative consequences on workers[3]. This includes managing the retraining of

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[2] About the openness of Italian labour law scholars to environmental sustainability, see R. DEL PUNTA, *Tutela della sicurezza sul lavoro e questione ambientale*, in *Diritto delle relazioni industriali*, 1999, 2, p. 151 ff.; P. TOMASSETTI, *Diritto del lavoro e ambiente*, Adapt University press, 2018, *passim*; A. LASSANDARI, *Il lavoro nella crisi ambientale*, in *Lavoro e Diritto*, 2022, 1, p. 7 ff.; L. ZOPPOLI, *Derecho laboral y medioambiente: stepping stones para un camino difícil,* in *Diritti lavori mercati Int.*, 2023, 1, p. 251 ff.; A. PERULLI, V. SPEZIALE, *Dieci tesi sul diritto del lavoro*, *Il Mulino*, 2022, p. 145 ff.; G. M. BALLISTRIERI, *Il lavoro nella transizione ambientale*, in *Massimario di giurisprudenza del lavoro,* 2023, 1, p. 9 ff.

[3] About the role of labour law in implementing a just transition, see B. CARUSO, R. DEL PUNTA, T. TREU, *Il diritto del lavoro nella giusta transizione. Un contributo "oltre" il manifesto*, *W.P. C.S.D.L.E*, 2023; F. MARTELLONI, *Sviluppo sostenibile e transizione giusta: il diritto del lavoro alla prova del limite*, in *Revista direito publico*, 2023, 20, p. 112 ff.; M. BARBERA, *Giusta transizione ecologica e diseguaglianze: il ruolo del diritto,* in *Giornale di diritto del lavoro e di relazioni industriali*, 2022, 3, p. 339 ff.; G. CENTAMORE, *Una just transition per il diritto del lavoro*, in *Lavoro e Diritto*, 2022, 1, p. 137 ff.; D.J. DOOREY, *Just Transitions Law: Putting Labour Law to Work on Climate Change*, in *Journal of Environmental Law and Practice*, 2020, p. 201 ff.; D. CUNNIAH, *Preface*, in ILO, *Climate change and labour: The need for a "just transition"*, vol. II, 2010, p. 122; A. ROSEMBERG, *Building a Just*

workers in sectors profoundly affected by green conversion processes and addressing the potential dispersal of human capital in regions hosting such businesses[4].
It is crucial to consider the role of trade unions in this context, as their stance on combating climate change has historically displayed considerable variability. At times, trade unions have demonstrated limited sensitivity to environmental issues, as evidenced by their cautious response to the 2016 Italian referendum on offshore drilling. This referendum aimed to repeal laws governing hydrocarbon extraction concessions and to prevent their renewal upon expiration. In this instance, certain trade unions expressed reservations regarding the potential implications of the referendum, fearing significant repercussions for employment in the extractive sector[5].
Conversely, in other contexts, trade unions have embraced ecological concerns, advocating for measures that do not compromise environmental integrity. This is illustrated by the demands of specific Spanish trade unions in the 1970s[6] and by the emergence of the Just Transition framework, which arose thanks to contributions from certain American labour organisations[7]. The latter perspective appears to have gained traction in recent years. For example, in the document entitled "A Just Transition for Jobs, Personal Well-being, Social Justice, and Planet Preservation for a Green Economic Transition," the three major Italian trade union confederations (CGIL, CISL, and UIL) have reiterated the necessity of implementing a just transition.
In the current context of alignment between trade unions' actions and environmental issues, it is essential to examine the role of trade unions and the

Transition: The linkages between climate change and employment, in ILO, *Climate change and labour: The need for a "just transition"*, vol. II, 2010, p. 141 ff.; A. CARACCIOLO, *Transizione ecologica: problemi definitori e questioni irrisolte*, in *Ambiente Diritto*, 2024, 2, p. 4 ff.

[4] About this topic see R. SALOMONE, *Transizione ecologica e politiche del mercato del lavoro*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2023, 1-2, p. 29 ff.; V. SPEZIALE, *Impresa e transizione ecologica: alcuni profili lavoristici*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2023, 3, p. 300 ff.; A. CARACCIOLO, *Transizione ecologica: greening skills to greener jobs*, in *Diritto delle relazioni industriali*, 2022, 4, p. 969 ff.;; L. CASANO, *Ripensare il "sistema" delle politiche attive: l'opportunità (e i rischi) della transizione ecologica*, in *Diritto delle relazioni industriali*, 2021, 4, p. 997 ff.; L. CASANO, *Formazione continua e transizioni occupazionali*, in *Variazioni su temi di diritto del lavoro*, 2022, 4, p. 659 ff.

[5] G. CENTAMORE, *op. cit.*, p. 136.

[6] M. A. GARCIA-MUNOZ ALHAMBRA, *Derecho del trabajo y ecologia: repensar el trabajo para un cambio de modelo productivo y de civilizacion que tenga en cuenta la dimension medioambiental*, in L. MORA CABELLO DE ALBA, J. ESCRIBANO GUITERREZ *(edited by)*, *La ecologia del trabajo. El trabajo que sostiene la vida*, Bomarzo, Albacete, 2015, p. 47 ff.; H. ALVARÈZ CUESTA, *Empleos verdes: una aproximaciòn desde el Derecho de Trabajo*, Bomarzo, Albacete, 2016, p. 105.

[7] D. STEVIS, R. FELLI, *Global labour unions and just transition to a green economy*, in *International Environmental Agreements: Politics, Law and Economics*, 2015, 15, p. 32.

concrete legal instruments that can be employed to address this challenge. Among these instruments is collective bargaining, whose inherent flexibility makes it a particularly suitable tool for guiding companies through the green transition while simultaneously considering workers' interests. In the Italian industrial relations system, a notable—if not yet structural—trend exists towards promoting environmental protection: some collective agreements now include provisions aimed at integrating environmental sustainability concerns within workplace safety, remote working, and rights to information and training, thereby endorsing an approach that embraces sustainable development and acknowledges the complexity of the Just Transition challenge[8].

Beyond its contractual dimension, which, as is well known, serves a "conflict-pacifying function"[9], this paper aims to assess—exclusively with reference to the Italian legal system—the adaptability of the right to strike in light of the recent green trends adopted by certain trade unions. In this historical moment, it is imperative to question the legitimacy of strikes called to compel employers towards more environmentally responsible behaviours or to urge political institutions to intervene in this critical area. Consequently, a significant increase in strike actions advocating for the right to live in a healthy environment can be anticipated, bolstered by strategic alliances between trade unions and environmental groups, as exemplified by the emerging collaboration between CGIL and the Fridays for Future movement[10].

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[8] C. CARTA, *La transizione ecologica nelle relazioni sindacali*, in *Lavoro e Diritto*, 2022, 2, p. 311 ff.; M. GIOVANNONE*, Le nuove dinamiche della contrattazione collettiva per la Just transition*, in *Rivista Giuridica del Lavoro*, 2021, 4, p. 637 ff.; F. TESTA, *La funzione sostenibile del contratto collettivo: spunti teorici ed empirici*, in A. BAVARO, C. CATAUDELLA, A. LASSANDARI, L. LAZZERONI, M. TIRABOSCHI, G. ZILIO GRANDI *(edited by)*, *La funzione del contratto collettivo. Salari, produttività, mercato del lavoro*, Adapt university press, Bergamo, 2023, p. 324 ff.; M. ZITO, *Il ruolo del dialogo sociale e della contrattazione collettiva transnazionale nella gestione delle tematiche legate all'ambiente e alla transizione verde*, in *Diritto delle relazioni industriali*, 2022, 3, p. 694 ff.;

[9] M. RUSCIANO, *Contratto collettivo e autonomia sindacale*, UTET, Torino, 2003, p. 114; F. SANTORO-PASSARELLI, *Autonomia collettiva*, in F. SANTORO PASSARELLI, *Saggi di diritto civile,* vol. I, Jovene, Napoli, 1961, p. 263 ff.

[10] Since 2022, the CGIL has fully endorsed the demonstrations organized by the collective founded by Greta Thunberg. As of writing, the CGIL has confirmed its participation in the Global Climate Strike on 03/03/2024, inviting «all its structures to ensure maximum participation for the day of mobilization... by joining the demonstrations organized at the local level by the #FFF movement and by immediately organizing moments of reflection on these issues with all the territorial entities involved in climate action».

2. Reconstructive remarks on the right to strikes in the Italian Legal System

For the purposes of this paper, it is necessary to recall the main reconstructive remarks regarding the exercise of the right to strike within the Italian legal system. As is well-known, this right is established in Article 40 of the Constitution[11]. Following an initial phase characterised by profound uncertainties regarding the direct effectiveness of the provision, over time, "judicial supplementation has largely been provided"[12] defining the limits related to the exercise of this right.
The entry into force of the Constitution radically transformed the Italian legal system and the trade union framework, moving beyond the corporatist order of the Fascist period to establish a system based on the principle of trade union freedom. This paradigm shift compelled the Constitutional Court to intervene on certain provisions of the Criminal Code that criminalised strikes. Although these provisions remained in force, they were "completely drained of vitality like an empty shell,"[13] rendering them incompatible with the current constitutional framework. Judicial activity focused on these criminal provisions, particularly regarding the purposes related to strikes[14]. In this regard, the Constitutional Court declared the illegitimacy of Article 502 of the Criminal Code (which criminalised lockouts[15] and contractual strikes) on the grounds of incompatibility with the principle of trade union freedom[16]. This

[11] If the Italian government hasn't made a specific rule about the right to strike, it's different for essential public services. For those, the law no. 146 of 1990 tries to balance the right to strike with other important interests protected by providing these services.
[12] G. PERA, *Sciopero*, *Enciclopedia del Diritto*, Milano, 1989, Vol. 36, p. 705.
[13] P. PASSANITI, *Lo sciopero nella Repubblica fondata sul lavoro. Gli anni '50 di un diritto garantito a metà*, in *Lavoro e Diritto*, 2016, 3, p. 532.
[14] M. RUSCIANO, *Sciopero politico e attività creatrice della Corte costituzionale*, in R. SCOGNAMIGLIO *(edited by)*, *Diritto del lavoro e Corte costituzionale*, ESI, Napoli, 2006, p. 211 ss.; G. PERA, *Sciopero cit.*, p. 706.
[15] It is appropriate to clarify that the lockout is not elevated to a right in our legal system. While the phenomenon of the strike takes on the characteristics of a «privilege for social purposes» (G. PERA, *Serrata e diritto di sciopero*, Giuffrè, Milano, 1969, p. 39), the lockout must be classified under the category of freedoms. Therefore, it must be considered fully lawful in criminal terms and unlawful in civil terms.
[16] See C. Cost., 04/05/1960, n. 29, in Consultaonline.it. The Court, referring to the strike and the lockout, has considered «the positive contrast that results... with the new system evident; a contrast not stemming from a generic lack of harmonious correlation, as frequently occurs between any new, rapidly introduced system, and those norms of the old which its survival still requires; but rather from a specific incompatibility touching upon an essential correlation. On one hand, there is Article 39 of the Constitution, which, expressing a distinctly democratic direction, declares the principle of trade union freedom; on the other hand, there is Article 502

development dispelled any doubts about the full legitimacy of contractual strikes, which are the typical form of such action, aimed at "exerting pressure on the employer to obtain not only wage improvements but also other working conditions."[17]
However, uncertainties remained concerning the legitimacy of the political strike[18], which aims to advocate for issues beyond the employer's control, such as the adoption of legislative measures by public authorities. The Constitutional Court has significantly contributed to this point, liberating the strike from the "servitude of objectives"[19] and paving the way towards "the defunctionalisation of the strike concerning collective bargaining and the full legitimacy of political bargaining purposes."[20] Full legitimacy, however, should not be confused with civil legality. In the Italian legal system, it is necessary to distinguish between economic-political strikes and "pure" political strikes.
The Constitutional Court addressed the legitimacy of the economic-political strike in judgment no. 123 of 1962. In examining the constitutional legitimacy of Articles 330, 503, and 504 of the Criminal Code, the Court clarified that Article 40 of the Constitution encompasses not only cases of contractual strikes, aimed at advancing claims related to the employment relationship against the employer, but also broader issues of an economic and social nature directed at the legislator, provided that they "concern the complex of interests of workers regulated under Title III, Part One, of the Constitution."[21] Therefore, a strike called to protect these interests is considered fully legitimate, both from a criminal and contractual perspective.
The Constitutional Court deliberated on the "pure" political strike in judgment No. 290 of 1974. In examining the reasoning behind the decision, it is evident that the Court distinguished the constitutional significance of the strike from two perspectives: the first, which considers it as a right; the second, which views it as an expression of a freedom that remains constitutionally protected. According to this approach, the strike is understood as a tool facilitating the participation of trade unions in the effective implementation of the principle of

of the Penal Code, a norm conceived and imposed to protect a system that denied that freedom».
[17] F. SANTONI, *Lo sciopero*, Jovene, Napoli, 1999, p. 40.
[18] See G. GIUGNI, *Il diritto sindacale,* (updated by L. BELLARDI, P. CURZIO, M. G. GAROFALO), Cacucci, Bari, 2012, p. 247 ff.
[19] G. GHEZZI, U. ROMAGNOLI, *Il diritto sindacale*, Zanichelli, Bologna, 1991, p. 203.
[20] V. BAVARO, *Lo sciopero e il diritto fra innovazione, tradizione e ragione pratica*, in *Lavoro e Diritto*, 2015, 2, p. 293, which also states that, in this way, «labour can... participate in shaping the country's economic policy through strikes, so that the trade union movement is recognized the macroeconomic role it has always claimed and exercised in practice».
[21] See also C. Cost., 15/12/1967, n. 141, in Consultaonline; C. Cost., 09/01/1974, n. 1, cortecostituzionale.it.

substantive equality. However, the Court clearly differentiates the economic-political strike from the "pure" political strike within the context of contractual responsibility, as the latter cannot be considered entirely overlapping with the notion of a strike-right as per Article 40 of the Constitution. Consequently, while the "pure" political strike is lawful in criminal terms, it constitutes a case of contractual non-compliance against which the employer may impose disciplinary sanctions[22].

3. The Legitimacy of Environmental Strikes in the Italian Legal System

Given these premises, one may explore the admissibility of strikes aimed at advocating for more sustainable practices by employers or the adoption of policies considering environmental protection. Since the legitimacy prerequisites of strikes in the Italian legal system are predominantly based on jurisprudence, such an investigation encounters numerous challenges. It must be clarified that the legitimacy of a strike should always be assessed in light of the specific circumstances of each case; consequently, it is essential to refer to several examples.

As previously noted, the proclamation of a strike can be directed either towards the employer or towards public authorities. In the former case, the purposes must be contractual in nature, as the employer cannot fulfill claims reliant on the exercise of legislative or executive power. A preliminary obstacle to the admissibility of a contractual strike aimed at environmental protection might arise from the assertion that, while this concern is a general interest of the community, it does not seem to align with the structure of the employment contract or fall within the scope of typical professional interests[23].

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[22] See C. Cost., 19/12/1974, n. 290, cortecostituzionale.it, in the part where it states: «Collective abstention from work, if aimed at economic purposes, cannot even be considered a legitimate justifying cause for dismissal or other measures provided by the employment relationship discipline (as affirmed most recently in judgment No. 1 of 1974); but it does not follow that, if aimed at other purposes, such abstention, while retaining all relevance within the scope of the employment relationship discipline, must or at least can always be qualified as a criminal offense». This approach has been contested by some labour law scholars. See F. SANTORO-PASSARELLI, *Sciopero politico e diritto di sciopero*, in *Il Foro italiano*, 1975, 3, p. 551, according to which «once the strike has been elevated to a constitutionally guaranteed right, this right cannot fail to include political strikes, if these are exercises of freedom, indeed if, as the judgment says, is capable of promoting the pursuit of the purposes referred to in the second paragraph of Article 3 of the Constitution... it cannot but be intrinsically contradictory that workers, to pursue these constitutionally established purposes, incur the rigors of the employer's power for abstaining from work»; in this sense also M. RUSCIANO, *Sciopero politico e attività creatrice* cit., p. 218 ff.

[23] For some reflections on environmental protection as a professional interest in the Spanish legal system see J. ESCRIBANO GUTIÉRREZ, *The strike as an instrument for environment protection,* in

However, many Italian labour law scholars have begun to reconsider the relationship between labour law and environmental issues. Within this scholarly trend, there is a growing willingness to transcend the perceived artificial divide between the "internal work environment" (company/workplace) and the "external environment"[24] (surrounding environment), thereby highlighting the necessity of establishing an integrated protective model[25]. According to this perspective, the detrimental consequences of business production result in harm that does not distinguish between the workplace and the surrounding environment, thus affecting both workers and the wider population. For instance, the case of the ILVA steelworks illustrates this point; its operations release carcinogenic agents daily, compromising the health of both the Taranto community and its workers[26].
If a company's production contributes to the pollution of the area in which it operates, it is evident that this also adversely affects the health of employees while they carry out their work duties. One way to acknowledge the legitimacy of a contractual strike for environmental protection may therefore involve orienting the strike towards safeguarding the health of workers, an argument that undoubtedly qualifies as part of their professional interests. Alongside this approach, one might consider invoking the exception outlined in Article 1460 of the Italian Civil Code. This provision allows a contracting party to withhold performance if the other party fails to fulfil its contractual obligations, serving as a typical instance of individual self-protection[27]. The possibility of invoking this exception due to the employer's breach of obligations regarding workplace safety is now well-established in Italian case law[28]. This remedy differs from the legal institution of the strike, which cannot be fully elaborated here; nevertheless, it is worth noting that the exception provided in Article 1460 can also be exercised collectively, despite being an institution with individual entitlement and execution[29]. For these reasons, workers might choose to

CHACARTEGUI JÀVEGA C. *(edited by)*, *Labour law and ecology*, Aranzadi, Cizur Menor, 2022, p. 224 ff.

[24] R. DEL PUNTA, *op. cit.,* pp. 151 ff.; P. TOMASSETTI, *op. cit.*, p. 169 ff.

[25] P. PASCUCCI, *Modelli organizzativi e tutela dell'ambiente interno ed esterno all'impresa*, in *Lavoro e Diritto*, 2022, 2, p. 343 ff.

[26] For a historical reconstruction S. LAFORGIA, *Se Taranto è l'Italia: il caso ILVA*, in *Lavoro e Diritto*, 2022, 1, p. 29 ff.; For a review on the spread of diseases related to the pollution caused by ILVA in Taranto v. L. SCARANO, *Taranto: malattie professionali, ecologia umana e diritto del lavoro*, in *Variazioni su Temi di Diritto del Lavoro*, 2023, 2, p. 305 ff.

[27] For an analysis of Article 1460 as a tool for protecting the integrity of the external environment see P. TOMASSETTI, *op. cit.*, p. 266.

[28] See Cass., 15/10/2021, n. 28353; Cass., 07/02/2013, n. 2943; Cass., 10/08/2012, n.14375.

[29] About the distinction between strike and collective exercise of the exception provided for in Art. 1460 see A. RICCOBONO, *Profili applicativi degli strumenti di risoluzione alternativa delle controversie: l'autotutela individuale del lavoratore*, in *Rivista italiana di Diritto del Lavoro*, 2010, 1, p. 125

invoke this exception rather than strike, thereby preserving their right to remuneration[30]. However, in this context, they would need to demonstrate the presence of a serious threat to their health arising from the external environment[31], as well as the employer's breach of safety obligations[32], to invoke the exception under Article 1460.
Another scenario for a contractual strike on environmental grounds could occur following the employer's failure to fulfil any sustainability obligations arising from a collective agreement[33]. As previously mentioned, certain collective agreements incorporate measures to align environmental protection with worker well-being, such as the establishment of the Workers' Representative for Safety, Health, and Environment (RLSSA)[34]. Should the employer neglect these obligations, a strike reacting to such conduct and demanding compliance with the collective agreement would certainly be legitimate.
A third scenario, perhaps more uncertain than those previously mentioned, could arise when a strike is declared to protect the increasingly widespread value of sustainability, particularly concerning the employer's conduct. Although this value does not inherently constitute a professional interest, there are circumstances where it might be regarded as such. Many companies have

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ff.; U. GARGIULO, *Rischio di contagio e rifiuto della prestazione: l'autotutela in tempi di pandemia*, in *Diritto delle relazioni industriali*, 2020, 3, p. 889, according to which «in the event of a sudden abstention of workers refusing to perform, revealing a lack of necessary health protection, the distinction between a (merely) contemporaneous exercise of the non-performance exception and a collective strike action can only be discerned by the detectability of a minimum level of organization of the protest, which presumes prior agreement among the workers, but above all, the collective purpose of the abstention itself»; see also V. FERRANTE, *Sciopero ed eccezione di inadempimento nella disciplina dei servizi pubblici essenziali*, in JUS, 2009, 1, p. 121 ff.

[30] See Cass., 01/04/2015, n.6631, according to which «in the event of the employer's breach of the safety obligation under Article 2087 of the Civil Code, it is legitimate, in response to the other party's non-performance, for the worker to refuse to perform their own service, while retaining the right to remuneration, as no adverse consequences can arise for them due to the employer's non-compliant conduct».

[31] For an analysis on the possible intersections between risks in the "internal" and "external" environments, see K. ARABADJIEVA, P. TOMASSETTI, *Towards workers environmental rights. An analysis of EU labour and environmental law,* ETUI W.P., 2024, pp. 11-14 and 11-22.

[32] An undeniable interrelation between environmental protection and the health and safety of workers concerns the risks associated with rising temperatures caused by climate change. See T. Palermo, 03/08/2022; the court, called to decide on an application filed by a delivery rider, ordered the company to provide the worker, during the summer season, with 'a thermal container with potable water sufficient to meet the average daily requirement, as well as mineral salt supplements in the same amount, and adequate sun protection".

[33] See P. TOMASSETTI, *op. cit.*, p. 269.

[34] The figure of the RLSSA is provided for in the Collective Labour Agreement of the Cement, Gas and water, Electrical Eyewear, Energy, and Oil sectors.

opted to embed environmental sustainability within their corporate missions; in such instances, aligning production with environmental protection ought to be considered a principal objective. This mission results from a complex amalgamation of factors, including the organisation of work: indeed, even the methods defined by the employer for executing work tasks have a certain environmental impact[35].

In this context, two relevant hypotheses for this paper may be identified: on one hand, workers may share the sustainability mission pursued by the company and demand the adoption of more sustainable organisational measures, as they cannot independently determine the methods for carrying out their work tasks; on the other hand, if the employer disregards the environmental impact of company production, workers may have a vested interest in altering such practices towards more sustainable models. In some situations, therefore, workers could hold a tangible professional interest in modifying the manner in which their tasks are executed or the overarching organisation of the company to protect environmental integrity. This interest could be rooted in the employer's previously adopted value of environmental sustainability or motivated by a desire to implement more sustainable practices should the current approach be deemed inadequate.

In these scenarios, the demands made fall squarely within the employer's discretion, who, through their managerial power, determines the organisation of the company and consequently how employees perform their work tasks. In light of these considerations, it is posited that contractual strikes aimed at advocating for the adoption of technical and organisational measures necessary to align more closely with the value of environmental sustainability—or to compel the employer to implement necessary adjustments if the current measures are found wanting—can be considered legitimate.

When addressing an "environmental" strike against public authorities, different factors must be considered. In this scenario, the strike could peacefully constitute a "pure" political strike; however, this would also breach contract. For these reasons, it is pertinent to examine whether the case analysed might represent a hypothesis of an economic-political strike, fully lawful from a civil perspective.

An examination of the positioning of environmental protection within the Italian Constitution reveals a systematic inconsistency that impacts the determination of the legitimising purposes of economic-political strikes. Constitutional Law No. 1 of 2022 revised Article 9 of the Constitution, with

[35] However, the well-known practice of greenwashing adopted by many production entities cannot be overlooked. This phenomenon refers to all actions taken by companies, organizations and institutions to create a sustainable public image of their activities, which, in reality, proves to be significantly damaging to environmental integrity.

the third paragraph establishing the Republic's obligation to safeguard the environment, biodiversity, and ecosystems, not only in the interest of future generations, but also Article 41, whose new formulation positions environmental integrity as a limit to the exercise of economic freedom and as a goal to coordinate public and private economic activities. Although environmental protection now finds explicit reference in Title III of the Constitution—namely in the revised Article 41—it appears difficult to argue that this value can inherently connect to the "complex of workers' interests," as it may be understood as a general interest of the community.

Adopting a different perspective, however, it is possible that this value could indirectly take on characteristics of a collective professional interest. The green transition represents a complex transformative phenomenon affecting the current economic-social model and involves multiple productive sectors. As noted in Italian doctrine, the implementation of the twin transition "will involve massive shifts of material resources and workers from sectors and companies compelled to restructure and reduce staff, towards sectors and companies with growth opportunities in the context of the new economy,"[36] and thus, the legislator cannot overlook the profound social repercussions of this phenomenon. It is within this context that the paradigm of the Just Transition emerges, aimed at achieving an ecological transition that does not exacerbate existing inequalities and considers the social impact of the necessary measures for its execution. Moreover, implementing a Just Transition necessitates the incorporation of social equity concerns into transition policies, which must strive to create an economic model that embraces environmental sustainability while also safeguarding the protection and dignity of workers.

This approach is substantiated by considering Articles 3, 4, 9, and 41, paragraphs 2 and 3 of the Italian Constitution in conjunction. The combined provisions of these norms require the Italian Republic to establish a system balancing the exercise of economic initiative freedom with environmental protection while concurrently addressing the associated social implications, such as the safeguarding of workers' rights[37]. Consequently, the Constitution compels the legislator to formulate labour laws that integrate environmental issues[38] without undermining the fundamental purpose of mitigating the imbalance of contractual power between employers and employees.

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[36] T. TREU, *Il lavoro flessibile nelle transizioni ecologica e digitale*, in *Working papers C.S.D.L.E. «M. D'Antona»*, 2023, 465, p. 6.
[37] M. CECCHETTI, *La disciplina sostanziale della tutela dell'ambiente nella Carta repubblicana: spunti per un'analisi della riforma degli articoli 9 e 41 della Costituzione*, in *Istituzioni del federalismo,* 2022, 4, p. 815.
[38] See B. CARUSO, R. DEL PUNTA, T. TREU, *op. cit.*, p. 15.

In this context, a strike aimed at advocating for the implementation of a Just Transition does not appear inconsistent with the typical purposes of such rights, which, when understood in their economic-political form, are intended "to exert pressure on public authorities in order to obtain legislative measures of a social character."[39] Therefore, workers are justified in striking to call for a package of measures that, on one hand, accelerates the ecological transition of the economy, and on the other hand, considers the corresponding social impacts through the adoption of specific measures to manage, for example, occupational transitions. Such aims, relating to the general conditions of workers involved in an economic-social transformation process, possess the characteristics of a collective professional interest[40] and should therefore be regarded as fitting squarely within the framework of Article 40 of the Constitution as an economic-political strike, making it fully lawful at the contractual level. This approach also highlights the "political" function of trade unions. It is important not to overlook the established Italian institutional practice, which views the trade union as a constant "interlocutor of public power"[41] and acknowledges it as a "constituent part of civil society."[42] It is through this perspective that some scholars propose to interpret the phenomenon of political strikes as "a tool that fits well among the democratic freedoms recognised by the pluralistic system, within which the institutional participation of the trade union and workers in supporting the legislative and governmental action of the state is fully recognised."[43]
These considerations also apply to strikes in essential public services, where Law No. 146 of 1990 imposes limitations to ensure a fair balance with certain constitutionally relevant personal rights. However, the general rules concerning notice and limitation of strike duration are subject to exceptions under Article 2, paragraph 7, of Law No. 146 of 1990, specifically when the strike is called "to defend the constitutional order or in protest against serious events harmful to the safety and well-being of workers." For several reasons, these exceptions do not appear applicable to a strike aimed at environmental protection. Firstly, the exceptional nature of the provision does not permit a broad interpretation,

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[39] F. SANTONI, *Lo sciopero cit.*, p. 44.
[40] See V. SIMI, *Categoria professionale*, in *Enciclopedia del Diritto*, Vol. VI, Giuffrè, Milano, 1960, p. 516; in his opinion, «...it seems that there could well be recognized a collective interest...in obtaining a legislative or administrative measure or in opposing it if harmful to that common interest...».
[41] G. GHEZZI, U. ROMAGNOLI, *op. cit.*, p. 218.
[42] F. SANTORO-PASSARELLI, *Autonomia collettiva cit.*, p. 156.
[43] F. SANTONI, *La metamorfosi dello sciopero politico nella società pluralistica*, in *Diritto delle relazioni industriali*, 2013, 2, p. 451. About political dimension of trade union freedom see U. PROSPERETTI, *Libertà sindacale (premesse generali)*, in *Enciclopedia del Diritto*, Vol. XXIV, Giuffrè, Milano, 1974, p. 498 ff.

as mandated by the Constitutional Court, and must be interpreted strictly[44]. Secondly, the purposes indicated by Article 2, paragraph 7, concern events characterised by such urgency as to necessitate an immediate response from workers, rendering the requirement for notice an impediment that could compromise the effectiveness of the strike. Specifically, the second exception provided by the provision applies in cases where the strike is called to respond to events characterised by such gravity[45] that they constitute an injury or concrete harm to the physical and mental integrity of workers[46]. Lower court case law and decisions of the Guarantor Commission interpret the provision quite stringently, asserting that trade unions cannot simply invoke a generic threat to workers' health but must demonstrate the actual occurrence of a specific harmful factor[47]. While the progression of climate change represents a serious threat to the survival of our species, this phenomenon does not presently seem capable of constituting a specific health risk event for workers requiring an immediate reaction. These considerations are corroborated by a judgement of the Rome Tribunal—later upheld on appeal—concerning a strike called in response to the Government's decision not to close non-essential offices during the initial phase of the pandemic, thus exposing workers to the risk of contagion. The tribunal upheld the Guarantor Commission's decision[48] concerning the impossibility of applying the exception because the strike had been called with reference to a general state of danger resulting from the pandemic and not to a concrete and specific harmful incident[49]. In theory, the second exception of Article 2, paragraph 7, Law No. 146/1990 could be invoked for an "environmental" strike in essential public services only in very rare situations where the environmental crisis assumes the characteristics of a tangible source of danger; that is to say, only if pollution were proven to have severe repercussions on the physical and mental integrity of the affected

[44] See C. Cost., 10/06/1993, n. 276; see also F. SANTONI, *La metamorfosi dello sciopero politico nella società pluralistica* cit., p. 450; G. SANTORO-PASSARELLI, *Vecchi e nuovi problemi in materia di sciopero nei servizi pubblici essenziali*, in *Rivista italiana di Diritto del Lavoro*, 1999, 2, p. 43.

[45] T. Roma, 05/11/2020, n. 7237. The court ruled that «...The harmful event to the safety and well-being of workers is serious when it materializes in an event of damage or concrete danger to the physical integrity and life of workers, in the sense that, due to the particular circumstances of fact and time, it translates concretely into an actual endangerment (with consequent probability of injury) of said legal assets; not when an event is only, by virtue of its existence, abstractly potentially injurious to the protected interest of the norm».

[46] C. Appello Roma, 02/08/2023, n. 2856.

[47] C. Appello Roma, 02/08/ 2023, n. 2856; T. Roma, 05/11/2020, n. 7237; C. di Stato, 19/01/2007, n. 108; Decisions of the Guarantee Commission on Strikes in Essential Public Services n. 183 of 21/02/2005, n. 1169 of 15/10/2021, n. 606 of 30/09/2009.

[48] Decision of the Guarantee Commission on Strikes in Essential Public Services 20/129.

[49] T. Roma, 5/11/2020, n. 7237, upheld on C. Appello di Roma, 02/08/2023, n. 2856.

workers, such as in the event of an environmental disaster releasing highly toxic agents at the location where workers perform their tasks.

4. Suggestions for a Green Reinterpretation of the Strike Execution Phase

In light of the reflections presented in this paper, the inquiry has been made into the possibility of including environmental protection among the objectives safeguarded by the right to strike. For the sake of argumentative completeness, it is crucial to investigate whether the value of environmental protection also finds relevance in the execution phase of the strike, irrespective of the purposes for which it is proclaimed.
In the Italian legal system, it is important to distinguish the execution phase of the strike. While Law No. 146/1990 introduces a series of constraints in relation to essential public services, a legal vacuum persists in other contexts, necessitating jurisprudence to identify—by reference to constitutional norms—the specific constraints pertinent to the execution phase of the strike.
Having moved beyond an initial phase that sought to define its limits within the theory of "unjust harm,"[50] the Court of Cassation initiated a significant shift in direction with judgment No. 711 of 1980. This decision posits that the limits of the right to strike are to be found in the "external limits," referring to "concurrent subjective positions, on a prioritised or at least equal footing"[51] with the right to strike, such as the right to life, personal safety, and the freedom of economic initiative[52]. These considerations are widely accepted and pertain to the application of every right recognised within the Italian legal system. In ruling on the legitimacy of the first of the "Salva Ilva" decrees, the Constitutional Court excluded the possibility of establishing a hierarchy among constitutional principles, asserting that "all fundamental rights protected by the Constitution are in a relationship of mutual integration, and it is therefore not possible to identify one of them as having absolute precedence over the others"[53]. Consequently, it follows that "protection must always be systemic

[50] F. BORGOGELLI, *Sciopero e modelli giuridici*, Giappichelli, Torino, 1998, p. 45 ff.
[51] Cass., 30 gennaio 1980, n. 711. About this topic see G. PERA, *Serrata e diritto di sciopero cit.,* p. 102; O. ROSELLI, *Sub art. 40*, in R. BIFULCO, A. CELOTTO, M. OLIVETTI *(edited by)*, *Commentario alla Costituzione*, UTET, Torino, 2006, p. 835 ff.
[52] With regard to the freedom of economic initiative as a limit to the exercise of the right to strike, the Supreme Court has established the legitimacy of damage to production (consisting of the lower economic outcome achieved by the employer), and conversely, the illegitimacy of abstention from work that generates damage to productivity, namely when the enterprise "as an institutional organization" is compromised. Such a situation arises, for example, in the case of the destruction of productive facilities used in the company.
[53] C. Cost., 9/05/2013, n. 85.

and not fragmented into a series of uncoordinated norms potentially in conflict with each other... Otherwise, one of the rights could expand limitlessly, becoming a "tyrant" over other constitutionally recognised and protected legal situations, which together constitute an expression of human dignity."[54] Given this perspective, it is pertinent to consider whether the right to strike should also be exercised with regard to the value of environmental protection, which was elevated to a fundamental principle of the Italian legal system by Constitutional Law No. 1 of 2022.

The need to adopt a balanced approach to the plurality of constitutional rights suggests, at least in theory, the integration of environmental protection into the execution phase of the right to strike. The range of legal positions concurrent with the right to strike identified in judgment No. 711/1980 cannot be seen as exhaustive; instead, adherence to this interpretative stance requires a case-by-case evaluation of the potential repercussions of the strike on other constitutional rights that pertain to the specific situation. There may, albeit infrequently, be scenarios in which the execution of a strike can cause significant harm to the environment. For instance, consider the strike by ASIDEP workers in Avellino, a company operating in the water purification sector. This strike, proclaimed for purely professional reasons, resulted in a total and prolonged shutdown of water purification activities for several weeks. The failure to implement measures to mitigate the effects of the strike posed a grave risk of environmental disaster due to the lack of filtration in the plant's water purification process[55].

It is certainly untenable to impose upon striking workers, based solely on constitutional norms, the obligation to ensure total environmental neutrality during their strike. Nonetheless, the external limit represented by the constitutional value of environmental protection—alongside the right to health as enshrined in Article 32 of the Constitution—may be deemed violated if the execution of the strike results in irreparable harm to the integrity of the surrounding environment. In situations involving continuous cycle plants and strikes that could potentially inflict serious damage to environmental integrity, it may be crucial to agree upon specific measures, including designating a group of workers responsible for mitigating the possible adverse repercussions of the strike on the external environment.

However, the primary challenge of this approach lies in the uncertain delineation of the boundaries within which the right to strike, in relation to

[54] C. Cost., 9/05/2013, n. 85.

[55] Some local newspapers have reported this news. Vertenza Asidep, +Europa Avellino: "Diritto al lavoro e alla tutela dell'ambiente negati" (avellinotoday.it); https://www.corriereirpinia.it/asidep-lo-sciopero-ad-oltranza-la-depurazione-a-rischio-e-la-vertenza-che-si-inasprisce/;.

environmental protection, can be exercised. This uncertainty stems from the lack of clarity about the precise notion of the environment as articulated in the Italian Constitution, and consequently, its minimum content that must be deemed inviolable when balancing it against other values[56]. The search for this point of "mobile equilibrium" can only be entrusted to case-by-case evaluations that take into account the specific peculiarities of the circumstances at hand.

5. Conclusions: The Indispensable Role of Social Dialogue in Implementing a Just Transition

The investigation conducted demonstrates the limited capacity of the right to strike, as established in the Italian legal system, to adapt to the surge of environmental mobilisations which, as noted in the introductory paragraph, sometimes appear to converge with trade union disputes. The right to strike could only be legitimately exercised as a means of exerting pressure on employers or public authorities to align with the paradigm of sustainable development in certain instances. The prevailing jurisprudential interpretation remains tethered to a predominantly economic-professional conception of the strike. While purely political strikes are recognised as an exercise of constitutional freedom, they are often construed as breaches of contract. The challenges to reinterpreting the right to strike from an environmental perspective appear surmountable only in cases where the value of environmental protection is embraced as a corollary to the typically professional objectives claimed by workers.
Rethink the regulation on strikes to support the fight against climate change requires initiating reflections on the constituent elements of the right to strike, the role it occupies within the legal framework, and the responsibilities that social partners are called upon to fulfil in the current context. The history of collective autonomy in the Italian legal system attests to the gradual attribution of functions with a general interest to trade unions, as exemplified by concertation—whereby social partners "contribute to shaping the country's political direction."[57] The enrichment of trade union functions has followed an

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[56] M. CARTABIA, *I principi di ragionevolezza e proporzionalità nella giurisprudenza costituzionale italiana*, in cortecostituzuonale.it, 12/11/2013, p. 11; A. MORRONE, *Bilanciamento (giust. Cost.)*, in *Enciclopedia del Diritto*, vol. II, Giuffrè, Milano, 2008, p. 195 ff.
[57] B. G. MATTARELLA, *Il ruolo di interesse pubblico del sindacato italiano*, in *Rivista delle Politiche Sociali*, 2008, 4, p. 177. On this topic see also. F. SANTORO-PASSARELLI, *L' evoluzione del sindacato cit.*, p. 156, which considered the trade unions' action as a concurrent factor in achieving the common good, albeit not having a public nature.; M. RUSCIANO, *Contratto collettivo e autonomia sindacale* cit.,

expansive interpretation of Article 39, paragraph 1, of the Constitution, which reveals the freedom to determine the scope of trade union action and the legal interests to be safeguarded through collective bargaining. However, the expansion of prerogatives[58] pertaining to the right to strike has not progressed in tandem with the institutionalisation of trade unions, lagging substantially behind[59]. This discordance becomes evident when considering the earlier observations: if it is possible to regulate the relationship between the signatories of collective agreements or employment contracts concerning the general interests of the community through collective bargaining[60], it is not entirely lawful to extend the notion of collective professional interest to encompass the proclamation of a strike. Moreover, this incongruity appears to contradict the complementary relationship articulated by the Constitutional Court between the principle of trade union freedom and the right to strike, which underscores the "full affirmation of trade union action"[61] and the freedom of collective autonomy[62].

At this juncture, two primary pathways may be pursued in future discussions regarding the subject matter of this paper.

The first would involve a comprehensive reconsideration of the "environmental" strike to fully incorporate it within the ambit of Article 40 of the Constitution[63]. Within the current constitutional framework, the value of

p. 247 ff., which highlights the progressive elevation of trade union actors in the Italian legal system to institutional subjects, involved in the management of general interests.

[58] See F. SCARPELLI, *La libertà sindacale*, in C. ZOLI *(a cura di), Le fonti. Il diritto sindacale*, UTET, Torino, 2007, p. 98; M. TIRABOSCHI, *Sulla funzione (e sull'avvenire) del contratto collettivo di lavoro*, in *Diritto delle relazioni industriali*, 2022, 3, p. 789 ff., considering the collective agreement as a "legal institution" highlights that «the systematic study of legal reality indicates, on the other hand, how the collective agreement expresses multifaceted economic and social functions, which are those assigned by the signing parties to each specific case» (p. 814).

[59] F. SANTORO-PASSARELLI, *Autonomia collettiva, giurisdizione, diritto di sciopero*, in F. SANTORO PASSARELLI, *Saggi di diritto civile,* vol. I, Jovene, Napoli, 1961, p. 200.

[60] The complexity of the topic does not allow for adequate treatment in this context. Among the various cases in which the typical function of the collective agreement has been enriched with additional purposes, characteristic of political interest, one might consider the phase of "functionalization of collective bargaining for economic policy objectives" initiated in the second half of the 1970s. See M. RUSCIANO, *Contratto collettivo e autonomia sindacale cit.*, p. 162.

[61] C. Cost., 04/05/1960, n. 29.

[62] F. SANTORO-PASSARELLI, *Autonomia collettiva, giurisdizione, diritto di sciopero cit.*, p. 261, according to which «the legal system recognizes to intermediate social groups the power to regulate their own interests, in the same way it recognizes it to individual individuals... The legal system leaves to groups, as to individuals, to freely define and satisfy their interests, limiting itself to providing individuals and groups, where it deems it appropriate, with the most suitable tools for the realization of their interests».

[63] J. ESCRIBANO GUTIÉRREZ, *op. cit.*, p. 250, according to which «it is necessary to make an interpretive effort with concepts such as professional interest, to enable the extension of

environmental sustainability constitutes a general interest of the community that both restricts the exercise of economic initiative (Article 41, paragraph 2 of the Constitution) and serves as a focus for coordinating public and private economies (Article 41, paragraph 3 of the Constitution). Essentially, Constitutional Law No. 1 of 2022 has connected the general interest of environmental protection to the array of economic and professional interests regulated by Title III of the Constitution, aiming to forge a virtuous link. The revitalised framework of the "Economic Constitution" could catalyse future interpretative developments, supporting the full legitimacy of strikes proclaimed to safeguard the environment and integrating the interplay of professional interests and environmental protection underscored in the constitutional text into the practice of collective conflict. Furthermore, through this approach, the right to strike could acknowledge the interdependence of environmental and social crises, serving as a supplementary tool to address climate justice demands[64].
The second alternative is to acquiesce to the prevailing interpretation of the legitimate purposes of the right to strike. However, this option does not necessitate that trade unions sacrifice their commitment to other general interests that, due to their transversality, affect the working class. In this regard, the EU Council Recommendation on strengthening social dialogue within the EU urges Member States to create conditions conducive to promoting social dialogue concerning the green transition, with the aim of ensuring its genuine fairness[65]. This approach reaffirms what has already been established by the Recommendation on ensuring a fair transition towards climate neutrality, which advocates for the structural inclusion of trade unions in shaping transition policies[66]. Social dialogue must therefore be understood as an essential tool for ensuring the social equity of this transformative process,

traditional instruments of collective action to the reality of environmental protection, which was not thought of when they were first recognized by our respective legal systems».

[64] The climate crisis is unequal both in its source and its effects. With respect to the first characteristic, in fact, some studies have highlighted how overall pollution is not evenly caused by everyone but by the few who hold the majority of wealth (see OXFAM, *Confronting carbon inequality*, 2020, which states that the richest 10% of the global population is responsible for 52% of carbon dioxide emissions over the past 25 years; A. PORCIELLO, *Filosofia dell'ambiente. Ontologia, etica, diritto*, Carocci, Roma, 2022, p. 123 ff.). With respect to the second characteristic, however, other studies focus on the repercussions of the phenomenon, whose effects are more severe for less developed countries (see M. BARBERA, *op. cit.,* p. 345 ff.): an example confirming this is the environmental disaster caused by the trade in used clothing, which has affected Ghana, becoming one of the world's largest open-air landfills. See https://www.africarivista.it/i-nostri-vestiti-usati-inquinano-il-ghana/203579/.

[65] See the article 1, letter d).

[66] The structural involvement of social partners is clearly evident from objective 2) of the recommendation as well as from Articles 4, 5, letter b), 8, letter c), 9, letters c), d), and e).

which, as previously mentioned, will extensively impact the labour market. Trade unions will be called upon to fulfil their historical role as the custodians of workers' professional interests, particularly in the face of a transformative process that is necessary to halt the environmental crisis before it is too late[67].

[67] About this topic see P. TOMASSETTI, *op. cit.*, p. 247 ff.; E. LEONARDI, *La giusta transizione tra questione sociale e questione ambientale: il potenziale ecologico delle mobilitazioni operaie*, in *Giornale di diritto del lavoro e di relazioni industriali*, 2023, 1-2, p. 99 ff.

Exploring Trade Union Perceptions Among Members and Non-members in Malta

Luke Anthony Fiorini, Manwel Debono, Anna Borg [*]

Abstract: Trade union density is declining throughout Europe. The situation is no different in Malta. Few recent studies have analysed the perceptions of trade union members and non-members to understand this phenomenon. To achieve this and generate novel findings, a cross-sectional study was conducted whereby both quantitative and qualitative data were collected. Trade union members were more likely to be older, have children, work in larger organisations or public organisations, and be covered by a collective agreement. Members described aspects of their unions' approach that they appreciated and the benefits they valued. Members called for better two-way communication and suggested improvements in the way their union is run. Findings indicate that trade unions could attract and retain members via improving internal union democracy, increasing proactivity at the enterprise and national level, promoting two-way communication, reconsidering political connections, and promoting union membership.

Keywords: *Industrial relations; trade unions; members; non-members; perceptions; Malta.*

1. Introduction

Trade unionism can benefit members in various ways. Amongst them, membership has been found to protect employment[1], benefit earnings and

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pensions[2], and provide more opportunities for job-related training[3]. Trade unions (TUs) often carry out important health-promoting activities[4] and these, as well as unions' focus on improving working conditions, often result in workplaces with better levels of occupational health and safety[5]. Trade unionism has also been found to support and benefit specific vulnerable populations such as migrant workers and victims of domestic violence[6]. Benefits can also be country-specific. For example, trade union members in the USA are more likely to have health insurance coverage and access to care[7]. In some European countries, trade unions administer voluntary unemployment insurance schemes[8].

Despite the benefits of TU membership, union density has been declining across Europe for many years[9]. This is also the case in Malta (EU), the country where this study was conducted. Given Malta's British colonial past, industrial relations in Malta reflect the British system, whereby voluntary bipartite collective bargaining at the enterprise level is the norm. However, following Malta's accession to the EU in 2004, European practices in the area of social dialogue and industrial relations are increasingly being observed.

Between 2000 and 2020, employment in Malta more than doubled, driven by an increase in the female and migrant labour force, and has continued to

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[1] L. Goerke, and M. Pannenberg, "*Trade union membership and dismissals*", Labour Economics, 2011, vol. 18, n. 6, 810-821.

[2] N. Torm, "*Does union membership pay off? Evidence from Vietnamese SMEs*", in J. Rand and F Tarp (eds), Micro, small, and medium enterprises in Vietnam, Oxford Academic, Oxford, 2018, 230–252. T. Turner, C. Cross, and M. O'Sullivan, "*Does union membership benefit immigrant workers in 'hard times?*", Journal of Industrial Relations, 2014, vol. 56, n. 5, 611-630.

[3] M. Stuart, D. Valizade, and L. Bessa, "*Skills and training: the union advantage*", CERIC, 2015, vol. 21.

[4] B. Malinowski, M. Minkler, and L. Stock, "*Labor unions: a public health institution*", American Journal of Public Health, 2015, vol. 105, n. 2, 261-271.

[5] JP. Leigh, and B. Chakalov, "*Labor unions and health: A literature review of pathways and outcomes in the workplace*", Preventive Medicine Reports, 2021, vol. 24, 101502.

[6] M. Stuart, D. Valizade, and L. Bessa. *op. cit.* G. Wibberley, T. Bennett, C. Jones, and A. Hollinrake*, "The role of trade unions in supporting victims of domestic violence in the workplace"*, Industrial Relations Journal, 2018, vol. 49, no. 1, 69-85.

[7] L. Petach, and DK. Wyant, *"The union advantage: union membership, access to care, and the Affordable Care Act."*, International Journal of Health Economics and Management, 2023, vol. 23, n. 1, 1-26.

[8] J. Clasen, and E. Viebrock, "*Voluntary unemployment insurance and trade union membership: Investigating the connections in Denmark and Sweden*", Journal of Social Policy, vol. 37, n. 3, 433–451.

[9] J. Visser, "*Why fewer workers join unions in Europe: A social custom explanation of membership trends*", British Journal of Industrial Relations, 2002, vol. 40, n. 3, 403–430. K. Vandaele, "*Bleak prospects: mapping trade union membership in Europe since 2000",* ETUI Printshop, Brussels, 2019.

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increase since[10]. TU membership has not kept pace with this rapid increase in employment. Union density was reported at 60% in 2000 and fell to 45% in 2019[11]. Although this level of density is rather positive when compared to several other European countries, national statistics may overestimate trade union membership[12]. Furthermore, whereas TU membership more than doubled between 1980 and 2000, only an 8% increase was registered between 2000 and 2019[13] . As unions seek to tackle the decline in TU density, comprehending individuals' reasons for joining or not joining a TU has become a fundamental research topic[14]. Despite this, there are few studies on views of TUs' work[15] and very few papers that explore this topic qualitatively. Furthermore, whilst work has continued evolving[16], and the profile of workers is ever-changing, recent research on this topic is very limited. This situation is no different in Malta, and thus the current paper aims to investigate members' and non-members' perceptions of TUs in Malta. More specifically, the study will explore how TU members differ from non-members, what TU members like about their union, and what they think their union can do better. The study will also examine why other individuals have chosen not to join a union and what can be done to encourage membership. The study will utilise both quantitative and qualitative data to generate new information that may be of value at both a national and international level.

[10] LA. Fiorini, and FME. La Ferla, "*The development of occupational health and safety in Malta*", in M. Debono, and G. Baldacchino (eds), Working Life - The Transformation of the Maltese Workplace: 1960-2020, Malta University Press, Malta, 2021, 217–236. Jobsplus, Employment trends, Malta, 2023. https://jobsplus.gov.mt/

[11] M. Debono, and LA. Fiorini, "*Malta: Trade union resilience in a changing environment",* in J. Waddington, T. Muller, and K. Vandaele (eds), Trade Unions in the European Union, Peter Lang, Lausanne, Switzerland, 2023, 763–798.

[12] M. Debono, *"An analysis of trade union membership in Malta"*, Xjenza, 2018, vol. 6, n.1, 46–58.

[13] M. Debono, and LA. Fiorini, *op. cit.*

[14] L. Frangi, and M. Barisione, "*Are you a union member?' Determinants and trends of subjective union membership in Italian society (1972–2013)"*, Transfer: European Review of Labour and Research, 2015, vol. 21, n. 4, 451–469. J. Holgate, G. Alberti, I. Byford, and I. Greenwood I, *"Trade union community membership: exploring what people who are not in paid employment could contribute to union activism"*, Transfer: European Review of Labour and Research, 2021, vol. 27, n. 4, 469–483.

[15] L. Frangi, and MA. Hennebert, "*Expressing confidence in unions in Quebec and the other Canadian provinces: Similarities and contrasts in findings*", Relations Industrielles, vol. 70, n. 1, 131–156.

[16] LA. Fiorini, *"Remote workers' reasons for changed levels of absenteeism, presenteeism and working outside agreed hours during the COVID-19 Pandemic",* SAGE Open, 2024, vol. 14, n. 1, 21582440241240636.

2. Literature Review

Research on TU density often falls into one of two categories. Studies that focus on the macro level and analyse the structural and institutional determinants of TU membership, and those that focus on the micro level, and examine the differences between members and non-members, as well as individuals' reasons for joining or leaving a TU[17].

It has been argued that macro-level factors, including political and institutional factors, are the primary reason for the decline in TU membership[18]. In many Western countries, the power and mobility of capital, backed by domestic and foreign supporters have posed significant challenges to TUs. Factors such as privatisation, labour deregulation and increased international competition have led to downward pressure on wages and working conditions, making it more difficult for TUs to influence working conditions[19]. Reasons also vary between countries. For example, the erosion of the link between unemployment insurance and TU membership in the Nordic countries (often termed the Ghent System)[20], or the shift of employment from manufacturing to the service sector in many Western countries[21]. In addition, many TUs are unable to make inroads into new workplaces, new sectors and young workers[22] and new forms of work such as platform work, where workers have no fixed employers or workplaces, exacerbate the situation. This is also the case in Malta, where blue-collar work has become less prevalent and TUs struggle to gain a foothold in many service industries and new forms of work. TUs have lobbied for the introduction of mandatory TU membership. The proposal has received Government support but has been fiercely resisted by employer associations[23].

At the micro-level, the factors and motivations that influence trade union membership have also been studied. Studies in several EU countries have demonstrated that the factors that drive TU membership can vary between

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[17] J. Toubøl, and CS. Jensen, "*Why do people join trade unions? The impact of workplace union density on union recruitment"*, Transfer: European Review of Labour and Research, 2014, vol. 20, n. 1, 135–154.

[18] J. Visser, *op. cit., 2002.*

[19] J. Kelly, *"Trade union membership and power in comparative perspective"*, The Economic and Labour Relations Review, 2015, vol. 26, n. 4, 526–544.

[20] A. Bryson, B. Ebbinghaus, and J. Visser, *"Introduction: Causes, consequences and cures of union decline",* European Journal of Industrial Relations, 2011, vol. 17, n. 2, 97–105.

[21] J. Toubøl, and CS. Jensen, *op. cit.*

[22] S. Machin, *"Trade union decline, new workplaces and new workers"*, in H. Gospel, and S. Wood (eds), Representing Workers: Trade Union Recognition and Membership in Britain, Routledge, London, 2003, 15–28.

[23] M. Debono, and LA. Fiorini, *op. cit.*

countries[24]. Furthermore, most cross-national studies do not include Malta, emphasising the value of studying such issues in the country. Individuals join unions for a variety of reasons, which include both the benefits they might derive from membership and broader social justice reasons[25]. Some of the more common micro-level findings are discussed below.

Waddington[26] found that one of the leading reasons for retaining TU membership was to have workplace support, which is also a primary reason in Malta[27]. Most members, however, were dissatisfied with their representation[28], and past research also indicates that this is common in Malta[29]. This is notable as individuals renounce their membership for reasons including poor support and communication[30].

Workers often join a TU to obtain working conditions that they would not otherwise get on their own[31], and indeed, Waddington[32] determined that improving one's pay and working conditions was another main reason for remaining a TU member, as were the additional benefits one gets from being a member. This also appears to be the case in Malta where individuals covered by collective agreements are more satisfied with the work of unions[33]. Indeed, dissatisfaction with TUs' efforts to improve pay and working conditions has been linked with individuals renouncing their membership[34].

Social norms can be a powerful reason for joining a trade union. Previous studies have revealed that a major reason for membership was that others in

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[24] B. Ebbinghaus, C. Göbel, and S. Koos, *"Social capital, 'Ghent' and workplace contexts matter: Comparing union membership in Europe"*. European Journal of Industrial Relations, 2011, vol. 17, n. 2, 107–124. C. Schnabel, and J. Wagner, "*Union density and determinants of union membership in 18 EU countries: Evidence from micro data, 2002/03"*, Industrial Relations Journal, 2007, vol. 38, n. 1, 5–32.

[25] J. Fiorito, I. Padavic, and ZA. Russell, *"Pro-Social and Self-Interest Motivations for Unionism and Implications for Unions as Institutions"*, in D. Lewin, and PJ. Gollan (eds*),* Advances in Industrial and Labor Relations, 2017: Shifts in Workplace Voice, Justice, Negotiation and Conflict Resolution in Contemporary Workplaces, Emerald Publishing Limited, Vol. 24, Leeds, 185–211.

[26] J. Waddington, "Trade union membership retention in Europe: the challenge of difficult times", *European Journal of Industrial Relations*, 2014, vol. 21, n. 3, 205-221.

[27] M. Debono, "*A national survey on trade unions in Malta",* National Forum of Trade Unions, Malta, 2015.

[28] J. Waddington, *op. cit., 2014*

[29] M. Debono, "*Attitudes towards trade unions in Malta*," Economic and Industrial Democracy, 2019, vol. 40, n. 4, 997–1017.

[30] J. Waddington, *"Why do members leave? The importance of retention to trade union growth"*, Labor Studies Journal, 2006, vol. 31, n. 3, 15–38.

[31] J. Visser, *op. cit., 2002.*

[32] J. Waddington, *op. cit., 2014.*

[33] M. Debono, *op. cit, 2019.*

[34] J. Waddington *op. cit, 2016.*

the same workplace were members[35]. As union density decreases, this pull factor is increasingly blunted. A statistical analysis[36] found that workplace union density was the most important predictor of union membership when controlling for various other variables. In a related finding, the presence of a union in the workplace was found to be an important variable[37] but its importance depends on the situation in the workplace. For example, its impact on membership is diminished where the workforce benefits from extension mechanisms[38]. In Malta, workers who are not members are also covered by collective agreement provisions in organised enterprises. Debono[39] found that apart from disinterest in trade unionism, the lack of a TU in Maltese workplaces was the greatest barrier to TU membership.
Attitudes and dispositional factors have also been linked to TU membership. TU members are more likely to hold a left-wing ideology than a right-wing ideology[40]. However, this only appears to influence membership in a few EU countries[41]. Waddington[42] also revealed that holding positive ideological beliefs about TUs was a reason why individuals remained TU members. Factors such as neuroticism and external locus of control[43] as well as higher self-transcendence and conservation scores have also been associated with TU membership[44].
In some EU countries, individuals are more likely to join a TU if they are dissatisfied with the situation at work[45]. Strike action has been significantly associated with higher membership rates. This is likely related to feelings of union effectiveness and perceived injustice about the situation[46]. The trend In

[35] J. Visser, *op. cit., 2002.*
[36] J. Toubøl, and CS. Jensen, *op. cit.*
[37] B. Ebbinghaus, C. Göbel, and S. Koos, *op. cit.* Schnabel, and J. Wagner, *op. cit.*
[38] Z. Fazekas, *"Institutional effects on the presence of trade unions at the workplace: Moderation in a multilevel setting"*, European Journal of Industrial Relations, 2011, vol. 17, n. 2, 153–169.
[39] M. Debono, *op. cit, 2015.*
[40] Z. Fazekas, *op. cit.* J. Toubøl, and CS. Jensen, *op. cit.* C. Kollmeyer, "*Who joins trade unions? Testing new* sociological explanations", Comparative Sociology, 2013, vol. 12, n. 4, 548–574.
[41] Schnabel, and J. Wagner, *op. cit.*
[42] J. Waddington, *op. cit., 2014.*
[43] KR. Parkes, and TD. Razavi, *"Personality and attitudinal variables as predictors of voluntary union membership"*, Personality and Individual Differences, 2004, vol. 37, n. 2, 333–347.
[44] H. Kirmanoğlu, and C. Başlevent, *"Using basic personal values to test theories of union membership"*, Socio-Economic Review, vol. 10, n. 4, 683–703.
[45] Z. Fazekas, *op. cit.,* Schnabel, and J. Wagner, *op. cit.*
[46] A. Hodder, M. Williams, J. Kelly, and N. McCarthy. *"Does strike action stimulate trade union membership growth?"*, British Journal of Industrial Relations, 2017, vol. 55, n. 1, 165–186.

Malta[47], as well as other EU countries[48], is that industrial action has become less frequent, which may have harmed membership. In fact, in many EU countries, individuals are more likely to join a union they consider powerful[49]. However, whilst economic strikes have decreased across Europe, general strikes (e.g., related to social justice) have increased[50] and thus TUs have not lost their power in mobilising individuals when needed. Lobbying government was cited by some TU members as a reason for retaining their membership[51]. Individuals in Malta also value this TU role[52]. Conversely, political links between TUs and political parties are often a reason for dissatisfaction with TUs, a situation that is not unique to Malta[53].
Demographic and work-related variables have also been associated with TU membership. In some countries, males are more likely to be TU members, however, this is not the case in the Nordic countries[54]. It has been argued that gender differences in TU membership are due to females' greater likelihood of working part-time and holding atypical contracts, which have also been associated with lower membership[55]. A study by Waddington[56] found little difference in the reasons for TU membership between men and women. Age has also been studied, with TU membership often linked with older age[57]. One study found that membership increased until the age of 54 and then decreased again, possibly because older individuals have greater job security and income[58]. The same study also found that the relationship between education and TU membership does not appear to be linear; membership increases with higher levels of education up to 15 years of full-time education (i.e., attainment of university-level education) and then decreases. TU members are also more likely to be employed in blue-collar occupations[59], although several professional unions appear to be thriving[60]. While contrary results have been

[47] M. Debono, and LA. Fiorini, *op. cit.*, E. Zammit, M. Debono, and M. Brincat, *"Malta",* in R. Blanpain, and M. Colucci (eds), International Encyclopaedia for Labour Law and Industrial Relations, Kluwer Law International, The Hague, 2015.
[48] ETUI, *"Strikes map of Europe",* Brussels, 2023, https://www.etui.org/strikes-map.
[49] Schnabel, and J. Wagner, *op. cit.*
[50] J. Kelly, *op. cit.*
[51] J. Waddington, *op. cit.,* 2014.
[52] M. Debono, op. cit., 2019.
[53] M. Debono, op. cit., 2019, J. Kelly, *op. cit.*
[54] Schnabel, and J. Wagner, *op. cit.*
[55] B. Ebbinghaus, C. Göbel, and S. Koos, *op. cit.*
[56] J. Waddington, *op. cit.,* 2014.
[57] Z. Fazekas, *op. cit.*
[58] B. Ebbinghaus, C. Göbel, and S. Koos, *op. cit.*
[59] B. Ebbinghaus, C. Göbel, and S. Koos, *op. cit.* Z. Fazekas, *op. cit.,*
[60] J. Kelly, *op. cit.*

presented, the size of the organisation seems to play an important role in TU density in countries where TUs are not involved in organising unemployment insurance[61], as is the case in Malta. This places Maltese unions at a particular disadvantage given the high proportion of micro and small organisations in the country.

Demographic and work-related variables have previously been studied in Malta. Debono[62] concluded that TU members tend to be older and have full-time and indefinite contracts. In contrast to some European findings, TU members generally had higher levels of education and higher-level occupations. A link with gender was not identified. In terms of satisfaction with TUs, limited associations have been identified with demographic factors: education and age were not correlated, while women were more satisfied with the work of TUs when they worked in smaller organisations, whereas men were more satisfied when they worked in larger organisations[63].

It can be concluded that the views of members and non-members are likely to be shaped by various factors. TU members are likely to value the positive working conditions and support offered by TUs, whilst political beliefs and social norms may also foster favourable attitudes towards TUs. Perceived shortcomings in these factors may be associated with TU dissatisfaction, as may additional factors such as TUs' political links and perceived lack of power.

3. Methods

A cross-sectional study was conducted, with data collection carried out in two phases. TUs in Malta were invited to share the questionnaire with their members. Seven TUs accepted this request. The questionnaire was also shared via social media, with adverts being set up on Facebook and LinkedIn which targeted individuals living in Malta of working age, those living outside of Malta were excluded. This two-pronged approach allowed for a larger sample to be obtained, and for responses to be collected from members and non-members. In all cases, an online questionnaire hosted on Google Forms was used.

Data collection took place via an anonymous questionnaire which contained open and closed-ended questions. Given the study's objectives, questions were prepared for union members and non-union members.

[61] Z. Fazekas, *op. cit.* B. Ebbinghaus, C. Göbel, and S. Koos, *op. cit.* Schnabel, and J. Wagner, *op. cit.*

[62] M. Debono, *op. cit.*, 2018.

[63] M. Debono, *op. cit.*, 2019.

All participants were asked to provide demographic and employment information which included: TU membership status, gender, age, level of education, if they have children, job status (full-time or part-time), employment contract (permanent or temporary), employer (public or private), size of organisation, country of origin and the sector they worked in.
TU members were also asked two further open-ended questions. One question asked respondents to describe what they liked about their trade union. The second asked them to explain how they felt their union could improve. Non-members were asked to consider four statements regarding whether they believed TUs played an important role in these factors in Malta, and were scored on a three-point scale of yes/no/unsure: protecting rights of workers at the workplace; offering individual services to their members; seeking unity among workers; contributing to national debates. Non-members were also asked if they were satisfied with the work of TUs in Malta; this was scored on the same three-point scale. Through open-ended questions, non-members were also asked to explain why they were not TU members, and what TUs could do to encourage membership. Those who chose 'no' or 'unsure' when asked if they were satisfied with TUs' work were asked to explain why.
Closed-ended questions were analysed quantitatively via SPSS version 29. Statistical analysis was conducted to determine associations between being a trade union member and the other studied demographic and employment factors. Chi-Square was used to identify significant differences whilst Phi was used to determine the effect size[64]. Missing data was tackled by using pairwise analysis. In the case of the open-ended questions, these were analysed qualitatively using thematic analysis[65].
The study received ethical approval from Faculty Research Ethics Committee (FREC) at the Faculty of Economics, Management and Accounting (FEMA), University of Malta. Participants were provided with an informative letter and indicated their consent before participating. The questionnaire was anonymous and no personal data that could identify the individuals was collected.

4. Results

Data from 346 participants were analysed, 204 (59%) were TU members whereas 142 (41%) were not. As shown in Table 1, most of the participants were male, aged between 40 and 55 years, had completed tertiary education,

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[64] GA. Morgan, KC. Barrett, NL. Leech, and GW. Gloeckner, "*IBM SPSS for introductory statistics: use and interpretation*" (5th ed), Routledge, New York, 2013.
[65] V. Braun, and V. Clarke, *"Using thematic analysis in psychology"*, Qualitative Research in Psychology, 2016, vol. 3, n. 2, 77–101.

had children, were employed full-time, worked in the public sector, worked in a large organisation, were of Maltese origin and were covered by a collective agreement.
Bivariate analysis (Table 1) indicated that TU members were significantly older, had children, worked in larger organisations, were of Maltese origin, were covered by a collective agreement, and worked in the public administration sector and human health and social work sector. Those working within the arts and the professional, scientific and technical sectors were less likely to be TU members.

Table 1. Associations between trade union membership and measured factors

Variable		N (%)	X^2	Phi
Gender	Male	188 (54.3)	.08	.02
	Female	155 (44.8)		
Education	Secondary or post-secondary	78 (22.5)	.07	.01
	Tertiary	269 (77.5)		
Children	No	134 (39.7)	4.73*	.12*
	Yes	210 (60.7)		
Job	Full-time	302 (87.3)	.96	.06
	Part-time	16 (4.6)		
Contract	Not permanent	48 (13.9)	.01	-.01
	Permanent	266 (76.9)		
Employer	Public	202 (58.4)	40.77***	-.36***
	Private	115 (33.2)		
Country of origin	Not Malta	24 (6.9)	4.91*	.12*
	Malta	322 (93.1)		
Sector[1]	Manufacturing	21 (6.1)	1.07	-.06
	Electricity	14 (4.0)	1.54	.07
	IT and Finance	37 (10.7)	3.68	-.11
	Professional, scientific or technical	29 (8.4)	8.58**	-.17**
	Administrative and support services	23 (6.6)	.44	-.04
	Public administration and defence	38 (11.0)	6.49*	.15*
	Education	50 (14.5)	1.29	.07
	Human Health and social work	49 (14.2)	15.47***	.23***
	Arts and recreation	11 (3.2)	6.22*	-.14*
Collective agreement	No	73 (21.1)	63.72***	.46***
	Yes	233 (67.3)		
Age	39 or under	105 (30.3)	7.14*	.14*
	40-55	194 (56.1)		
	56 or older	47 (13.6)		
Size of organisation	49 or less	57 (16.5)	12.93**	.21**
	50-249	50 (14.5)		
	250 or more	200 (57.8)		

[1] Only sectors with > 10 individuals presented. *< .05, **< .01, ***<.001. Source: Own Elaboration (2024).

4.1. Reasons for not Being a TU Member

Participants were asked to explain why they were not TU members. 137 participants responded to this question. Three key themes emerged, namely reasons related to participants' employment, perceptions of TUs' principles and impact, and outcomes of TU membership. The number of participants who provided an answer related to a sub-theme is provided in brackets.

4.1.1. Employment

Participants (30) provided reasons linked to their sector or organisation, often noting that it was not unionised, and thus they did not have the option to join a TU. Others worked in small organisations and did not see the need, or were unsure that they would benefit from membership. Some participants were previously TU members but having left a unionised organisation or sector, did not see a reason to remain a member.

> I work in a small company and no one is a member. I don't know how much help being in a union would be for me

A further 16 participants were not TU members due to their role in their organisation. Reasons included being part of management, working within Human Resources, or because, "*my current role does not allow me to join a union*". Several other individuals (22) gave reasons related to their employment status, including not being employed (11) as they were either a student or retired, self-employed (9) or being employed part-time (2).

> I am self-employed so I never felt the need to join a union

4.1.2. Trade Union Principles and Impact

Several participants (16) avoided union membership due to perceptions that TUs were subservient to political parties, the government, and to a lesser degree, to employers. Some participants made specific reference to Malta's two largest unions, the General Workers Union (GWU) and UHM Voice of the Workers (UHM). Participants felt that TUs that did this had lost their values and became ineffective.

> In Malta, unions are too politically inclined and their agenda is set accordingly

Several participants (19) questioned the impact of TUs, using words and terms such as, "not radical enough", "useless", "helpless", "inefficient", and "powerless". Examples provided included organisation-specific ones, such as collective agreements that had expired a long time ago and have not been renegotiated, as well as more general statements, sometimes linked to the union's political links including:

> At the moment they are like Sleeping Beauty - it is like they do not exist anymore because they are just another branch of the political party in Government

> The silence of today's trade unions is deafening

A further 11 participants highlighted that they did not trust TUs. Participants often questioned if TUs had employees' best interests at heart. Wider national-level values were also questioned by some:

> Slave labour, cheap labour, human trafficking, forced sex work, social dumping, corruption and selling workers to any bidder are all legitimised and institutionalised

4.1.3. Outcomes

Several participants (26) saw little benefit in becoming a TU member or were uninterested. Reasons were sometimes linked to other themes, such as their perceived lack of impact. Others worked in a sector or job with clear and good working conditions and saw no benefit. A couple of participants believed in negotiating their conditions:

> I do not believe in the need to be represented by a third party to properly negotiate my work needs/aspirations

Some individuals (10) reflected upon negative experiences in the past explaining that their union had not assisted them when needed.

> I did not get the service I wanted when I was a member, so I resigned

A few others (3) worried that if they interacted with a TU it would tarnish their reputation at work, or their employer would be vindictive against them.

> My current employer does not respect trade unions and if I had to use them he would turn against me and make my life hell

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4.2. Non-Members' Perceptions of Tus' Role in Malta

The majority of non-members felt that TUs played an important role in protecting workers' rights within the workplace, in contributing to national debates and in offering their services to their members. However, most non-members did not believe that TUs played an important role in seeking unity among workers, and few non-members were satisfied with the work done by TUs in Malta (Table 2).

Table 2. Non-members perceptions of TUs

	Yes (%)	No (%)	Unsure (%)
Protect the rights of workers in the workplace	78 (55.3)	48 (34.0)	15 (10..6)
Offering individual services to their members	70 (49.6)	46 (32.6)	25 (17.7)
Seeking unity among workers	52 (36.9)	68 (48.2)	21 (14.9)
Contributing to the national debate	72 (51.4)	47 (33.6)	21 (15.0)
Satisfied with TU work in Malta	33 (23.2)	90 (63.4)	19 (13.4)

Source: Own Elaboration (2024).

4.3. Non-union Members: Reason not Satisfied with TUs

Non-union members who were dissatisfied or unsure if they were satisfied with TUs work (n = 109) were asked to elaborate on their reasons why. 94 individuals responded. Their responses fell within one of two themes, either they dealt with dissatisfaction with the outcomes of TUs' work, or with the philosophy and values of TUs.

4.3.1. Outcomes

Several participants (28) described their dissatisfaction with TUs' contribution at both an organisational and a national level. At the organisational level, participants questioned the contribution that unions had brought to workplaces:

> I haven't heard of anything the trade union I could potentially form part of have done for workers recently

It was stated that TUs had become weaker and were not militant enough at both the organisational and national levels. Some participants linked this with unions' desire not to create conflict with political parties. In other cases, participants struggled to name TU contributions or described national topics where they believed TUs should take more of a stand:

> There are so many themes and issues which they could be working on (e.g., living wage, gig work, remote work, health and safety) but they are not, or if they take them on, their attempts feel half-hearted

A few participants (7) were disappointed with past interactions with a TU. Participants highlighted that had been let down by their union when they needed them, or felt that they showed preferential treatment to other members.

4.3.2. Trade union philosophy and values

The most common reason for dissatisfaction (33) with TUs was their perceived links with political parties and the government of the day. Some participants believed this prevented TUs from representing members appropriately, particularly when dealing with the government as the employer.

> The largest unions are merely extensions of the two main political parties and act in the interests of the parties rather than their members

A few participants specifically highlighted the links between the GWU and the Labour Party, others argued that some TUs were more "interested in strengthening its financial portfolio than confronting the government on major issues", and thus held back from discussing important national matters.
Indeed, a few individuals (4) expressed their dismay at unions' focus on money. Participants stated how unions focused on collecting their fees from members or on their wealth.
A related subtheme was the belief that TUs were not focused on the protection and amelioration of workers' conditions (22). This too was sometimes attributed to links with political parties or employers.

> Their interests do not necessarily centre around the wellbeing and protection of the employee

A few other individuals (6) were specifically critical of TUs' proximity to organisational leaders and their focus on pleasing employers or aiding management-level workers to improve their conditions rather than regular employees.
Several individuals (20) criticised TUs' philosophy and principles, but the aspects varied substantially. Whilst most criticised TUs for becoming pro-market, for protecting capitalist behaviours, and abandoning the working class,

others felt that trade unions were too socialist, protected lazier workers and highlighted that striking punished normal citizens.

> They seem to have a basic lack of understanding of the importance of bringing together the working class, irrespective of race, origin, language, etc, leaving an open space for capitalist interests to take over and alienate workers

A few participants (3) also criticised TUs lack of unity, highlighting the constant squabbling between TUs.

4.4. Non-union members: what can unions do to encourage membership?

All non-union members were invited to provide their opinions regarding what TUs could do to encourage them to become members, 125 responded to this question. Most responses fell under the theme, 'change philosophy and approach'. Other themes included promotion and outcomes, and unsure and uninterested.

4.4.1. Change philosophy and approach

Participants (29) called for TUs to focus their attention on workers, by "defending, protecting and promoting the workers' rights", to "return to their roots", and to do more for the weakest employees. Participants called for more frequent member consultation, to be more visible outside of the period when a new collective agreement was being negotiated, and to ensure that collective agreements benefitted the entire workforce, not only those in higher positions. When issues arose, participants argued that TUs should take the side of the employee and not the employer.

> When it comes to collective bargaining, the bargaining power of unions is substantial and so it must be utilised wisely and not only in the interests of the few

Participants (28) also argued the TUs must dissociate themselves from political parties. They argued that TUs should not be "puppets of both political parties" or "cheerleaders to the government of the day", and that they "focused on members, not politicians".
Another common theme was participants' (24) call for TUs to be "bolder" and "more militant". It was argued that TUs should be more "courageous", "unrelenting", "ready to fight", "to work hard", 'to be determined', 'to speak

out'. In most cases, this was about fighting for employee rights and conditions. However, national-level changes were also discussed.

> Must become bolder and assume the militant attitude of Malta Employers Association (MEA). MEA always takes the side of the employers. Suffice to say that MEA leaders even went on record arguing against parental leave, even if this was "politically incorrect" etc. Why can't trade union leaders assume similar audacious stands?

Participants (24) called for TUs to be more professional in their approach, calling for them to be run more democratically and transparently. Others called for unions to be impartial and to support workers equally. However, some stated that TUs must *"stop defending workers who are unworthy of their defence"*.
It was also argued (13) that TUs should focus more on certain categories of employees. Suggestions were varied and included doing more for part-time workers, targeting sectors that are not unionised (iGaming and accountancy were highlighted), supporting foreign workers, those working in small organisations, those employed in certain government employment grades, and those living in Gozo (Malta's sister island). A couple of participants also suggested that mandatory union membership could be a possible solution.

4.4.2. Promotion and Outcomes

Some participants (12) felt that TUs should do more to promote unionism and its benefits, as they were unaware of TU work or the benefits of membership. Some participants encouraged greater TU presence at outreach activities such as sector-specific conferences. Others felt that TUs should be more accessible.

> Show the individual the benefits of being in a union. As a whole everyone knows it's beneficial, but on an individual basis it is vague

Some participants (5) stated that they would consider membership if they thought it would benefit them. Better working conditions and protection against discrimination were mentioned. A couple of participants stated that TU membership should include additional benefits, such as the provision of medical insurance.

4.4.3. Unsure or Uninterested

Several respondents (20) were either unsure what TUs could do to persuade them to join or stated that there was nothing TUs could do to persuade them. Reasons for this attitude included the opinion that union action has a negative impact, that they see no value in joining given their working conditions, and that they prefer to negotiate their own terms and conditions.

4.5. Union Members: What I like about my Union

Responses (*n* = 167) fell into one of three themes, namely those who liked the approach taken by their TU, those who enjoyed the benefits associated with membership, and those who liked little about their union.

4.5.1. Approach

The leading theme that emerged was that TUs supported and worked for their members (40). TUs were described as *"continually fighting for better conditions at our place of work"*, or working hard to improve worker rights. Others described how their TU demonstrated care, interest in their wellbeing, or assisted them, including providing advice and support when needed.

> When I was in need, even when I was alone, they came through and helped me

Many participants (34) described their TU as accessible and offered two-way communication. Members described their TUs as approachable, easy to reach and open to members' opinions. Some emphasised the accessibility of shop stewards and those in senior positions. Others were positive about the information they received from their TU and highlighted its importance during collective agreement negotiations.

> Regular communication from the union representatives at our place of work

Some respondents commented favourably on the level of professionalism and reputation of their TUs (11), describing their approach and knowledge of relevant issues and how well-established they were. Participants also described that their TU was a house/professional union (10) and felt that it better understood their issues and focussed on their professional needs.

> Being a house union, most of the representatives have hands-on experience when a complaint is raised

Some respondents spoke positively about facets of their TU's leadership (10). A few described leaders as hard-working or respectful. Others appreciated that their TU leadership had no political or government links, and spoke positively about the TUs' openness to improvement.

> He works like a dog. He lives and breathes UPE (Union of Professional Educators) and is very dedicated to the members

4.5.2. Benefits

Several participants (20) described how forming part of a union provided them with power in numbers, and with a voice that would otherwise not be heard. Some participants noted that their union was powerful in their sector, or that they had resources at their disposal.

> The voice of the members is heard by management through our union

Some participants (16) cited collective agreements as the most important benefit of TU membership. Individuals described satisfaction in not having to fight for better conditions themselves or alone, that the collective agreement was renegotiated promptly, or that the agreement led to better working conditions. The collective agreement conveyed a sense of fairness, as working conditions were standardised for the same grades.

> Collective power, removing the pressure from having to negotiate a better work package myself

TU membership also provided participants (6) with a sense of security. This was related both to the union's ability to stick up for workers when needed as well as via the presence of a collective agreement.
Some participants (9) described additional benefits they derived from their membership. Almost all members focused on continuous professional development (CPD) or related benefits such as TU-organised seminars and profession-specific news. A couple of participants described the information about job vacancies and discounts at other companies that they received through their union membership.

> Nowadays, our union … has evolved to provide frequent continuous professional development courses and seminars to

> ameliorate our professionalism towards our clients and colleagues

4.5.3. Better than Nothing or Negative Comments

Five participants simply viewed their TU as *"better than having no representation at all"*. A further 20 respondents stated that there was little or nothing to like about their union. Some felt betrayed or abandoned by their union or that they were *"spineless"*.

> They haven't done much, especially when we needed them

4.6. Union Members: What my Union can Improve

Trade union members' suggestions (*n* = 153) fell into one of two overall themes. These either dealt with improving TU communication or how their TU was run.

4.6.1. Communication

Many participants (45) highlighted the need for better and more frequent two-way communication between the union and members. Some argued that this needed to be more transparent, should have occurred before important decisions were made, and that responses needed to be quicker. Others suggested greater use of digital communication and social media.

> Be more present and available to our queries and needs, reply to emails and return calls within a reasonable time

Several participants (19) specifically called for more meetings to take place between the union and members. Some specified that an annual general meeting was not sufficient.

> Organise a general meeting for all the members at least every six months. It would help in identifying problems at an early stage and most of all hearing ideas and perhaps even solutions directly from the members themselves

A few participants (3) also encouraged improvements in how the union communicated with the general public, stating that this sometimes came across as aggressive, and did not help public relations.

4.6.2. Union Focus and Management

Several members (22) called for TUs to be more proactive, for timely discussions on collective agreements and for more action, militancy and, if necessary, legal action.

> Negotiating the collective agreement should start a lot earlier. It's always concluded one to two years after the previous collective agreement expires

However, a few participants (3) were uncomfortable with the aggressive or militant attitude of their TU and called for greater consideration before calling industrial directives in specific sectors, such as health.

> People get very angry with directives involving patients. For example, leave patients in bed. Why should a dementia patient who doesn't even know what is going on get punished to improve nurses' conditions? It shouldn't be so

A key suggestion by several participants (15) was that their TU needed to focus more on members' needs. Participants commented that some types or grades of workers had been forgotten. Others felt that their TU needed to re-focus on worker needs in contrast to their unions' business interests, acquiring new grades of workers, or the needs of union officials.

> Acknowledge that its main purpose is to safeguard and promote its members' interests rather than the interests of its officials and those close to them

In a related sub-theme, individuals (12) argued that TU ideology should be more member-centred. Participants felt that their union should focus less on politics and instead focus on workers' rights and issues such as wellbeing. Several nurses also expressed dismay that their union had started to represent other professions and called for this to be reversed:

> Remove allied health professionals from being members as they have zero interest in helping our profession move forward. By protecting their interests many nurses end up suffering the consequences

Some participants (10) argued that their TU required a change in leadership and that the process by which leaders were elected needed to be more

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democratic, or that there should be better worker representation within the union.

> Opening up to new blood, where new people can actually be elected in the union.

Aspects related to conflicts of interest and fairness were also discussed (20). Several argued that union officials are there for their personal interests and growth and that this should be eradicated.

> Our union council members are on the committee to gain personal exposure, often leading to personal promotion at work

Others highlighted that conflicts of interest arose because their TU represented different grades of workers and those with management responsibilities acted as union representatives. This could lead to TUs not taking the side of workers in disputes, agreeing to collective agreements that favoured certain individuals, grades or those in senior positions, or leaving certain workers voiceless:

> How can I complain about management to the union, if the union representatives and the management are the exact same people?

Participants thus suggested that management-level workers should not be represented, that collective agreements should benefit all grades of workers, and that union officials involved in bargaining should not work for the involved enterprise.
Some participants (14) called for their union to have more human resources, particularly more worker representatives within the workplace. Calls for full-time secretaries and the employment of more officials were also made, with some suggesting that these should be paid for by the state or employer.

> We need more shop stewards who are ready to sacrifice their time for us

Some participants also called for greater union professionalism (10). Suggestions were varied and included providing union representatives with training, fostering more ethical behaviour and better skills, and access to professionals when needed. Some participants also described the need for their TU to have more power (5). Participants made several suggestions including government support, legislative changes that favoured unionism and additional resources for unions. A few participants (4) also called for TUs to provide more services and training for members as part of their membership.

5. Discussion

The study found that union members' demographics differed significantly from those of non-members. Members were older, worked in larger organisations and the public sector. These findings are similar to those in other countries and previous studies from Malta[66], highlighting the challenge for TUs to attract new members in an ageing workforce[67], with unions making fewer inroads with younger individuals working in the private sector. While the structure of the public sector often supports unionism[68], opposition in the private sector can often stifle unionism[69], as illustrated by qualitative findings, where a small number of non-members feared that membership could damage their reputation. That more members work in larger organisations is unsurprising considering that a concentration of TU members can foster attraction via social pressure[70]. Qualitative findings also revealed that individuals working in smaller organisations saw less value in TU membership, while those who moved from a unionised setting to a non-unionised environment saw no value in retaining their membership. This is of particular concern for TUs in Malta where there is a shift in economic sectors towards non-unionised ones, and where micro and small organisations make up the majority of enterprises.

In line with previous national findings[71], gender was not associated with TU membership. Over the past decades, more women have entered the workforce in many developed countries, including Malta, often within unionised sectors. Conversely, traditionally male-dominated unionised sectors have shrunk, leading to similar numbers of male and female union numbers[72]. However, TU members were more likely to have children. Given the results, this is likely unrelated to gender, but is rather related to members' older age and desires for security and stability. The qualitative findings support this and highlight that TUs should promote the role they play in preventing precarious work and obtaining better working conditions.

TU members were more likely to be of Maltese origin. Immigration of both EU citizens and third-country nationals has increased dramatically in Malta

[66] M. Debono, *op. cit.*, 2019. J. Visser, *op. cit.*, 2002. J. Visser, "*Trade unions in the balance*", ILO ACTRAV Working Paper, Geneva, ILO, 2019.

[67] B. Ebbinghaus, *"Trade unions' changing role: Membership erosion, organisational reform, and social partnership in Europe",* Industrial Relations Journal, 2002, vol. 33, n. 5, 465–483.

[68] B. Ebbinghaus, *op. cit.*

[69] J. Visser, *op. cit.*, 2002.

[70] J. Toubøl, and CS. Jensen, *op. cit.*

[71] M. Debono, *op. cit.*, 2015.

[72] J. Visser, *op. cit.*, 2019.

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over the past decade[73], with foreign workers now accounting for almost a third of the workforce. Only 7% of the current sample were not Maltese, suggesting that foreign workers were underrepresented. Some TUs in Malta are reportedly making inroads with foreign workers[74], however, some participants called for TUs to do more for this group. Studies from Malta have suggested that foreign workers encounter issues such as poor working conditions, discrimination, and are more likely to be injured in the workplace[75]. As discussed later, some participants suggested that the benefits of unionism should be promoted and this may be particularly relevant for third-country nationals coming from countries where unionism is less entrenched in the work culture[76].
Contrary to previous findings,[77] membership was not statistically associated with full-time or part-time employment. This is likely because part-time workers were under-represented in the sample. However, within qualitative findings, some participants called for TUs to do more for part-time workers. Qualitative data also indicated that non-members were more likely to be unemployed or self-employed. TUs do not traditionally focus on the self-employed[78], but as almost 15% of all employment is self-employment[79], TUs would do well to focus more attention on this group. This is in contrast to the registered unemployed who make up less than 3% of the labour force[80]. As in other countries, the trend towards false self-employment is also being accelerated by digital labour platforms. Some European TUs have a history of successfully organising and representing self-employed workers[81], but current qualitative findings suggest that the self-employed do not see value in TU membership. One Maltese employers' association, the Malta Chamber of SMEs (GRTU) counts self-employed workers amongst its members.

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[73] Jobsplus *op. cit.*
[74] M. Debono and LA. Fiorini, *op. cit.*
[75] SC. Buttigieg, K. Agius, A. Pace, and M. Cassar, "*The integration of immigrant nurses at the workplace in Malta: a case study",* International Journal of Migration, Health and Social Care, 2018, vol. 14, n. 3, 269–289. M. Debono, and MT. Vassallo*, "An analysis of working conditions of Filipinos in Malta"*, European Scientific Journal, 2019, vol. 15, n. 26, 64–88. LA. Fiorini, L. Camilleri, and M. Gauci, "*Occupational accidents in Malta and the role of the occupational health and safety authority: A twenty-year analysis"*, International Journal of Occupational and Environmental Safety, 2024, vol. 8, n. 2, 12-30.
[76] M. Kranendonk, and P. De Beer, *"What explains the union membership gap between migrants and natives?"*, British Journal of Industrial Relations, 2016, vol. 54, n. 4, 846–869.
[77] Z. Fazekas, *op. cit.* J. Visser, *op. cit.*, 2002.
[78] G. Haake, *"Trade unions, digitalisation and the self-employed–inclusion or exclusion?"*, Transfer: European Review of Labour and Research, 2017, vol. 23, n. 1, 63–66.
[79] National Statistics Office, *"Labour Force Survey 2023/4"*, 2024, https://nso.gov.mt/labour-force-survey-q4-2023
[80] National Statistics Office, *op. cit.*
[81] G. Haake, *op. cit.*

Conversely, TUs in Malta have lobbied against bogus self-employment and contributed to the introduction of legislation against this form of employment[82]. Examples of TUs organising platform workers have also been reported[83]. However, much scope for progress remains. This was exemplified recently by platform workers enacting national unofficial strikes for better working conditions, with no clear TU involvement[84]. Consequently, TUs should make themselves available to those who work flexibly and are not linked to specific workplaces[85] whilst also advertising the benefits of membership.

Some participants also avoided membership due to their role, often as they held management positions or worked within human resources. Whilst some studies suggest that the emergence of human resources has not contributed to the erosion of TU power and that workers may benefit from the presence of both in an organisation[86], others have argued that participatory human resources strategies may reduce the perceived need for TUs within the workplace[87]. No participants other than those who work in the role commented on their organisations' human resource function. Human resource practitioners may see themselves as an alternative to trade unionism and appear to view membership as inappropriate or unneeded.

Many TU members were found in the public administration sector and human health sector, which is also dominated by public workers. Whilst this illustrates TUs' strength in the public sector, it is also representative of the strengths and focus of specific unions. General trade unions such as the UHM and GWU have many members in the public sector, and both general unions and professional unions, such as the Malta Union of Midwives and Nurses (MUMN), are popular in the human health sector. Several favourable

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[82] S. Rizzo, and LA. Fiorini, "*Malta: Developments in Working Life 2022*", Industrial relations and social dialogue, Eurofound, 2023. https://www.eurofound.europa.eu

[83] M. Debono and LA. Fiorini, *op. cit.*

[84] N. Mailak, *"How 500 Bolt couriers went on strike without a union"*, Malta Today, July 31, 2022. https://www.maltatoday.com.mt/news/national/118077/how_500_bolt_couriers_went_on_strike_without_a_union.

[85] A. Bryson, *op. cit.*

[86] S. Machin, and S. Wood, "*Human resource management as a substitute for trade unions in British workplaces"*, ILR Review, 2005, vol. 58, n. 2, 201–218. I. Martínez-Corts, JP. Moreno-Beltrán, S. Renedo, and FJ. Medina, *"Opponent or allied? An European analysis of the union presence and human resource practices"*, Frontiers in Psychology, 2022, vol. 13, 878006.

[87] D. Valizade, *"Why would workers prefer collective forms of representation? Evidence from the 2011 Workplace Employment Relations Study"*, in International Labour Process Conference, Kings College, London, 2014. J. Waddington, *"Workplace representation, its impact on trade union members and its capacity to compete with management in the European workplace"*, Transfer: European Review of Labour and Research, 2014, vol. 20, n. 4, 537–558.

comments referred to professional or in-house unions. Participants emphasised the importance of their union understanding their professional concerns and offering professional training. Professional unions have the advantage of being able to organise their members more easily and offer tailored services, which would be more difficult for larger general unions to do[88]. Whilst trade union power and membership have generally declined, TUs representing professionals have bucked this trend in many countries, reflecting a strong sense of occupational identity[89]. Disadvantages more likely found within professional and in-house TUs also emerged in the findings. Participants complained that TUs lacked resources or preferred that officials involved in bargaining were not employees of the organisation. Workers in the arts and the professional, scientific and technical sectors were less likely to be union members. This may reflect a need and opportunity for dedicated unions, with several participants indicating that they were not members because TUs were not present within their sector or organisation.

The current paper aimed to determine why individuals were not TU members and what could be done to encourage membership. Whilst positive perceptions of TUs may encourage membership[90] less than a quarter of non-members were satisfied with the work of TUs in Malta. Quantitative results provide possible reasons for this. Only about half of non-members felt that TUs play an important role in contributing to the national debate, protecting workers' rights at work, and offering services to members. Even fewer felt that unions play an important role in seeking unity among members. More concerning, the percentage of non-members who believe that TUs play an important role in these factors has dropped substantially since a Maltese study conducted in 2014[91]. The decline is smallest in the provision of services to members (-3%), but greater in the role TUs play in protecting workers' rights (-12%), and contributing to national debates (-19%) and substantial in seeking unity among workers (-29%). This suggests that the decline in union density may be linked to eroding beliefs about the perceived effectiveness of TUs.

TU members were more likely to be covered by a collective agreement. Qualitative findings also showed that being covered by a collective agreement, and the associated benefits, such as favourable working conditions and salary were valued by TU members. Members also appreciated being part of a

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[88] B. Keller, *"The rise of professional unions in Germany. Challenge and threat for established industrial relations?"*, Industrial Relations Journal, 2018, vol. 49, n. 3, 278–294.

[89] J. Kelly, *op. cit.*

[90] B. Shulruf, B. Yee, B. Lineham, L. Fawthorpe, R. Johri, and S. Blumenfeld, *"Perceptions, conceptions and misconceptions of organized employment"*, Journal of Industrial Relations, 2010, vol. 52, n. 2, 236-241.

[91] M. Debono, *op. cit.,* 2019.

collective as they felt they had power and access to resources that they would not otherwise have access to. The results echo previous findings that better working conditions and protection were key reasons for TU membership[92]. Non-members did not appear to value or recognise these benefits and indicated that they already enjoyed favourable working conditions or that they preferred to negotiate their terms. Others reflected on past experiences which fostered a belief that protection was not there when needed. Members and non-members alike also desired improvements related to collective agreements, describing slow negotiations and agreements that benefitted some workers more than others as shortcomings. Given their importance to members' satisfaction[93], TUs would do well to avoid such situations. Due to a lack of official statistics, and unreliable estimates, it is unclear how many workers are covered by a collective agreement in Malta. Several non-members were unsure what might persuade them to become members, but the presence of a collective agreement may be among the most tangible impacts a TU can have. The introduction of the Minimum Wage Directive, which has yet to be transposed into Maltese law, requires countries where collective agreement coverage is below 80% to develop an action plan on how to improve this[94]. This may thus lead to changes in this regard. While the Directive seems to be aimed at promoting sectoral collective agreements, a rarity limited to the public sector in Malta, several TUs in Malta have instead argued in favour of introducing mandatory trade union membership[95]. This is possibly because the former would not tackle the perennial issue of free-riders, but rather exacerbate it. Mandatory membership received little mention as a method of improving membership, with only two non-members highlighting that this should be considered.

A common theme that often influenced participants' satisfaction with TUs was their perceived impact and power. Non-members argued that TUs' lack of influence was a reason for their dissatisfaction, a reason not to be a TU member, and that the situation needed to improve for them to consider membership. Conversely, members cited TUs' efforts to support and fight for workers and unions' ability to exercise collective power as key benefits of TU membership. However, members also wanted their TUs to be more proactive in supporting workers, rather than focusing on expanding their membership. As in many other countries[96], strikes in Malta have decreased over the years[97],

[92] M. Debono, *op. cit.,* 2015. J. Visser, *op. cit.,* 2002. J. Waddington, *op. cit.,* 2014.
[93] M. Debono, *op. cit.,* 2019.
[94] M. Pape, *"Directive on adequate minimum wages. Briefing EU legislation in progress"*, European Parliamentary Research Service, 2022.
[95] M. Debono and LA. Fiorini, *op. cit.*
[96] ETUI, *"Strikes map of Europe"*, 2023. https://www.etui.org/strikes-map

with unions favouring dialogue at the enterprise and national level. This may have influenced perceptions of union effectiveness[98]. Given its great importance, unions would do well to demonstrate their impact. At the national level, TUs are involved in debate via tripartite bodies, the Malta Council for Economic and Social Development (MCESD) and the Employment Relations Board (ERB). The integral role of TUs within these forums is visible on occasion, as was the case during the COVID-19 pandemic when national support measures were determined within the MCESD[99]. However, the discussions held in these bodies are often shrouded in secrecy, which has possibly worked to the disadvantage of the TUs. Conversely, if TUs' influence in these bodies is limited, where bargaining and voice are replaced by consultation, workers are increasingly likely to seek organisations other than unions to represent their interests[100]. Indeed, it has been argued that the decline in TU power has contributed to the rise of extremist political parties and that impactful TUs could stem this rise[101]. Whilst TUs can be effective agents of social justice, and seen as such[102], it was notable that non-members were more likely to reflect on TUs' influence at the national level. Members may be better informed of TUs' work in these forums or do not consider it a primary concern. Whilst several members wanted more proactivity at the enterprise level, not all wanted more militancy. A few members were concerned about the impact of strikes on others, as well as the impact of aggressive communication on public opinion.
The partisan political links of TUs were a regular theme. Non-members described this as a key reason for not joining a TU, and would consider membership if a TU was not politically affiliated. It has previously been described that such political connections could prevent TUs from recruiting members[103]. Partisan politics was mentioned less frequently by members, and whilst a few felt that TUs should focus less on politics and more on workers, it appears that links to political parties were neither seen as a strength nor a serious deterrent; possibly because members chose TUs that aligned with their

[97] M. Debono and LA. Fiorini, *op. cit.*
[98] A. Hodder, *op. cit.*
[99] LA. Fiorini, *"Protecting employment and businesses in Malta during the first twelve months of Covid-19: a chronology of support measures"*, in LA. Fiorini (ed.), Centre for Labour Studies Biennial Report: 2019-2020, Malta, Centre for Labour Studies, 2021, pp. 24–36.
[100] L. Baccaro, C. Benassi, and G. Meardi, *"Theoretical and empirical links between trade unions and democracy"*, Economic and Industrial Democracy, 2019, vol. 40, n. 1, 3–19.
[101] L. Baccaro, *op. cit.* N. Mosimann, L. Rennwald, and A. Zimmermann, *"The radical right, the labour movement and the competition for the workers' vote"*, Economic and Industrial Democracy, 2019, vol. 40, n. 1, 65–90.
[102] J. Kelly, *op. cit.*
[103] J. Holgate, *op. cit.*

political beliefs, or because they were unconcerned about politics. However, some members emphasised that the lack of political affiliation was a key benefit of forming part of a professional TU. Many respondents did however expect TUs to play an active role in lobbying the Government to improve working conditions at a national level. Others expected TUs to work with the Government to improve their power. Thus, respondents expected TUs to play a role at the political level. After all, it is at this level that the rules and policies that the labour market and TUs themselves must abide by are created, as are broader concerns such as the welfare state[104]. In line with previous findings[105], participants felt that TUs' links to political parties, particularly those in Government, minimised their ability to do so. TUs traditionally use their ties with pro-labour political parties to be influential at the peak level[106]. However, several TUs across Europe that had formal and informal relationships with political parties have ended or reduced these relationships for various reasons, including because political parties have lost popularity or their ideology has changed[107]. This does not seem likely in Malta, where the largest TU, the GWU, with which around half of all union members are registered[108] is traditionally tied to the Partit Laburista (PL, the Malta Labour Party), and appears to have benefitted from the PL's many years in power. Concerns among non-members about TUs' changing ideology, often that they had become too capitalist, may be related to political ties, as the PL has increasingly shifted towards the right. Malta's second largest TU, the UHM, to which a further quarter of all TU members are registered, has informal ties to the party in opposition, the Partit Nazzjonalista (PN, Nationalist Party), which is traditionally pro-business. There thus appears to be an opportunity for non-party affiliated TUs to increase their membership in Malta, particularly if they take meaningful and visible stands against Government policies considered unfavourable to workers.

Many of the findings of the current study revolve around TUs' internal democracy. Members and non-members argued that TUs need to focus more on the needs of members. The ability of new blood to emerge within the leadership structures of TUs was also questioned, as was favouritism in TU decisions, including collective bargaining. It has been argued that established

[104] R. Hyman, and R. Gumbrell-McCormick, *"Trade unions, politics and parties: is a new configuration possible?"*, Transfer: European Review of Labour and Research, 2010, vol. 16, n. 3, 315–331.
[105] J. Holgate, *op. cit.* R. Hyman, and R. Gumbrell-McCormick, *op. cit.*
[106] R. Erne, and M. Blaser, *"Direct democracy and trade union action"*, Transfer: European Review of Labour and Research, 2018, vol. 24, n. 2, 217–232.
[107] R. Hyman, and R. Gumbrell-McCormick, *op. cit.* J. Kelly, *op. cit.*
[108] Registrar of Trade Unions, *"Report by the Registrar of Trade Unions 2022-2023"*, 2023. https://dier.gov.mt/en/About-DIER/Archives/.

TUs increasingly develop autocratic leadership which is detached from workers and their needs and increasingly focused on organisational survival[109]. However, TUs rely on members' buy-in to wield power, which can be difficult to achieve when internal democracy is weak[110]. Non-members are unwilling to join a union that is perceived as ineffective[111]. Good levels of internal democracy thus appear crucial for TUs to attract and retain members, and this can be difficult to achieve in larger more heterogeneous TUs where leaders are further removed from the rank and file[112]. TUs worldwide regularly struggle with issues of internal democracy[113] and authors have discussed the difficulty of improving this in established TUs[114]. Positively, several members spoke about effective TU leaders, their unions' reputation, and their TU's approachability and communication. However, the current study shows that TUs need to continue to work on improving two-way communication. Members called for more regular meetings and the opportunity to provide their input before decisions are made that affect them. Communication was also seen as a manner to address concerns about ideology, which needs to be more member-centric. Communication can benefit TUs as it not only informs about members' needs and preferences but allows TUs to shape the preferences of members who often do not have all the information or well-formed policy preferences[115]. Members also urged TUs to make better use of social media and other electronic means of communication. Providing information in this manner can enable members to be better informed, promoting participation and democracy[116]. TUs have been criticised for only using social media for one-way communication[117] and would benefit from using the medium to engage with younger individuals who are underrepresented in TUs.

TUs are well-positioned to contribute to adult education initiatives[118]. This was highlighted in the current study, where participants were positive about the training offered to them by their TU. Conversely, members spoke about TU

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[109] L. Baccaro, *op. cit.*

[110] R. Gumbrell-McCormick, *"Union Democracy: A European Perspective"*, Labor Studies Journal, 2022, vol. 47, n. 2, 170–179.

[111] PF. Clark, *"Building More Effective Unions"*, New York, ILR Press, 2009.

[112] R. Gumbrell-McCormick, *op. cit.*

[113] R. Gumbrell-McCormick, *op. cit.*

[114] AM. Greene, J. Hogan, and M. Grieco, *"Commentary: E-collectivism and distributed discourse: New opportunities for trade union democracy"*, Industrial Relations Journal, 2003, vol. 34, n. 4, 282–289.

[115] L. Baccaro, *op. cit.*

[116] AM. Greene, *op. cit.*

[117] B. Carneiro, and HA. Costa, *"Digital unionism as a renewal strategy? Social media use by trade union confederations"*, Journal of Industrial Relations, 2022, vol. 64, n. 1, 26–51.

[118] K. Forrester, and J. Payne, *"Trade union modernisation and lifelong learning. Research in Post-Compulsory Education"*, 2000, vol. 5, n. 2, 153–171.

officials' needs for further education and professionalisation. They also called for less favouritism within the union, both in internal promotions and in dealing with members' needs. Clark et al.[119] note that the role that administrative practices can play in revitalising unions has received little attention. They conclude that "the adoption of more formal, systematic, efficient and modern administrative practices, in general, has a positive impact on union revitalization efforts" (p. 386) and had a favourable impact on TU member numbers. Improved policies that reduce favouritism in recruitment and promotion, strengthen TU officials' skillset, attract diverse profiles of TU officials (e.g. women, migrants), and encourage greater use of outsourced services to complement TUs' offerings, may motivate TU staff and reduce turnover[120]. Diverse profiles of union officials may also attract unrepresented groups to become TU members, whilst improved administrative procedures can also save money, which could be invested in acquiring resources. Members pointed out that more human resources are needed, whilst workplace representatives need to be more carefully chosen, and their demands are likely to apply particularly to the smaller unions. Due to the size of the country, Maltese TUs are likely to struggle with resources no matter how efficient their procedures are, and may therefore need to explore alternatives such as enhanced Government financial support, access to EU funds, and sharing of resources between unions via confederations – all of which already exist to varying degrees in the Maltese TU scene.

Non-members suggested that unionism should be promoted in Malta, with some participants unclear about the benefits of membership. Suggestions included that TUs attend sector-related fairs, such as those related to iGaming, a fast-growing sector in Malta that remains largely un-unionised. The promotion of unionism coupled with measures to improve internal union democracy may convince those who abandoned unionism due to negative past experiences, doubts about its value, and those who have lost trust in TUs. Such publicity should delineate the benefits of membership, the work of TUs, and the measures taken to improve internal democracy, thereby addressing common concerns. To boost membership, some TUs have focused on offering additional services and benefits (e.g. discounts at shops). Some authors have suggested such an approach in countries like Malta where collective agreement benefits are extended to non-members[121]. A small number of participants called for more services or expressed concerns about the cost of

[119] PF. Clark, GJ. Bamber, PV. Whitehead, LS. Gray, S. Cockfield, and K. Gilbert, *"Does modernizing union administrative practices promote or hinder union revitalization? A comparative study of US, UK and Australian unions"*, British Journal of Industrial Relations, 2021, vol. 59, n. 2, 370–397.
[120] PF, Clark et al. *op. cit.*
[121] A. Bryson, *op. cit.* Z. Fazekas, *op. cit.*

membership. However, these appear to be concerns shared by a very small group of people and it is unlikely that a continued focus on these issues will bring many benefits to TUs.

5.1. Limitations

As the study was cross-sectional, the direction of associations could not be determined with certainty. The study however made use of both quantitative and qualitative data to allow for findings to be triangulated. The analysed sample size was limited in number and data was not collected randomly, thus findings may not be representative of the Maltese population. Some groups of individuals appear underrepresented in the sample.

6. Conclusion

The study revealed that trade union members were usually older, had children, worked in larger organisations, were covered by a collective agreement and worked within public organisations. Whilst members often hailed from the public sector and the health sector, membership was less likely in sectors related to the arts and professional activities.
Fewer than a quarter of non-members were satisfied with the work of trade unions. Around half of non-members felt that unions played an important role in national debates, providing members with services and protecting workers in the workplace. However, fewer felt that unions were fostering unity within the workplace. Participants provided several reasons for not joining a trade union. These included employment-related issues, such as the absence of a trade union within their workplace or sector, concerns about trade unions' principles and perceived lack of impact, and beliefs that membership would not be beneficial. Several factors that could encourage membership were also uncovered. These included TUs being more militant and focused on workers, TUs dissociating themselves from political parties and promoting the benefits of trade unionism.
Members' perceptions were also explored. Members valued that their union provided them with a collective voice, favourable working conditions and salary via collective agreements and conducted member-focused actions. Others described positive leadership behaviours, their union's reputation and the ease with which they accessed and communicated with the union. Union-provided continuous professional education was viewed as a valuable benefit. Trade union members, however, also discussed manners in which their trade union could improve, which frequently focused on strengthening two-way communication and changing how the trade union was run, including focusing

more on members' needs, being more proactive, limiting favouritism and allowing new blood into union leadership.

The study demonstrates that despite declining trade union density, measures can be taken to retain members and increase membership; only a fraction of the respondents who were not members stated that nothing could persuade them to become members. Trade unions that are perceived to have a high level of internal democracy, that actively support workers at the enterprise and national level, are not tied to political parties, foster two-way communication and promote their services in sectors and to workers that are underrepresented, particularly those who do not feel that they have good working conditions, should have a bright future.

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Iran's Maritime Code and UNCLOS: Is There a Connection between Maritime Training, Labour, and Safety?

Mostafa Abadikhah *

Abstract. Maritime training, labour, and safety are crucial aspects of commercial shipping, encompassed within both domestic maritime law and international law, including Iran's framework. The primary source of Iran's maritime law is its maritime code, while the cornerstone of international maritime law is the 1982 United Nations Convention on the Law of the Sea (UNCLOS), often deemed the constitution of the seas. Despite signing the UNCLOS in 1982, Iran has yet to ratify it. This paper investigates whether Iran adheres to UNCLOS provisions regarding maritime training, labour, and safety in its maritime trade practices, utilising theoretical knowledge and logical analysis of Iran's maritime code alongside relevant international conventions.

Keywords: *Iran's Maritime Code; the 1982 Convention on the Law of the Sea; Training; Safety; Labour.*

1. Introduction

The sea is a fundamental aspect of maritime law, while mercantile ships are vital to its practice. The relationship between international law of the sea and maritime law is undeniable, as the operational field for mercantile vessels lies within maritime zones[1]. According to the United Nations Convention on the

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[1] *See* Rachel Rogers, *The Sea of the Universe: How Maritime Law's Limitation on Liability Gets it Right, and Why Space Law Should Follow by Example*, Indiana J. Global L. Studies, Vol. 26, No. 2 (2019), pp. 741-760, https://doi.org/10.2979/indjglolegstu.26.2.0741.

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Law of the Sea 1982 (UNCLOS)[2], these zones include internal waters, the territorial sea[3], contiguous zones, exclusive economic zones, the continental shelf, the high seas, and the seabed[4].
Today, the OECD estimates that around 90% of global trade is conducted via sea transport, with ships travelling between trading ports located in both internal waterways and territorial seas of various states. Thus, to operate effectively within these maritime zones[5], commercial vessels must adhere to the law of the sea in addition to domestic maritime regulations. The principles and rules governing the law of the sea are codified within UNCLOS. Although mercantile ships are regulated by maritime law, this branch is also part of each state's legal framework; therefore, the rules and provisions of maritime law should align with those of their respective national laws.
One specific area where owners or captains of commercial ships must consult their domestic laws in accordance with UNCLOS is in maritime safety, training, and labour regulations. Although some states, such as Iran[6], have not ratified UNCLOS due to conflicts with domestic legislation, the Convention remains widely accepted as the constitution of the sea. Its rules offer essential protection for the order and security of maritime zones[7]. Historically, the ocean has been central to international law, a notion developed by Hugo Grotius in his work, "The Free Sea", which argued that all nations should have

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[2] U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].
[3] Sometimes the term "territorial waters" was used instead of "territorial sea". See Inmaris Perestroika Sailing Maritime Services GmbH and Others v. Ukraine, ICSID Case No. ARB/08/8, ¶ 282 (Mar. 1, 2012).
[4] Mostafa Abadikhah, Rishat Vakhidovich Nigmatullin & Latypova Natalia Sergeevna, *An introduction to the basic dimensions of investment protection in the archipelagic waters: a review of IIAs and UNCLOS*, ATLANTIC L. J. Vol. 26, pp. 74-109, (2023) at 80; *Also see* Mom Ravin, *ITLOS and Dispute Settlement Mechanisms of the United Nations Convention on the Law of the Sea* (United Nations-The Nippon Foundation Fellow Germany, March-December 2005) at 5, https://www.un.org/depts/los/nippon/unnff_programme_home/fellows_pages/fellows_papers/mom_0506_cambodia_itlos.pdf.
[5] OECD, Ocean shipping and shipbuilding (Mar. 2021, 7 pm), https://www.oecd.org/ocean/topics/ocean-shipping/ (last visited Jan. 2, 2024). It should be noted that UNCTAD believes the maritime trade and business is around 80%. *see*, Conor Walsh & the others, *Trade and trade-offs: Shipping in changing climates*, Marine Policy, Vol. 106, (August 2019) 103537 https://doi.org/10.1016/j.marpol.2019.103537.
[6] UNCLOS, *supra* note 3, *see* the members of the UNCLOS (Updated 2023), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en (last visited Jan. 2, 2024)
[7] Dorota Pyć, *The Role of the Law of the Sea in Marine Spatial Planning* (Maritime Spatial Planning. Palgrave Macmillan, Cham. Jan. 24, 2019) at 375, https://doi.org/10.1007/978-3-319-98696-8_16

equal access to the ocean[8]. Given the necessity for order in this international domain, UNCLOS was established to regulate human interactions with the sea comprehensively[9]. Although various interests exist—ranging from shipping to fisheries and energy production—those engaged in maritime activities must respect the unified rules set forth by UNCLOS.
Moreover, treaties like UNCLOS signify the process of globalisation, as their provisions serve as a central point for both public and private sectors within the international community. In today's interconnected world, particularly in commerce, relevant sectors increasingly depend on one another, necessitating stronger international ties. When private entities enter the global stage, they must comply with international regulations such as UNCLOS that govern their operations. Consequently, even states that have not ratified UNCLOS, like Iran, frequently reference its rules to ensure the safe operation of their mercantile vessels; Iran has implemented UNCLOS guidelines within its maritime law and code. The topics of training, safety, and labour reflect the influence of UNCLOS on Iranian maritime law.
This paper advances four hypotheses. First, despite being distinct branches of law—one private and the other public—international law of the sea and maritime law are interconnected. When a mercantile vessel departs from its port of origin towards its destination, it navigates various maritime zones governed by international law, necessitating due regard for these rules by shipowners and the state of origin. Second, while Iran has not ratified UNCLOS, it has adhered to its principles within its maritime law. Third, maritime labour in Iran is state-protected, meaning that maritime labour contracts, even for private vessels, must follow state guidelines to ensure safety for both the vessel and the sea. Fourth, the training of seafarers is a governmental requirement; thus, private owners cannot hire untrained crew members according to Iranian maritime law, as this relates to safety concerns. In support of this requirement, maritime academic centres—public or private—have been established with the backing of the Iranian government.
To answer the primary research question—whether Iran has implemented the Convention on the Law of the Sea concerning maritime safety, training, and labour in its maritime trade—the paper employs both quantitative and qualitative methods. Quantitatively, it analyses Iran's relevant maritime code and law of the sea conventions, while qualitatively, it investigates the challenges presented by Iran's maritime codes and practices. The paper is structured into

[8] See, Hugo Grotius, the free sea, translated by Richard Hakluyt, Liberty Fund Publication, 2004, available at, https://scholar.harvard.edu/files/armitage/files/free_sea_ebook.pdf
[9] Global Constitutionalism, Volume 13, Issue 1, March 2024, pp. 13 – 15 DOI: https://doi.org/10.1017/S2045381723000138

five sections: first (part 2), it examines maritime training, including subsections on maritime training within the Iranian legal framework, educational systems, and international law of the sea. The aim is to assess Iran's domestic maritime training system in relation to the law of the sea. Second (part 3), the study focuses on maritime labour, addressing domestic and international perspectives of labour law and current issues within the Iranian legal context. Third (part 4), it explores maritime safety under both Iranian law and the law of the sea. The final section presents the conclusion.

2. Maritime Training

Maritime education is a significant element in the philosophy of shipping, as the key factor in the successful management of a ship is its human component—namely, the crew[10]. A skilled, trained, and certified crew is essential to ensuring the security, safety, and efficiency of the vessel. Consequently, there is an unbreakable link between ensuring a ship's safety through effective crew performance and the training of that crew, alongside the issuance of seamanship certificates[11]. Viewed more broadly, the training of seafarers plays a substantial role in maritime safety and the preservation of the marine environment[12]. Therefore, professional training is a necessary prerequisite for employment in seafaring[13], one that must be prioritised more than ever in the current century. It serves as a foundational mindset to confront the challenges faced by the shipping industry and is considered fundamental to effective management and ship safety[14].
This section of the paper will first examine Iran's domestic provisions regarding maritime training, followed by an analysis of international standards and Iran's compliance with them.

[10] Marlow Navigation, *Seafarer Training and Development* (Mar. 6, 2020, 12:30 PM), http://marlow-navigation.com/en/russia-information/seafarer-training-development.html (Last visited Jan. 1, 2024)
[11] Marlow Navigation, *Standards you can rely on: wherever, whenever* (Jul. 16, 2021, 14 PM), http://marlow-navigation.com/en/training-and-safety.html (Last visited Jan. 1, 2024)
[12] Lalith Edirisinghe, *The Seafarers' Training and Education*, (Dec. 22, 2018), https://www.researchgate.net/publication/329862569_The_Seafarers'_Training_and_Education (Last visited Jan. 1, 2024)
[13] Moira McConnell, Dominick Devlin & Cleopatra Doumbia-Henry, *The Maritime Labour Convention, 2006:*
A Legal Primer to an Emerging International Regime, Minimum Requirements For Seafarers To Work On A Ship (2011) at 243, https://doi.org/10.1163/ej.9789004183759.i-708.47
[14] Kadir Cicek, Emre Akyuz & Metin Celik, *Future Skills Requirements Analysis in Maritime Industry*, Procedia Computer Science, Vol. 158, pp. 270-274, (2019) at 270.

2.1. Maritime Training and the Iranian Domestic Legal System

The importance of training is acknowledged within domestic legal systems, with many states addressing this issue in their maritime laws[15], both before and after international attention was drawn to it. In the citizenship section of the first chapter of Iran's maritime code, Articles 2 and 3 address maritime training. Article 2 states: "The ship owner must train Iranian nationals to work on board at his own expense and must employ them in place of foreign employees." Additionally, "The internship programme is established by the ship owners and executed, following approval from the Ports and Shipping Organization, by the same owners."[16]

Two points can be drawn from this article. First, the Iranian legislator's emphasis on safety, security, and order aboard the ship and at sea has led to a particular focus on employing trained crews. Second, the Iranian legislator prioritises trained crews regardless of their nationality. Approximately 60 years ago (at the time the maritime code was approved in 1963), due to a shortage of trained Iranian crews, ship owners were compelled to employ foreign nationals. Consequently, for several years, many of the hired crews were foreigners, leading to a perception within Iranian society that working on board was unattainable for locals, as ship owners preferred foreign crew members. However, the Iranian legislator believed that this mindset was erroneous, asserting that trained crews are crucial and that any trained individual, regardless of nationality, can work on board.

Moreover, ship owners often complained about the extra expenses incurred by employing foreign nationals. In response, Article 2 stipulates that if owners wish to employ Iranian nationals to eliminate these additional costs, they must first fulfil the requirement of providing training facilities for Iranian nationals at their own expense, after which they may hire them. This process illustrates that preference was not based on nationality at the time; rather, it was rooted in maritime training.

Article 3 of the code mandates that "the Ministry of Economy is obliged to establish a training school for mercantile maritime crews in one of the southern ports within a year from the date of approval of the code."[17] This proactive approach by the Iranian legislator in the realm of maritime law is noteworthy; the provisions of the first chapter were approved without being

[15] *Such as* the maritime regulations of Norway; *see* Norwegian Maritime Code. 1994-06-24 No. Ship Safety and Security Act. 2007-02-16 No. Ship Labour Act. 2013-06-21 No. https://www.sdir.no/en/shipping/legislation/ (Last visited Jan. 2, 2024)

[16] Iranian parliament, Iranian Maritime code, art. 2, approved in 1963, https://rc.majlis.ir/fa/law/show/95589 (Last visited Jan. 2, 2024).

[17] *Id,* art. 3

adapted from other maritime laws or international conventions. Unfortunately, the 1958 Geneva Conventions on the Law of the Sea, which serve as primary documents of public international law in this field, do acknowledge the work of ship crews but fail to emphasise the importance of training in this context. Thus, the Iranian legislator's focus on the necessity of training can be regarded as a significant advancement in the initial steps of maritime legislation.

2.1. Maritime Training and Iranian Educational System

Based on Article 3 of Iran's maritime law, 21 universities, colleges and institutes have been established for training of skilled crews. Relevant universities and institutions can be seen in the table below:

Figure 1. List of the maritime training universities and institutes of Iran (from 1963 to 2023)

Name of the University/Institutes	Year of establishment (maritime education)	Province
1. Amir Kabir University, Faculty of Marine Engineering	1987	Tehran
2. Islamic Azad University, Science and Research Unit, Faculty of Marine Sciences and Techniques	2001	
3. Islamic Azad University, North Tehran Branch, Faculty of Marine Sciences and Techniques	1991	
4. Sharif University of Technology, Department of Marine Mechanics	1990	
5. University of Tehran, Department of Civil Engineering in Marine Structures	1985	
6. Shipping Training Institute of the Islamic Republic of Iran	1990	

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7. Malik Ashtar university of technology, Marine Science and Technology Complex	1983	Isfahan
8. Sahand University of Technology, Marine structure	1990	East Azerbaijan
9. Islamic Azad University Khark branch, Faculty of Maritime Affairs (Kharg Island)	1999	Bushehr
10. Persian Gulf University, Faculty of Shipbuilding Engineering (Bushehr)	2018	
11. Maritime Training Institute of the Islamic Republic of Iran (Bushehr)	1990	
12. Imam Khomeini University of Marine Sciences and Techniques (Nowshahr) of the Navy of the Islamic Republic of Iran	1982	Mazandaran
13. Tarbiat Modares University, Faculty of Natural Resources and Marine Sciences (Noor)	1985	
14. Marine Science School of Iran National Oil Tanker Company (Mahmoudabad)	1990	
15. Sanat Naft University, Faculty of Marine Sciences (Mahmoudabad)	1989	
16. University of marine Technology, Babol Noshirvani	1983	
17. Khorramshahr Marine Science and Technology University	1994	Khuzestan
18. Chabahar University of Maritime and Marine Sciences	1976	Sistan and Baluchestan
19. Hormozgan university, Amir Kabir University of Marine Industries (Bandar Abbas)	2011	Hormozgan
20. Imam Khamenei University of Marine Sciences and Techniques of the Islamic Revolutionary Guard Corps Navy (Zibakanar)	2013	Gilan

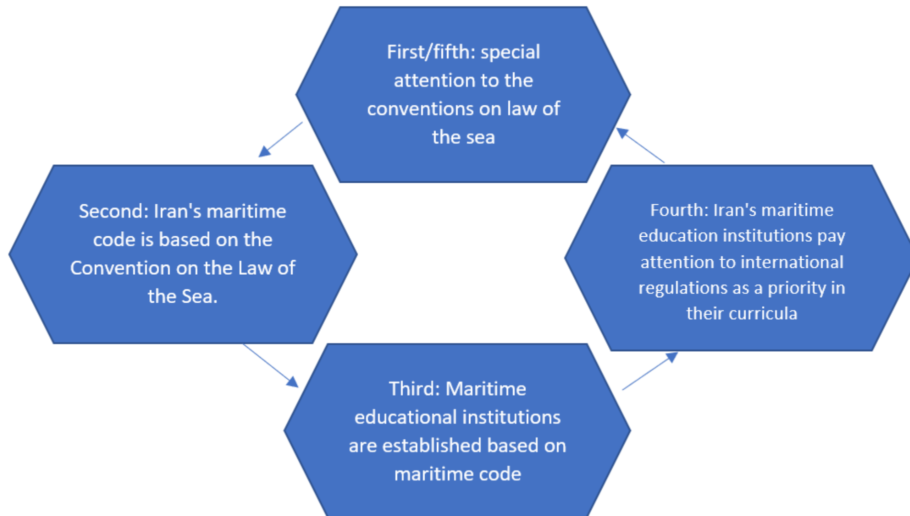
21. Shahid Khodadadi School of Marine Sciences and Techniques (Bander Anzali)	1990	

Source: Own elaboration (2024).

The relationship between Iran's maritime education system, the Iranian maritime code, and the conventions on the law of the sea can be likened to interconnected links in a chain. This is because Iran's maritime code, which was approved for the first time in 1963, places special emphasis on the four Geneva Conventions relating to the law of the sea (1958). As mentioned, the focus on maritime education within the Iranian maritime code is derived from these conventions.
Based on the Iranian maritime code, maritime educational institutions were established. It is noteworthy that in the maritime education system of Iran, international standards and conventions on the law of the sea are prioritised. Consequently, the curriculum for students includes sections dedicated to teaching international regulations and laws, with the conventions on the law of the sea being discussed as the constitution of the sea.
Thus, the development of Iran's maritime education system can be traced back to the conventions on the law of the sea, forming a cohesive relationship in four stages as follows:

1. The Convention on the Law of the Sea.
2. The approval of the maritime code based on the Convention on the Law of the Sea.
3. The establishment of educational institutions in line with maritime law.
4. The prioritisation of international regulations in the curricula of Iranian maritime education institutions.
5. A special emphasis on the conventions of the law of the sea.

Figure 2. The relationship between the Conventions on the Law of the Sea, Iran's Maritime Law and Iran's Maritime Education Institutions



Source: Own elaboration (2024).

2.3. Maritime Training and Law of the Sea

Over time, as the need for effective communication grew, circumstances gradually changed. Although the 1958 Geneva Convention on the High Seas did not adequately address the importance of maritime training, the escalating significance of this training for maintaining international order prompted states to establish precise and uniform international provisions in this context. The International Maritime Organization (IMO), a pioneer in the harmonisation of maritime regulations, designed a convention focused on seafarers' training standards[18]. This convention, titled the "International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)," was signed by the majority of states in 1978.[19] It pertains to the technical

[18] It should be noted that prior to this convention, three international agreements regarding the training of seafarers had been signed by states. However, due to their advisory nature, they differed significantly from the present convention.
1. Agreement No. 53, approved in 1936, titled "Certificate of Competence for Ship Crews," established the requirement for seafarers to complete training courses in order to work on board.
2. Agreement No. 74, approved in 1946, was titled "Certificate of Skilled Seafarers."
3. Agreement No. 147, approved in 1976, stated that the member states of the agreement were responsible for conducting training courses.
[19] The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, Jul. 7, 1978, 1361/1362 U.N.T.S. [hereinafter STCW].

qualifications and professional training of seafarers and highlights the critical role of the human element in ensuring maritime safety[20].

The existing challenge in international maritime law, stemming from insufficient attention to seafarer training within the Geneva Conventions, led the international community to place greater emphasis on training ship crews in 1982, the same year the United Nations Convention on the Law of the Sea (UNCLOS) was signed. As stated in Part B of the third paragraph of Article 94, "Each State shall take such measures as are necessary to ensure the safety of ships flying its flag, including: b) the management of the ship... and the training of its crew, in accordance with prevailing international regulations."[21]

The emphasis that UNCLOS places on "international maritime regulations" cannot be overlooked, as the mention of these regulations in the paragraph indicates that international maritime law recognises the significance of this issue and acknowledges the existence of established international regulations in the field of training. Many years later, the first chapter of the Maritime Labour Convention, in addition to the provisions concerning the professional and training conditions of crews under the STCW, titled "Minimum Conditions for Seafarers to Work on Board," also highlighted the importance of training as a requisite for attaining the qualifications and competencies necessary for performing duties at sea[22].

Despite the international focus on maritime training and the expansion of this issue within international maritime law, the Iranian legislator did not reform Articles 2 and 3 of the Maritime Code during the latest amendments to the Iranian Maritime Code in 2011. Consequently, the Iranian Maritime Code remains unchanged from its original approved text. This stance suggests that the Iranian legislator perceives the attention to crew training in UNCLOS as having little impact on the new amendments; thus, they regard the convention's recent emphasis merely as a reiteration of an already acknowledged issue. In fact, the importance of maritime training as a matter of public law is underscored by the 1982 convention, which designated this as one of the duties of states, a duty that Iran has adhered to in accordance with UNCLOS.

3. Maritime Labour

Working on board mercantile ships during voyages, which often last for months, is one of the most sensitive and specialised jobs, and it is also highly

[20] The Iranian Parliament approved the Convention on 28 July 1996.
[21] Geneva Convention on the High Seas, Apr. 29, 1958, 450 U.N.T.S. art 94.
[22] Maritime Labour Convention, Fec. 23, 2006, 2952 U.N.T.S. [hereinafter MLC].

dangerous. The occupational sensitivity of maritime labour—connected with the safety of ships at sea, the health and safety of passengers, the marine environment, and the secure transportation of cargo—demands constant preparedness to confront emergency situations[23]. The dangers associated with shipping and voyages are so significant that over the years they have led to the establishment of various customs and specific rules under the title of maritime law. Incidents such as sinkings and the seizure of ships in ports directly impact seafarers and ship crews, as well as other parties involved in transportation contracts. Therefore, from a public law perspective, ensuring the safety of shipping across various aspects—including compliance with technical standards in equipment production and ship construction, adherence to maritime rules and techniques, the existence of scientific, technical, and practical qualifications among crew members, oversight of appropriate working conditions on board, and the provision of necessary occupational and social support to seafarers—has a strong connection with the responsibilities of the state[24]. This section of the paper will first consider regulations at the international level before examining Iran's domestic legal system in detail.

3.1. Maritime Labour and Law of the Sea

The employment process for crews serving as seafarers on commercial ships—from pre-employment stages to the concluding contract, including the content of the contract, methods of termination, safety of work on board, and the guarantee of decent living and working conditions—includes elements that necessitate direct state intervention and monitoring of implementation. Consequently, the employment contract for seafarers is regarded as an administrative contract[25]. Given that everything on the ship, including working conditions, is influenced by safety concerns, these provisions cannot be left solely to the agreement of private parties. In other words, the responsibility for ensuring the labour rights of seafarers and the safety of mercantile shipping also rests with states.

[23] *See* Fotteler, M.L., Andrioti Bygvraa, D. & Jensen, O.C. *The impact of the Maritime Labor Convention on seafarers' working and living conditions: an analysis of port state control statistics*. BMC Pub. Health 20, 1586 (2020). https://doi.org/10.1186/s12889-020-09682-6

[24] European Maritime safety agency, The EU Maritime Profile - maritime safety, (Dec. 2022), https://www.emsa.europa.eu/eumaritimeprofile/section-3-maritime-safety.html (Last visited Jan. 1, 2024)

[25] Of course, it is based on the Iranian legal system, especially the maritime code. See also *the Administration's terms and conditions for seafarers to work on a ship under the MLC* (Sep. 11, 2020) https://www.ilo.org/dyn/normlex/en/f?p=1000:53::::53:P53_FILE_ID:3131178 (Last visited Jan. 2, 2024)

Any defects or disruptions in appropriate working conditions can jeopardise shipping safety and endanger the health and safety of passengers on board. Furthermore, considering the international aspect of mercantile shipping, any failure to ensure safety and proper labour conditions may impact the rights and benefits of other states. Therefore, states must guarantee adherence to relevant international standards and regulations on ships registered under their flags. In this regard, Professor Laura Carballo from the University of Santiago asserts: "Although maritime employment and labour relations are primarily governed by states, there are deficiencies that can occasionally be addressed through the application of international law of the sea. However, it is significant that public international law places the responsibility for maritime labour issues on the flag state."[26] This statement aligns precisely with the principles established by UNCLOS.

The 1958 Geneva Convention on the High Seas acknowledges the importance of safety and its connection with maritime labour. In part (b) of paragraph one of Article 10, it states: "All flag states are obliged to ensure the safety of ships at sea by taking the necessary measures, especially in the following cases: ... b) The labour conditions and composition of the ship's crews are regulated based on the current international labour regulations and approvals."[27]. The emphasis on "especially" in this paper implies three significant points: first, that attention to appropriate labour conditions by flag states is linked to the safety of the ship; second, that flag states are required to regulate labour conditions, establishing accountability in cases of non-compliance; and third, that designating flag states as responsible in this regard supports international order. Following the 1958 Convention, the international community took an important step under UNCLOS, reflecting on the significance of maritime labour. In Part B of the third paragraph of Article 94, using similar legal terminology as the 1958 Convention, it views maritime work from the perspective of ship safety, stating: "Each flag state shall take the special measures which are necessary to ensure the safety of the ship at sea, including: b) the manning of ships, labour conditions, and the training of crews, taking into account the applicable international instruments."[28]

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[26] Laura Carballo Pineiro, *International Maritime Labour Law* (International Max Planck Research School for Maritime Affairs at the University of Hamburg, springer,2015) at 11.
[27] *Supra* note 22, art 10.
[28] J. Grdinic, *Improving Safety at Sea Through the Compliance with the International Maritime Safety Codes*, J. of Maritime Research, Vol XIII. No. I, pp 5–14 ISSN: 1697-4040, (2016) at 6.

2.3. Maritime Labour and the Iranian Domestic Legal System

It is clear that, according to the conventions on the law of the sea, the determination of labour conditions falls within the jurisdiction of individual states. Consequently, states must establish appropriate labour conditions within their domestic legal systems, taking into account the regulations of the International Labour Organization (ILO). The Iranian government, like others, enacted a labour code in the same year the 1958 Geneva Conventions were signed, which does address maritime labour to some extent. However, attention to this significant issue within the context of the Maritime Code, as the primary source of Iran's maritime trade, is essential.
Unfortunately, Iran's Maritime Code does not adequately address this matter, and even the amendments to the code have not considered maritime labour sufficiently. Article 2 of the Iranian Maritime Code, titled "Nationality of the Ship's Captain, Officers and Crews," is the only provision that briefly references maritime labour. It states: "The captain, officers, and crews of the ship may be non-Iranian nationals if necessary. The ship owner must train Iranian nationals to work on board at their own expense and employ them instead of foreign workers. The training programme will be established by the owners and will be executed after approval from the Ports and Shipping Organization. In any case, at least half of the ship's crew must be Iranian nationals within four years from the date of acceptance of Iranian citizenship."[29]
In relation to maritime labour, Iran's maritime law has operated similarly to the 1958 conventions, generally addressing maritime labour in a transient manner and leaving many details to specific laws. However, it should be noted that these conventions do not aim to prescribe detailed terms of maritime law; instead, they highlight the importance of the issue by allocating specific articles or clauses to it. In any case, the connection between maritime labour in Iran's domestic legal system and international law of the sea is evident from these articles.

2.4 Maritime Labour and the Current Problems within the Iranian System

In line with the connection between maritime training and labour, and to achieve a more practical understanding of maritime labour issues, we conducted an academic survey. We posed questions to students from ten maritime universities in Iran in a discreet and completely anonymous manner

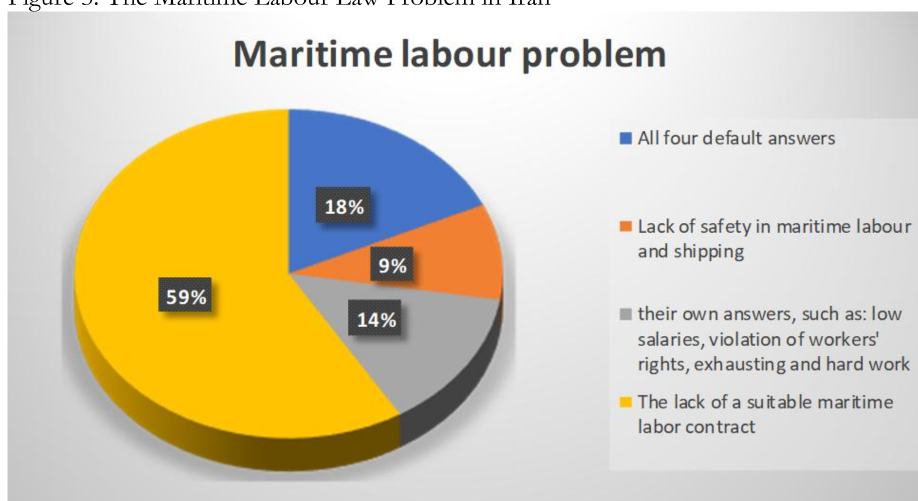
[29] *Supra* note 15, art. 2

for detailed evaluation. The fundamental question in this questionnaire was: "What is the primary problem of maritime labour and work on board in Iran?"
In the questionnaire, five default answers were provided:

1. Lack of suitable equipment for maritime labour and work on board
2. Lack of safety in maritime labour and shipping
3. Lack of proper universities to train specialised crews for maritime labour
4. Lack of professors who are specialists in the training process
5. Lack of a suitable maritime labour contract.

Finally, participants were encouraged to provide their own answers if their preferred response was not among the default options, along with any suggestions for improving the situation. A total of 260 individuals participated in this evaluation: approximately 200 were undergraduate students, and the remainder were graduates.
Most respondents highlighted the lack of a suitable maritime labour contract, with their collective suggestion being the establishment of a robust, useful, and comprehensive model contract that upholds the rights of workers and maritime crews. About 59% of the students cited the absence of an appropriate maritime labour contract. Approximately 9% noted only the lack of maritime safety in Iran, while about 18% selected all four default responses. Moreover, 14% did not choose any default answers and instead provided their own, mentioning issues such as low salaries, violations of workers' rights, and exhausting work conditions.
Figure 3 outlines these statistics in detail.

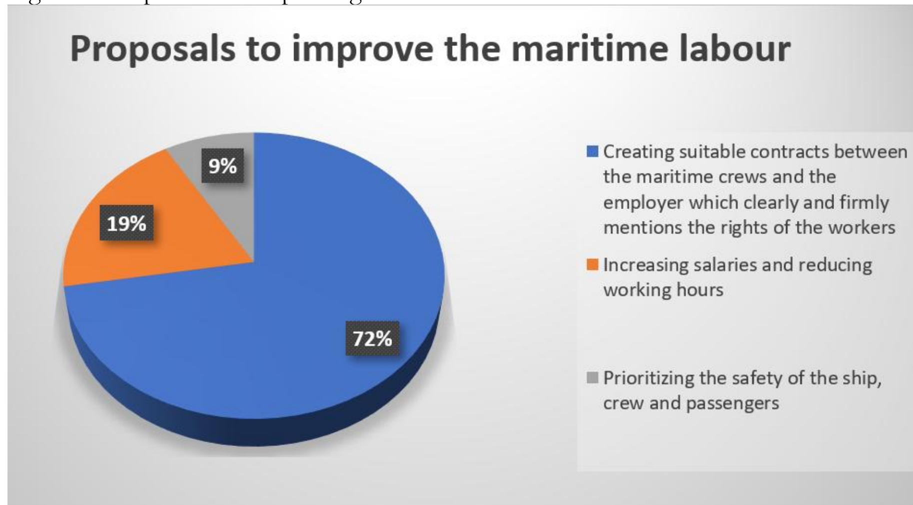
Figure 3: The Maritime Labour Law Problem in Iran



Source: Own Elaboration, 2024.

Students were also asked to provide their proposals for improving conditions. Four responses stood out as particularly noteworthy. The students' answers are displayed in Figure 4.

Figure 4: Proposals for Improving Maritime Labour Conditions in Iran



Source: Own Elaboration, 2024.

Fortunately, following numerous complaints regarding the absence of a healthy, sustainable, and coherent maritime labour contract, as well as the violation of workers' rights in this context, Iranian officials took action. After three years of extensive discussions and investigations involving professors from the aforementioned maritime universities, as well as consultations with lawyers and relevant authorities, a model maritime labour contract was developed at the end of 2022[30]. According to the official statement from the Minister of Labour and Social Welfare of Iran, this contract comprises 16 articles that address seafarers' rights, including provisions for vacations, working hours, rest periods, and return-to-work timings. Furthermore, the contract is grounded in domestic labour laws as well as international regulations, including those of the International Labour Organization, the

[30] Tarabaran, Iranian Official maritime media, *reforming the maritime labour contracts* (Oct. 19, 2022, 11 AM) https://tarabaran.com/%D9%82%D8%B1%D8%A7%D8%B1%D8%AF%D8%A7%D8%AF-%DA%A9%D8%A7%D8%B1-%D8%AF%D8%B1%DB%8C%D8%A7%D9%86%D9%88%D8%B1%D8%AF%D8%A7%D9%86-%D8%AA%D8%BA%DB%8C%DB%8C%D8%B1-%DA%A9%D8%B1%D8%AF/ (Last visited Jan. 2, 2024)

International Maritime Organization, and the United Nations Convention on the Law of the Sea[31].

3. Maritime and Shipping Safety

This section of the paper will address two issues: first, a review of international documents related to maritime safety, and second, an analysis of Iran's legal system in relation to maritime safety.

4.1. Maritime Safety and the Law of the Sea

In many countries, specific laws have been established concerning ship and maritime safety, as well as the provision of proper labour conditions on board and the establishment of relations between ship crews and their employers. Given the increasing interactions among states via maritime routes and the transiting of each other's maritime zones or high seas, maritime rights and shipping safety have been jeopardised by the diversity of shipping provisions related to safety and maritime labour. Consequently, the International Maritime Organization (IMO) believes that the most effective way to enhance maritime safety is through the development of international provisions and regulations that are adhered to by all shipping nations[32].

The IMO is a specialised agency of the United Nations that deals with international shipping. Its primary objective is to establish, protect, and maintain a comprehensive regulatory framework for shipping. Its formal duties today include maritime safety, environmental concerns, and the harmonisation of legal matters. To achieve its goals, the IMO has facilitated the adoption of several documents such as conventions, codes, and recommendations concerning shipping safety, pollution prevention, collision prevention, and related issues. Many of these documents include safety requirements for

[31] It is important to note that the issue of the maritime labour contract remains contentious. A year after the drafting of this contract, the present article is limited to reflecting the statements made by the Minister of Labour for two reasons: 1. There is no available sample of the new maritime labour contract on Iranian websites or databases; all official and unofficial sources merely state that such a contract was drafted as a model. 2. The author of this article has made numerous attempts to contact the Iranian Ports and Maritime Organization in order to request a sample of the model contract, but on each occasion, the organisation has indicated that the labour contracts are confidential and cannot be shared. Consequently, this article confines itself to outlining a series of generalities regarding the model contract.

[32] International Maritime Organization, *Maritime Safety* (May 12, 2023) https://www.imo.org/en/OurWork/Safety/Pages/default.aspx (Last visited Jan. 2, 2024))

ships[33]. The IMO's first duty upon its establishment in 1959 was to adopt a revised version of the International Convention for the Safety of Life at Sea (SOLAS)[34], the most significant treaty addressing maritime safety. Two years after the adoption of SOLAS, another international convention was ratified by the International Labour Organization (ILO) titled the "Merchant Shipping (Minimum Standards) Convention"[35]. According to Article 5, "the Convention is open to the ratification of Members which are parties to the SOLAS 1974."[36] Additionally, "the Maritime Labour Convention," which connects to SOLAS, was approved in 2006, representing a significant attempt at unifying maritime law provisions. The preamble to this convention emphasises the international safety standards for ships as outlined in SOLAS[37] and reiterates the relationship between ship safety and maritime labour[38]. This convention came into force on June 11, 2015, after receiving approval from the Iranian parliament. Therefore, the interconnection among the relevant conventions in the text and preamble illustrates the undeniable link between training, safety, and maritime labour.

4.2. Maritime Safety and the Iranian Domestic Legal System

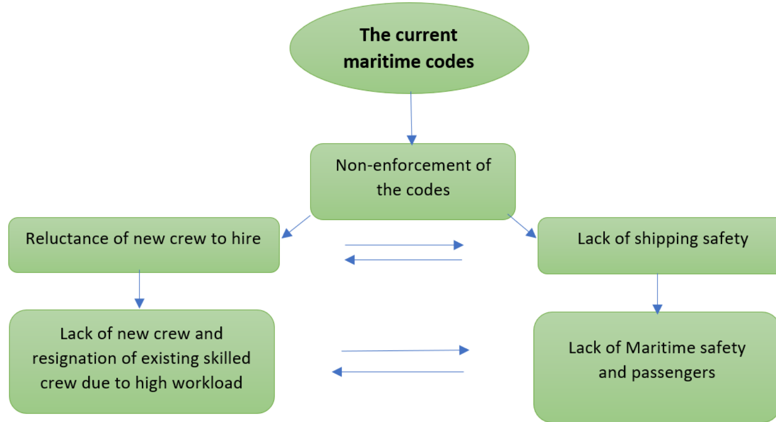
Iran's maritime code was considered one of the most progressive laws of its time. During the Pahlavi period, experts from Europe were enlisted to draft Iran's maritime code, resulting in a commendable legal framework. One area of particular interest for legislators was maritime training and labour in relation to safety at sea. However, following the 1978 revolution in Iran, those who took control of the government sought to revise many laws without adherence to sound legislative principles and lacking the necessary expertise, merely imposing an Islamic perspective. Fortunately, they were unable to reform Iran's maritime code, which remains in use today. It is evident that Iranian lawmakers paid particular attention to the 1958 conventions during the drafting of the code in 1963, incorporating the text of these conventions into Iranian maritime law.

[33] *See* Wieslaw Tarelko, *Origins of ship safety requirements formulated by International Maritime Organization,* International Symposium on Safety Science and Technology, Procedia Engineering 45, pp. 847 – 856, (2012) p 847 www.sciencedirect.com (Last visited Jan. 2, 2024)
[34] International Convention for the Safety of Life at Sea, Nov. 1, 1974, 1184 U.N.T.S. [hereinafter SOLAS].
[35] Merchant Shipping (Minimum Standards) Convention, Oct. 29, 1976, 147 U.N.T.S.
[36] *Id*, art 5.
[37] *See* Alexandros X.M. Ntovas, *Introductory note to the Maritime Labour Convention* (International Legal Materials , American Society of International Law, Vol. 53, No. 5, pp. 933-1018, 2014) http://www.jstor.org/stable/10.5305/intelegamate.53.5.0933
[38] It should be noted that this convention has been amended 4 times; in 2014, 2016, 2018, 2022. *See* MLC, *supra* note 23.

Notably, in 2011, the Iranian parliament attempted to reform the maritime code once more. During parliamentary discussions, efforts were made to align some provisions of the law with the United Nations Convention on the Law of the Sea (UNCLOS). However, in the 2011 amendments, the same text as that of the 1958 Geneva Conventions and UNCLOS was retained regarding maritime labour and training related to safety. Therefore, it is clear that the Iranian parliament recognizes that, although Iran has not ratified UNCLOS, it should be regarded as the constitution of the sea, warranting specific attention to its provisions for the order and security of maritime zones. Undoubtedly, in light of current maritime developments, Iran requires comprehensive and progressive legislation today. However, the lack of skilled and expert representatives in the Iranian parliament, coupled with the insufficient engagement of specialists, has rendered the Iranian government weak and inefficient in this regard.

Shipping and maritime safety rely not merely on the texts of codes and legislation, because even with comprehensive laws, strict practical enforcement is still necessary. Unfortunately, one of the major weaknesses within Iran's legal system is the inadequate practical application of the existing codes, particularly in maritime law. According to Iranian maritime law, outdated systems and dilapidated vessels should not be granted traffic permissions if they fail to secure the necessary safety permits; however, this requirement is frequently overlooked. Consequently, Iran's maritime transport system is antiquated and poses a risk to maritime safety, shipping, and passengers, a situation that is also mirrored in air transport. The failure to observe transportation safety regulations has resulted, on one hand, in the daily resignation of existing expert crews in Iran, and on the other hand, in the unwillingness of new recruits to work within the current system. Thus, non-compliance with maritime laws has led to inadequate transportation safety, which in turn has caused a shortfall of skilled crews and workers. The figure below illustrates the practical stance of Iran's legal system regarding maritime and shipping safety.

Figure 5. the practical approach of Iran's legal system regarding maritime and shipping safety[1]



Source: Own Elaboration, 2024.

3. Conclusion

Today, the United Nations Convention on the Law of the Sea (UNCLOS) is regarded as the constitution of the ocean. This means that even states that have signed the convention but have not ratified it within their domestic legal systems—except in cases where it contradicts their rights and interests, which they have not accepted—are expected to adhere to its provisions in other cases. This aligns with customary international law or forms part of international regulations related to the order and security of maritime zones. Maritime training, safety, and labour are three issues pertinent to the order and security of these zones. States and actors in the international community that utilise the seas and oceans for commercial, recreational, political, or military purposes must comply with the rules of UNCLOS concerning maritime training, safety, and labour.

Like the United States, Iran is one of the states that has not ratified the UNCLOS. However, in Iran's maritime code, which essentially serves as the country's trade law by sea, the provisions of the 1958 Geneva Conventions and UNCLOS have been strictly adhered to concerning maritime training, safety, and labour. This indicates that the Iranian legislators during the Pahlavi Empire (when Iran's maritime code was approved) understood that maritime law is fundamentally commercial and dependent on the seas. Even though Iran has not ratified the Geneva Conventions, it is required to comply with the provisions of the 1958 conventions on the law of the sea to ensure the order and safety of maritime areas. Furthermore, Iran's recently drafted model maritime labour contract aligns with both domestic laws—including Iran's

maritime law—and international laws and regulations, including conventions on the law of the sea.

However, ensuring the order and safety of the seas and shipping cannot be achieved merely by enacting laws; it also requires practical implementation. Unfortunately, in this practical regard, Iran's domestic legal system has performed inadequately. The non-implementation of laws leads to two significant consequences: first, a lack of safety in shipping, and second, a reluctance on the part of new crews to seek employment. These outcomes create further repercussions; on one hand, the absence of shipping safety compromises maritime safety overall and jeopardises the safety of passengers. On the other hand, the reluctance of new crews to hire increases the workload on, and may lead to the resignation of, current skilled crews. Some existing skilled crew members also resign due to dissatisfaction with Iran's maritime transportation system and the non-compliance with current laws. Ultimately, the shortage of skilled crews exacerbates safety issues. Therefore, it is evident that while Iran has enacted laws based on the Conventions on the Law of the Sea, it has not effectively carried out their practical applications within the international community.

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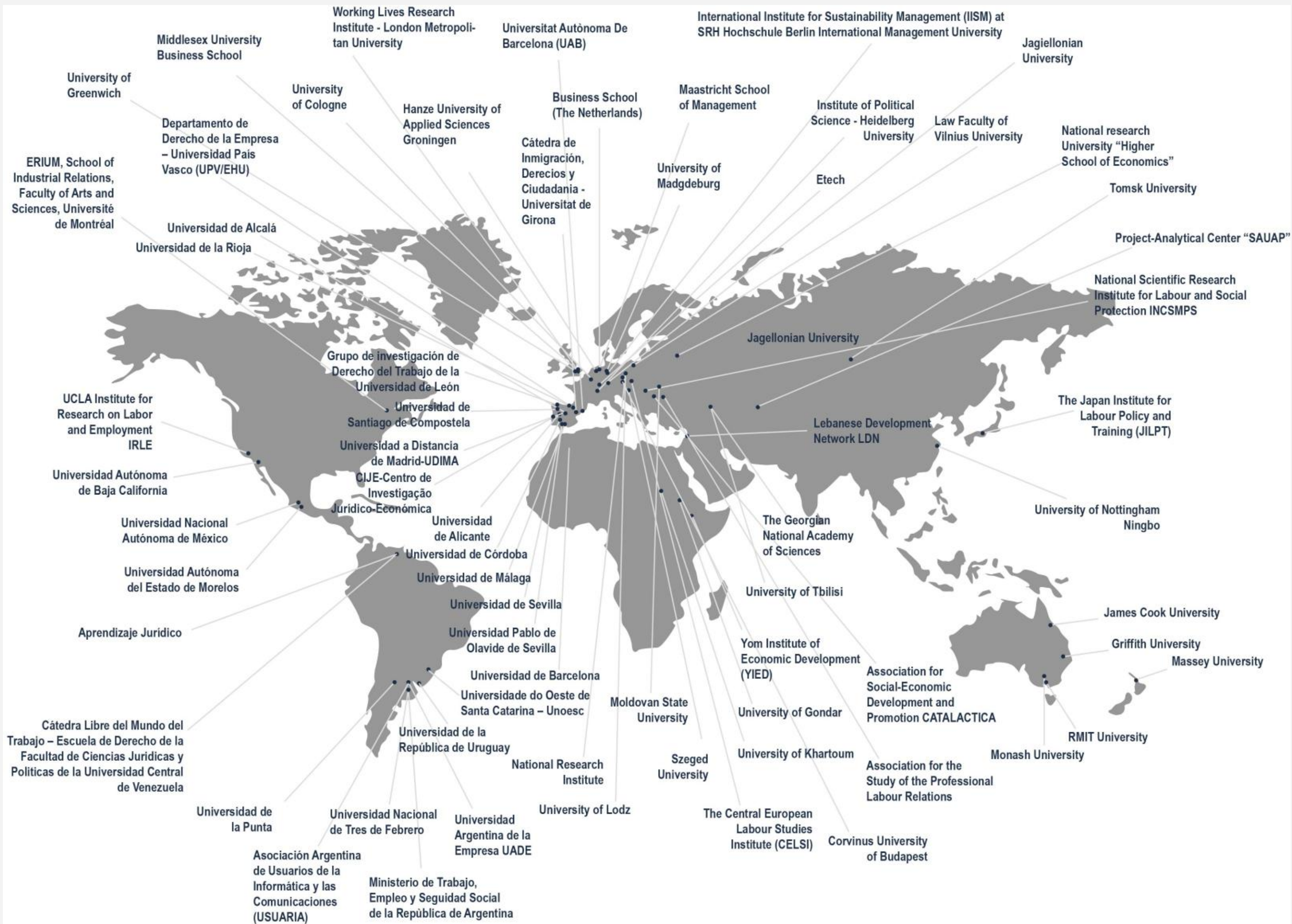

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