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Ley rider: a new era for digital platform workers' rights in Spain**

di Fulvio Mannino*

1. *Introduction*

In recent decades, we are witnessing an increasingly rapid and relentless development of the digital economy that tends to be globalised, in which digital platforms are assuming a predominant role.

It could even be argued that, although a relatively recent phenomenon, the so-called "destination" of these contracts, i.e. the contractual figures used as a hiding place, has older roots.

Such behavior is part of a broader dynamic of evasion of labor law regulations.

In this respect, platforms, by putting customers in contact with workers operating through them, favor, given the high degree of flexibility and autonomy that characterizes the forms of work that can be exercised there, new earning opportunities (thus allowing the reduction of barriers to entry into the labor market[1]), as well as the possibility for workers to choose when, where and how much time to work, and, above all, the tasks they intend to accept.

However, beyond these significant benefits, it should be noted that both the scientific community and the political world have expressed some concerns regarding the working and employment conditions in which these individuals find

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[1] EUROFOUND, *Employment and working conditions of selected types of platform work*, in *https://www.eurofound.europa.eu*, 2018.

themselves, highlighting the risks to occupational health and safety (henceforth, *OSH*)[2], exacerbated, when considering certain types of work on digital platforms (exposed to a greater risk of reduced income), by the COVID-19 pandemic.

Not to mention that the many peculiarities of working on a digital platform make it extremely difficult to apply *OSH* risk prevention and management systems[3].

That being said, at the national level, several initiatives have been drawn up in order to cope as best as possible with the development of digital platform work and the numerous challenges it entails, in line with the principles enshrined in the European pillar of social rights (all of which are emphasized, *inter alia*, by other international texts, such as the report of the ILO centenary committee, which, in essence, analyses how digital work platforms are transforming the world of work, offering, on the one hand, new opportunities, such as access to work for disadvantaged groups with no social protection and precarious working conditions and support for collective bargaining, and, on the other hand, creating significant challenges.

This underlines the need for global regulation aimed at ensuring basic protections, transparency and rights for all platform workers, promoting an international dialogue between governments, companies and workers for sustainable and fair development[4]).

The EU Member States themselves, (considered from a legislative and judicial perspective), in this regard, have taken steps to effectively address the challenges of digital platform work, encountering not a few difficulties regarding, in particular, the legal qualification of the existing employment relationship and adopting, consequently, different approaches.

Among them, Spain stands out in particular, where the so-called "*Ley rider*" (*rider law*) was adopted on 11 May 2021 and came into force on 12 August of the same year[5], which, in essence, put home delivery workers on an equal footing with traditional employees.

First of all, it should be noted how, in the debate on the static or dynamic nature of the organizational model of business activity following the impact of digitalization, certain work services performed by persons considered "weak subjects" have been excluded from the scope of the typical protections of labor law, as happened in the Spanish context, especially with the 1994 reform of the Workers' Statute, which excluded from legal protection carriers who use their own

[2] EU-OSHA, *A review on the future of work: online labour exchanges, or "crowdsourcing": implications for occupational health and safety*, in *https://osha.europa.eu*, 2016.

[3] ILO, *World employment and social outlook: the role of digital labour platforms in transforming the world of work*, *Flagship Report*, in *https://www.ilo.org*, 2021; F. STEPHANY, M. DUNN, S. SAWYER, V. LEHDONVIRTA, *Distancing bonus or downscaling loss? The changing livelihood of US online workers in times of COVID-19*, in "Journal of Economic and Human Geography", 2020, Vol. 111, No. 3, pp. 561-573.

[4] ILO, *Employment and social prospects in the world. The role of digital work platforms in the transformation of the world of work*, in *www.ilo.org*, 2021.

[5] Royal Decree-Law 9/2021 of 11 May 2021.

vehicle[6].

However, a more significant turning point occurred in 2007 with the creation of an intermediate figure between subordinate and self-employed worker, expressed in the economically dependent self-employed worker (*TRADE*), whose discipline can be found in article 11 of the Law on the Statute of Self-Employed Workers (*LETA*) and who, while retaining legal independence, revealed an economic subordination to the main client[7].

The typification of this intermediate figure can be interpreted in two ways: on the one hand, as an adaptation of existing labor regulations to new professions, recognizing certain labor rights to workers who, at least formally, were self-employed, and, on the other hand, as a way to reduce the protections in relation to those activities characterized by material subordination, which, conversely, would have deserved the full protection offered by labor law, thus opening the door to the so-called "*legalization of fraud*".

These two approaches dominated the debate, but the effectiveness of this law was limited by the arrival of the financial crisis of 2009 and the austerity policies of 2010-2012.

In spite of the limited practical effectiveness regarding the inclusion of this figure within the scope of autonomy[8] (and the persistent need to recognize these workers as "subordinates"), the introduction of the *TRADE* category has had a not insignificant impact on the subsequent debate on new forms of work linked to the phenomenon of digitalization, where the so-called "*uberization*" of the economy and the spread of the *gig economy* have highlighted significant changes in the organization of work, especially in the transport and personal services

[6] In this way, we departed from a jurisprudential position that gave rise to a debate on the so called "escape" of labour law (M. RODRIGUEZ-PINERO ROYO, *La huida del Derecho del Trabajo*, en "Relaciones Laborales", 1992, 1, pp. 85-94.) as it happened for other categories such as commercial or insurance agents. On the exclusion of carriers and STC 227/1998 of 26 November, which declares it constitutional, B. SUAREZ CORUJO, *La controvertida figura de los transportistas con vehículo propio y su exclusión del ordenamiento laboral*, in "Revista Española de Derecho del Trabajo", 1999, 94, pp. 251-280.

[7] This is a category which lies outside the so-called "typical perimeter" of the employment relationship (F.J. CALVO GALLEGO, *Los trabajadores autónomos dependientes: una primera aproximación*, in "Temas Laborales", 2005, 81, pp. 41-78.) which finds its justification in the "decline" of wage labor (A. VALDES ALONSO, *El concepto de trabajador autónomo económicamente dependiente*, en J.CRUZ VILLALÓN, Y F.VALDÉS DAL-RE (Dirs), *El Estatuto del Trabajo Autónomo*, Las Rozas, La Ley / Wolters Kluwer, 2008, pp. 197-235), although, it must be added, how the resolution of conflicts that may arise between the *TRADE* and the client employer is the prerogative of labour legislation (M. LLORENTE SANCHEZ-ARJONA, *La tutela judicial de los TRADE. Un estudio dela atribución de la competencia a la jurisdicción social*, in "Temas Laborales", 2009, 102, pp. 157-186).

[8] Although in 2019 the Bank of Spain had estimated that economically dependent self-employed workers (TRADE) accounted for around 12% of the total self-employed, i.e. around 400,000 professionals whose income depended for more than 75% on a single client, the INE downgraded this figure in its survey of the working population, estimating only 143,000 people. Of these, only 10,000 were found to have formally recognized this status and registered as such with the *Servicio Público de Empleo*, out of a total of 1,500,000 self-employed workers without employees. See in this regard, *www.autonomosyemprendedor.es/articulo/actualidad/espana-tiene-mismo-numero-trades alemaniafrancia/20190618200820019862.htm.*

sectors[9].

Among jurists, the debate on the effects of this new digital revolution in the world of work has been heated, since, on the one hand, there are those who have seen in these changes a new form of "*digital neo-tourism*", capable of creating new modes of coordination and de-territorialized production and, on the other, there have been discussions on the adequacy of the traditional concept of worker, defined by article 1.1 of the *E.T.* (*Estatuto de Los trabajadores*), to interpret the new labor realities, even going so far as to raise the question of the need to redefine the notion of worker in response to this sort of "new autonomy" arising from the digital economy[10].

Moreover, it should not be forgotten, as will be analyzed shortly, how both the aforementioned law and the EU Directive on digital platform work, recently definitively approved, have had the merit of introducing, in addition to the presumption of employment, a right to information, intended for digital platform workers' representatives, on the functioning of algorithmic systems, which can well influence, sometimes negatively, working conditions, including health and safety profiles, access and employment retention, including profiling[11].

2. *The general context of digital platform work in Spain: regulatory evolution and legal challenges before the* Ley Rider

Already during 2018, workers performing tasks that required the intermediation of digital platforms as their main form of employment constituted, according to the findings of the survey conducted by *COLLEEM II*[12], a small percentage of the working population in Spain (2.6%)[13], which has the second highest percentage of platform workers in Europe, after the Netherlands (2.7%)[14].

Although the overall number of these workers remains relatively low, the phenomenon has attracted considerable attention and concern in recent years,

[9] F.J. TRILLO PARRAGA, *Economía digitalizada y relaciones de trabajo*, in "Revista de Derecho Social", 2016, 76, pp. 59-82.

[10] A. PERULLI, *Beyond Subordination. La nuova tendenza espansiva del Diritto del Lavoro*, Torino, Giappichelli, 2021.

[11] The amended text of the Workers' Statute was introduced by Royal Legislative Decree 2/2015, of 23 October.

[12] COLLEEM was developed by the *JRC* and DG Employment, Social Affairs and Inclusion to study the extent and impact of the phenomenon of digital work platforms in Europe. See, *https://ec.europa.eu/jrc/en/colleem*.

[13] M.C. URZÌ BRANCATI, A. PESOLE, E. FÉRNANDÉZ-MACÍAS., *New evidence on platform workers in Europe. Results from the second COLLEEM survey*, in "JRC", 2020, *https://ec.europa.eu*.

[14] According to data collected by Huws et al. (2019), digital platform workers in Spain are predominantly young, with 21.5% in the 16-24 age group, 25.7% between 25 and 34, 22.7% between 35 and 44, 17.7% between 45 and 54, and only 12.5% between 55 and 65. Moreover, most of these workers are male: 32.5% of men have worked for digital platforms at least once, compared to 22.4% of women.

especially with regard to the employment *status* ofthose working through digital platforms.

Consider, in this regard, that the Spanish authorities have been actively engaged in identifying and combating the forms of abuse that spill over into the formal classification of these workers, to the extent that the Labor and Social Security Inspectorate and the Social Security Office are combating the phenomenon of Bogus self-employment that is rife among these workers[15].

In terms of occupational health and safety, the National Institute for Occupational Safety and Health (*INSST*) has launched an awareness-raising campaign, called "*Make yourself visible*", whose aim is to improve the road safety of food couriers on motorbikes and bicycles, given the high accident rate in this group compared to other sectors[16].

That being said, it should be noted how the technological transformations resulting from the phenomenon of digitalization, allowing a sort of adaptation to the new working reality and, in particular, to the unprecedented ways of performing work, and attempting, as far as possible, given the peculiarities of this new form of work activity, to apply the fundamental principles and institutions of labor law, are bringing about a great transformation in the world of work[17].

Nevertheless, it seems that this phenomenon has, at the same time, raised enormous questions about the ability of the traditional legal model to regulate the new labor realities.

In the past, while labor law focused on an anthropological model that considered the subordinate worker, framed in the *Fordist* factory, as the normative prototype of reference, at present, such a model seems to have been progressively adapted to include figures such as the economically dependent self-employed worker (*TRADE*), which, in essence, represents an intermediate category that, on the one hand, maintains legal independence and, on the other hand, is characterized by a sort of economic subordination to a main client.

Well, with the advent of the *gig economy*, new ways of working are emerging, such as those of the *riders*, characterized by very high precariousness, low incomes and extreme flexibility, since these are activities that often escape the legal boundaries of subordinate and self-employed work, generating debates on their formal legal classification.

In the Spanish context, in particular, *riders* were considered as self-employed,

[15] In 2019-2020 alone, the Labor Inspectorate unilaterally reclassified almost 30,000 workers of *Uber Eats*, *Glovo*, *Amazon* and *Deliveroo* as employees. However, according to representatives of the General Workers' Union (*Unión General de Trabajadores*, *UGT*) interviewed, many of these workers continue to operate as self-employed despite being formally recognized by the Inspectorate as employees. The 2018 National Plan for Dignified *Work (Plan Director por un Trabajo Digno*) identified false self-employment in the context of digital platforms as one of the main priorities. See, *https://www.mites.gob.es/ficheros/ministerio/plandirector/plan-director-por-un-trabajo-digno.pdf*.

[16] See, *https://www.eurofound.europa.eu/data/platform-economy/initiatives/instituto-nacional-de-seguridad-salud-y-bienesar-en-eltrabajo-inssbt-national-institute-for-safety*.

[17] J. CRUZ VILLALON, *El derecho del trabajo ante la transformación digital*, in "Revista de Derecho Social", 2022, no. 100, pp. 141-170, esp. p. 164.

as individual freedom and autonomy in the performance of work was emphasized.

However, such a view came under criticism because it overlooked the real economic and organizational subordination of these workers to digital platforms.

The doctrinal debate, in fact, focused on traditional concepts such as subordination, economic dependence and autonomy, comparing regulatory experiences in other European countries such as France and Italy[18].

In this regard, it should be noted that this form of work, carried out, as already stated, by means of sophisticated technological systems, is only apparently carried out autonomously.

In fact, the power of direction and control, typical of subordinate employment and exercised by the platform, are (almost paradoxically) superior to those exercised in the context of a non-digitalized employment relationship: this is reflected in the precise and extremely detailed indications that the platforms provide to workers regarding the tasks to be carried out, the ways in which they are to be carried out, the subsequent assignments, the time available, the quality of the result, etc., all made possible thanks to the automated systems and algorithms incorporated in the platforms themselves[19].

On the other hand, the issue of qualification has also been strongly scrutinized by the Spanish courts themselves, which have found themselves hearing disputes concerning platform work, especially in the delivery and personal transport sector, where the legal discussion revolves around the definition of "employee" according to the Workers' Statute, which defines certain criteria to distinguish subordinate work from self-employment, defining the employee as someone who voluntarily renders services in exchange for remuneration and under the organization and direction of an employer[20].

Despite this, there have been contradictory rulings on the reclassification of digital platform workers, even in similar situations[21].

However, in September 2020, an important Supreme Court ruling brought more clarity[22].

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[18] A. BAYLOS GRAU, *La larga marcha hacia el trabajo formal: el caso de los riders y la ley 12/2021*, in "Cuadernos de relaciones laborales", 2022, vol. 40, no. 1 (2022), pp. 95-113, in particular, pp. 96-98.

[19] J. CRUZ VILLALON,*El derecho del trabajo ante la transformación digital*, cit., p. 165.

[20] See Articles 1 and 8.1 of the Workers' Statute.

[21] For example, Judgment of the Labor Court No. 1 of Gijón (*Juzgado de lo Social* núm. 1 de Gijón) (20.02.2019); Judgment of the Labor Court No. 33 of Madrid (*Juzgado de lo Social* núm. 33 de Madrid) (11.02.2019); Judgment of the Labor Court No. 6 of Valencia (*Juzgado de lo Social* núm. 6 de Valencia) (1.06.2018); Judgment of the Labor Court No. 11 of Barcelona (*Juzgado de lo Social* núm. 11 de Barcelona) (29.05.2018); Judgment of the Labor Court no. 4 of Oviedo *(Juzgado de lo Social* núm. 4 de Oviedo) (24.02.2019), Judgment of the Labor Court no. 17 of Madrid (*Juzgado de lo Social* núm. 17 de Madrid) (11.01.2019), Judgment of the Labor Court No. 39 of Madrid (*Juzgado de lo Social* núm. 39 de Madrid) (3.09.2018).

[22] Supreme Court, 25 September 2020, No. 805, at www.labor-social.com; A. TODOLÌ SIGNES, *Comentario a la Sentencia del Tribunal Supremo español que considera a los Riders empleados laborales*, in "Labor & Law Issues", 2020, Vol. 6, No 2.

The case concerned a worker on the *Glovo* delivery platform, who, in the Court's view, had to be classified as an employee, taking into consideration several criteria, including the fact that the platform's workers were operating under *Glovo*'s brand name, that the essential means for the performance of work are not the worker's telephone or motorbike, but the digital platform itself.

The other criteria examined concern the presence of an evaluation system[23] which operates as a form of surveillance and control over the platform's workforce, limiting, de facto, the freedom of workers in the management of their working time, or the very nature of the platform, which, far from being a mere intermediary is a real delivery company, as well as the assumption by *Glovo* of all commercial decisions, including price, method of payment and remuneration, and the non-participation of the platform's workers in the negotiations between *Glovo* and the companies for which the products are delivered, nor between *Glovo* and the customers.

In light of this, given that, as the Supreme Court teaches, "*the evolution of the concept of dependence and subordination has been significant over time. As early as 1979, the Supreme Court made it clear that such dependence does not imply total subordination, but rather inclusion in a corporate context of government and organization*", in post-industrial society, on the other hand, the notion of dependence has, as is well known, taken on decidedly more flexible forms.

They are due, in particular, to the advent of digitized control systems for the provision of services and the different exercise of classic employer powers (direction, organization and control) through algorithmic management, which clearly requires a decisive adaptation of the concepts of dependency and subordination to contemporary social circumstances (as also stipulated in article 3.1 of the Civil Code)[24].

Drawing on the interpretation provided by the Court, it follows that in the relationship established between the platforms and the workers working on them, the employer's powers of direction, organization and control of the work performed are different from those labour relations in which the entrepreneur/employer assumes the risks and benefits from the product of the work performance itself.

In other words, in the specific context of the work of digital platforms, the criteria of alienation and dependence must also be found in those situations in which the entrepreneur/employer tends to realize, albeit indirectly and implicitly and through algorithmic management, an activity of coordination, direction and

[23] Through rating systems, customers have the possibility to assess the performance of workers themselves by assigning a score ranging from one to five stars, depending on the speed or accuracy of the work performed. By adopting these systems, platforms transfer some management tasks to customers in this way.

According to the Supreme Court, "*couriers with the highest score are given priority in access to new services or rides*", which acts as a form of control over delivery drivers. See, P. BERASTEGUI, *Exposure to psychosocial risk factors in the gig economy: a systematic review*, in "ETUI Report", 2021, *https://www.etui.org*.

[24] See paragraph 7.2 of Judgment 805/2020, 25 September 2021.

control of the work performance, also exercising the power of sanctioning and influencing, in this way, the very working conditions of the subjects who provide their services for the platform[25].

This, consequently, leads to two important implications: firstly, the workers involved in these services are recognized as subjects protected by the Workers' Statute and, secondly, the digital platforms are considered as companies that exercise powers of management and control, both through the supervision of work and through the organization of the work process itself.

In fact, although workers may formally appear to be autonomous, it should be noted that, in reality, this is often a false flexibility, since the power of management has a direct impact on their working conditions and employment.

2.1. *The origin of the* Ley Rider*: the role of social dialogue*

On the basis of the aforementioned pronouncement, even though some platforms moved towards a change in the contracts with the workers and, at the same time, filed other lawsuits to obtain a different pronouncement[26] and, on the other hand, to bring the same case before the Court of Justice to achieve the same objective, the long and arduous negotiation between the social partners, which started at the end of October 2020, was prolonged until reaching the agreement[27] of 10 March 2021[28] between the Government, through the Ministry of Labor and Social Economy, the social partners at national level, the most representative trade unions and the employers' associations.

It is important to note that, at first, this agreement, although welcomed by academic doctrine (since it establishes a minimum of rights, creating opportunities for the improvement of working conditions and their organization[29]), was assessed as rather limited by the trade unions, given that the initial proposals were essentially focused almost exclusively on the fight against false self-employment in this sector, without any reference whatsoever to algorithms.

Well, since the aforementioned date (March 10th), internal proceedings for the approval of the emergency legislation have been initiated in the Council of Ministers.

[25] See also SSTS of 22 April 1996, rec. 2613/1995; SSTS of 3 May 2005, rec. 2606/2004. F. TRILLO PARRAGA, *La Ley Rider o el arte de volver*, in "Revista de Derecho Social", 2021, no. 94, pp. 19-38, esp. p. 26.

[26] Consider, in this respect, the cases of the companies *Glovo*and *Deliveroo*, where the Supreme Court, in its ruling of 26 May 2021, rejected a cassation appeal brought by *Deliveroo* against a ruling of the Madrid Court of Justice, which had recognized the subordinate nature of the employment relationship in favor of 532 riders ofthe company.

[27] F. DIEZ, *Las plataformas de reparto y la ley "rider" en España. Historia, seguimiento y análisis*, in "Observatorio de trabajo, algoritmos y sociedad", Madrid, 2023.

[28] F.M. FERRANDO GARCIA, *Algunas reflexiones sobre la regulación del trabajo a través de las plataformas digitales*, in *https://www.net21.org.*, 2021, 3.

[29] J. CRUZ VILLALON, *Una presunción plena de laboralidad para los "riders"*, in *https://elpais.com*, 2021.

In this regard, during the two months of mandatory technical consultations, a series of internal pressures occurred, originating from the digital platform *lobby* (whose influence extended to the government's economic area) in order to change, unsuccessfully, through some clarifications in the statement of reasons, at least the content of the agreement.

However, when, following the Supreme Court's ruling, trade union priorities changed and the issue of algorithms was introduced as a topic for negotiation, platforms and other companies increased their opposition, thus delaying the signing of the agreement, given, in their view, the irrelevance of the issue for traditional companies, and the relevance for digital companies, which, nevertheless, did not feel adequately represented.

It follows from this that the fact that the aforementioned law arose out of a social dialogue may suggest a true consultation between the social partners in the sector, who may have developed relations of cooperation and mutual understanding.

In fact, the platforms refused to agree on any issues with their employees, including the regulation of their work.

This last consideration, in fact, allows us to understand the so-called *rationale* of the 2021 agreement, which, in essence, lies in the general context of labor relations in the country at that historical moment; the Spanish government, in fact, composed of a coalition of left-wing parties, had initiated a process of negotiation with the social partners on the main problems affecting the labor market, reaching several agreements on issues concerning the minimum wage, telework and the reform of labor legislation, including the *Ley Rider*.

Consequently, this law, far from being analyzed from a merely sectorial perspective, i.e. as a result of the relations of the social partners in the context of the platform economy, must be conceived as the fruit of negotiations that took place on a national scale, so much so that the document was negotiated *tout court* by national, not sectorial, organizations.

This, moreover, was fuelled by the resistance of the platforms to establishing any relationship with workers' representatives, rejecting their representativeness and even adopting anti-union practices (which contributed to the difficulties encountered in the concrete application of the new legal framework, not stemming therefore, from technical flaws in the law or from a lack of resources on the part of the administration) and which saw firm opposition, on the part of the platforms, to the agreement that gave rise to the legal reform, where some of them even abandoned the employers' confederation, the so-called *CEOE*[30].

In this last regard, one of the companies that had decided to leave this confederation was *Glovo*, as the main company in the sector, because it complained that *CEOEM-CEPYME*, having contributed to the conclusion of

[30] M. RODRIGUEZ-PINERO ROYO, *La Ley Rider dos anos despues: ensenanzas de una experiencia particolar*, in "Revista de Estudios Jurídico Laborales y de Seguridad Social", 2023, 7, pp. 16-18.

the tripartite agreement (justifying it as a kind of defense against competition and to prevent the use of false independents in this sector), had "betrayed" it, since, in its opinion, this law would have been an obstacle to the development of the digital economy[31].

Nevertheless, other companies such as *Deliveroo*, *Amazon* and *Uber Eats* remained within the *CEOE*, as did the digital business patron *Adigital*, which stood up for the preservation of the autonomous *rider* model through the so-called digital *TRADE*.

Due to this delay, *the Boletín Oficial del Estado* of 12 May[32] published *RDL* 9/2021 of 11 May (the name of which was proposed by the trade unions themselves from the very beginning of the negotiation[33]), converted into L. 12/2021 of 28 September, which amended the text of the *Estatuto de los Trabajadores* (Workers' Statute), approved by Real Decreto Legislativo 2/2015 of 23 October, whose purpose was to guarantee the rights of workers in the digital platform sector dedicated to deliveries.

In the section on Reasons, which permeates the entire legal content of this law, this legislation has taken a rather favorable view with regard to state regulation of these relations, just as it has seen the need for the progress brought about by digitalization in the field of labor relations to be fully realized through the use of parameters aimed at protecting the working and living conditions of those working in the field of digital platforms.

Incidentally, it should be noted that the Exposition of Reasons allowed for the overcoming of a debate between the so-called *techno-optimists* and *techno-pessimists*, regarding which it was feared, especially by the latter, that labor law would be completely subjected to the demands of digitalization, which would have meant the disappearance of the discipline, including with regard to protections, provided for in labor law.

In reality, digital technologies are designed to bring benefits to the living conditions of people and, in this case, workers, as long as they are not merely instrumentalized for the purpose of lowering production costs.

Thus, the Tripartite Agreement accepts the possibility of grafting such technologies into the work environment, while paying some attention to the generalization of the positive effects inherent in *business* models based on digital

[31] See, *https://www.eldiario.es/economia/glovo-marcha-ceoe-pactar-ley-rider-formaasociacion-empresas-sancionadas-falsos-autonomos17873510.html.*

[32] See, *https://www.boe.es/diario_boe/txt.php?id=BOE-A-2021-7840.*

[33] It should be noted that the use of this term has a particular history, as digital platforms tended to generate specific names for their workers (such as *riders*, *drivers*, *turks*), often drawing inspiration from English. The intention was obvious, as it was to avoid the use of the word 'employee', which often unmasked the real nature of their employment. Apart from motives related to organization or *marketing*, the aim was to provide an additional element that would counteract or conceal the legal classification of the employment relationship as subordinate. In fact, the origin of these expressions comes from the platforms themselves. However, the workers made this term their own, using it as a symbol of their professional identity, starting to call themselves '*riders*', and the trade unions also adopted this denomination, referring to the legislative proposals in their favour as a real "*rider law*".

platforms[34].

Lastly, we anticipate that, unlike other regulations, such as the regulation of remote work[35] (RDL 28/2020), in this hypothesis, far from having constructed a special regulation outside the Workers' Statute, RDL 9/2021, as will be analyzed shortly, amended two points of the Statute, consisting of the extension of information rights for workers' representatives[36] and the introduction of an additional provision (23rd), which assumes employment subordination in favor of those working in this sector[37].

2.2. *Challenges in the implementation of* Ley Rider*: platform opposition and legal conflicts*

Before moving on to the analysis of the two points above, the need arises to conclude the issue concerning the development of social dialogue by examining the difficulties in applying this legislation, due to the strong resistance shown by the platforms.

For example, the *Asociación Española de la Economía Digital* (*Adigital*), which had already expressed negative views on this new legislation, published a report in October 2022, during the social dialogue process, analyzing the economic impact of turning self-employed *riders* into employees, since, according to their estimates, some 23,000 jobs would be lost, equivalent to 7% of the total, and Spanish restaurants would suffer a loss of more than €250 million in revenue.

Thus, the sector, vigorously opposing the passing of the law, put forward a proposal (supported, on the other hand, by some political parties during the parliamentary debate on Law 12/2021) about an alternative model focused on freedom of choice for workers: in this way, *riders* would be able to choose whether to be hired as employees or to continue working as self-employed persons, suggesting, as mentioned above, the use of the *TRADE* contract for *riders*, whose conditions would be determined by professional agreements signed with their representatives.

Moreover, it should be noted that each large company in the sector has adopted a different strategy in response to the new legislation, as the market has been concentrated in a few large companies; by way of example, the *Deliveroo* platform seems to have adopted a rather radical stance, declaring in July 2021 its decision to cease operations in Spain, which led to a collective redundancy of over three thousand people[38] and its definitive exit from the Spanish market in

[34] F. TRILLO PARRAGA, *La Ley Rider o el arte de volver*, cit., pp. 22-23.

[35] S. BINI, *Distance working in Spain: from emergency to normality*, in "Labour & Law Issues", 2020, 2, C.1-C.22.

[36] Comités de Empresa y Delegados de Personal, regulados en el Título II del Estatuto de los Trabajadores.

[37] A. BAYLOS GRAU, *Una breve nota sobre la ley española de la laboralidad de los riders*, in "Labour & Law Issues", 2021, vol. 7, no. 1, C.4-C.6.

[38] Such a reaction, although it may appear unusual for a traditional company, is not at all so for a platform. In this regard, examining the behavior of these types of companies, a recurring

November of the same year[39].

Glovo's platform, on the other hand, made a different choice, continuing to operate in Spain, considered a strategic market, and interpreting the law in the sense that, far from requiring a radical change in the contractual model used until then, it only contained a presumption of subordination, against which contrary evidence could be provided.

For this reason, *Glovo* defended the validity of self-employment contracts by adopting two approaches: on the one hand, a legal defense against administrative sanctions and complaints and, on the other hand, a restructuring of its contractual system in order to come closer to a real self-employment model.

This led, on the one hand, to changes in the order allocation system and contracts with restaurants, which, however, met with resistance from workers and business *partners*, and, on the other hand, to the hiring of a part of the workers with employment contracts, mainly in the *online* supermarket sector.

Nonetheless, the company has repeatedly suffered sanctions, in the form of fines, from the Spanish authorities for non-compliance, although, at the time of writing this report, no final ruling had yet been issued on its practices since the law came into force, which was used by *Glovo* as an argument to support the legitimacy of its strategy, while continuing to operate with its self-employment model.

The *Just Eat* platform adopted a different strategy from the beginning, welcoming the new legislation, basing its *business* model on contracts with smaller transport companies (as well as directly employing a considerable number of workers[40]), which in turn employ *riders* and affirming that it guarantees workers' rights with a labor contract and establishes clear rules for all operators in the sector, it also started negotiations for a collective agreement with the UGT and CCOO trade unions (although even the latter initially complained about the limited applicability of the law to delivery workers only[41]), the first of its kind in Spain; after the law's approval, it continued with this policy, but faced complaints of "illicit transfer of workers" that resulted in the imposition of sanctions.

pattern emerges, consisting of exerting pressure on regulators and authorities, opposing regulatory changes that they find unacceptable. A significant example is provided by the *Uber* platform itself, which has often threatened local authorities with withdrawing its services from cities if regulations are passed that could harm it. In Spain, for example, *Uber* has suspended its operations in major cities, Madrid and Barcelona, after labor and transport authorities questioned its *business* model with which it has always operated.

[39] It would certainly not be the first time that a platform has decided to withdraw from a country, given that, a few years ago, one of the leading companies in the home food delivery sector, *Take Eat Easy*, ceased operations after being heavily sanctioned by the Labor Inspectorate. The *Deliveroo* platform has also abandoned other national markets in the past, although, in this case, there seem to have also been commercial reasons underlying such a decision.

[40] *Just Eat* states, in this regard, how such a choice benefited some 2,000 workers, turning this decision into a real *marketing* tool, filling *social media* with ads emphasizing that working for them meant having a labor contract, enjoying fair wages and paid holidays.

[41] See, *https://www.politico.eu/article/spain-approved-a-law-protecting-delivery-workers-heres-what-you-need-to-know/*.

The *Uber Eats* platform, if, at first, it tried to enforce the aforementioned law by collaborating with external companies in order to avoid the direct contracting of self-employed workers, later, when it found that *Glovo* maintained its model, it changed course.

In March 2022, in fact, the general manager of *Uber Eats* in Spain wrote an open letter to the Minister of Labor, criticizing the unequal treatment between platforms and denouncing *Glovo* for not complying with the law.

From what has been analyzed so far, it is clear that the application of Law 12/2021 did not bring about a radical change in the behavior of platforms, since many of them tried to maintain their previous models.

This has resulted in both an increase in legal and labor disputes and a rather differentiated reaction of the platforms, which has had a major impact on the organization of the sector, creating divisions between companies that accuse each other of breaking the law in order to gain a competitive advantage[42].

Algorithmic transparency plays a key role in all this, allowing unions to use this information in collective bargaining negotiations.

In essence, the *Ley Rider* has raised a heated debate in Spain, with different opinions on how work on digital platforms should be regulated and what the rights of the workers involved are[43].

In this regard, it should be noted that the main association of food delivery platforms, *APS* (*Asociación de Plataformas de Servicios bajo demanda*), which represents *Deliveroo*, *Stuart*, *Glovo* and *Uber Eats*, has expressed strong concerns about algorithmic transparency[44].

APS, for example, argued that revealing the algorithms could negatively affect the development of the digital economy in Spain, while violating the principles of freedom of enterprise and industrial property[45].

On the other hand, the trade union *CCOO* welcomed the inclusion of algorithmic transparency in the new law, arguing that it strengthens the working relationship between *riders* by forcing companies to be more transparent about new labour management methods, such as the use of algorithms[46].

Although the initial objective of the Spanish trade unions was to establish a register of algorithms, this proposal was not included in the final text of the law.

However, the accessibility of information on algorithms is considered a first and important step towards the implementation of a so-called "*Human-In-Command*" (HIC) approach.

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[42] M. RODRIGUEZ-PINERO ROYO, *La Ley Rider dos anos despues*, cit., pp. 18-21.

[43] A. ARANGUIZ, *Platforms put a spoke in the wheels of Spain's "riders' law"*, in "Social Europe", 2021, *https://socialeurope.eu*.

[44] See, *https://english.elpais.com/economy_and_business/2021-05-12/spain-approves-landmark-law-recognizing-food-delivery riders-as-employees.html.*

[45] See, *https://www.wired.co.uk/article/spain-gig-economy-algorithms.*

[46] See, *https://english.elpais.com/economy_and_business/2021-05-12/spain-approves-landmark-law-recognizing-food-delivery riders-as-employees.html.*

This latter, promoted by various European bodies such as the *European Economic and Social Committee* and the *International Labor Organization* (*ILO*)[47], which implies maintaining a certain degree of human supervision over artificial intelligence systems, ensuring, especially with regard to the work of digital platforms, that the final decisions affecting working conditions are ultimately taken by human beings, as well as an involvement of workers in the algorithm design process.

It goes without saying that the fundamental characteristics of the platform economy certainly do not facilitate the representation of workers[48], given the "virtual" nature of work, the high *turnover*, the temporary nature of employment relationships and the competition between platform workers constitute major barriers to collective action[49], which is a major obstacle to workers' participation in negotiating algorithms and limiting their impact on *OSH*.

Nevertheless, in Spain, platform workers have developed forms of self-organization, particularly in the food delivery sector[50].

An example is provided by the "*Riders X Derechos*" movement, which organized strikes and public campaigns for the recognition of employee *status*, where in June 2020, they promoted a manifesto signed by various trade unions and grassroots organizations to support their cause[51] and whose representatives were, moreover, invited to the Ministry of Labor to discuss the *Ley Rider*[52].

In addition, Spanish trade unions have initiated lawsuits concerning the employment *status* of platform workers, with the aim of including platform work in sectorial collective agreements.

In this regard, a final important provision of the directive concerns precisely the promotion and facilitation of collective bargaining with platforms, since self-employed workers have often encountered several difficulties with regard to the possibility of collective bargaining; it is therefore seen as a crucial instrument to improve working conditions, including *OSH* profiles[53].

In conclusion, a greater collective organization of workers and the application of the *HIC* approach could help to reduce the negative effects of algorithmic management on working conditions, including *OSH* challenges,

[47] EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, *Artificial intelligence -The consequences of artificial intelligence on the (digital) single market, production, consumption, employment and society*, in *www.eesc.europa.eu*, 2017, Opinion No 7; ILO, *Global Commission on the Future of Work. Work for a Brighter Future*, in *https://www.ilo.org*, 2019.

[48] K. LENAERTS, Z. KILHOFFER, M. AKGÜÇ, *Traditional and new forms of organization and representation in the platform economy, Work Organization*, in "Labor & Globalization", 2018.

[49] E. NEKHODA, T. KUKLINA, *Occupational safety and health in digital economy: challenges for government regulation*, *54th International Scientific Conference on Economic and Social Development*, 2020.

[50] J. ARAZAS, *Spain Work in digital platforms: literature review and preliminary interviews*, in *https://notus-asr.org*, 2019.

[51] EUROFOUND, *RidersXDerechos (Riders for Rights)*, in *https://www.eurofound.europa.eu*, 2021.

[52] In this context, *Riders X Derechos* supported the creation of a registry of platforms active in Spain, along with their algorithms, a proposal that was, however, not included in the final text of the law.

[53] A. BERTOLINI, R. DUKES, *Trade unions and platform workers in the UK: Worker representation in the shadow of the law*, in "Industrial Law Journal", 2021, 50(4), pp. 662-688.

where the new law, in this case, represents a positive and important step in this direction, obliging platforms, under penalty of the infringement they could incur under art. 7 *LISOS* (the so-called *Law on Infringements and Sanctions in the Social Order*)[54], to inform the legal representatives of the workers about the parameters and rules of the algorithms that influence, sometimes negatively, the decisions inherent to the work activity[55].

2.3. *The health and safety of digital platform workers: legal framework, presumption of subordination and the role of the* Ley Rider *and the EU Digital Platform Work Directive.*

Having concluded the issues relating to the evolution of social dialogue, it is now possible to examine an extremely important profile that the *Ley Rider* intended to address, and in relation to which Spain can boast of having been the first EU member state: it consists in the issue of the legal classification of workers who perform work through digital platforms, establishing, in this regard, a legal presumption of employment relationship for such workers, especially in the delivery sector (although not limited to food only), and also guaranteeing, as we will have the opportunity to analyze further on, the transparency of algorithms, obliging platforms to inform workers' representatives about the operation of algorithms that impact on working conditions and access to or maintenance of employment, including *profiling*.

However, the scenario described in the previous paragraphs, in which there is an atmosphere of deep frustration due to the difficulties encountered in enforcing the law and its objectives, has led to a proposal for a directive[56] at EU

[54] A. BAYLOS GRAU, *The bumpy ride of riders in Spain. Analysis of Law No. 12/2021*, in "Labour & Law Issues", 2022, Vol. 8, No. 1, pp. 32-33.

[55] EU-OSHA, *A review on the future of work*, cit., 2022, pp. 7-9.

[56] The European Commission's initial proposal for a directive was presented on 9 December 2021 and included measures aimed at ensuring the proper legal status of platform workers by introducing a presumption of subordination if certain mandatory criteria were met, improving transparency and accountability in algorithmic management by providing for human oversight of algorithm-based decision-making processes, and strengthening the collective representation of platform workers. The European Parliament, in its report of 12 December 2022, made several changes to the original proposal, including, on the one hand, the elimination of mandatory criteria for determining employment *status*, proposing instead a list of non-mandatory criteria, and, on the other hand, a strengthening of personal data protection measures, accompanied by a strengthening of the requirement for human oversight in decisions concerning workers and a further promotion of collective representation rights. The Council, after several attempts, adopted its position on 12 June 2023, but weakened several of the Commission's original provisions, including the criteria necessary to activate the presumption of subordination. A preliminary interinstitutional agreement was reached on 13 December 2023, only to be rejected. A new agreement was found on 8 February 2024, but this too was rejected by the Council the following week. Finally, a final compromise was reached on 11 March 2024, with a text that further toned down some of the measures of the initial proposal, in particular with regard to the presumption of employment, and approved by the European Parliament, in plenary session, on 24 April 2024. This proposal for a directive was finally approved on 14 October 2024, where the Council adopted new rules on digital platform work (see EUROPEAN PARLIAMENT, *Initiative to improve the working conditions of people working in the platform economy*, in *https://www.europarl.europa.eu*, 2024).

level, finally approved in October 2024 (Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work, published on 11 November 2024 in the Official Journal of the European Union and entered into force on 1 December and must be transposed by 2 December 2026), whose main objective is to improve the conditions of all workers performing digital platform work in the EU (irrespective, therefore, of their employment status), as well as to ensure that their employment status is correctly determined, and to promote transparency, fairness and accountability in the algorithmic management of platform work[57], and which will be instrumental in determining the scope of national regulation in this area.

In this regard, this Directive, after providing, in Article 2, the definition of a digital work platform and of all the subjects operating therein, in Article 3, along the lines of what happened in the *Ley Rider* and from which it seems to have drawn, in a certain sense, inspiration, addresses the question of the correct legal classification of these workers[58].

Moreover, similarly to the Spanish legislation, Article 5 of the Directive (*formerly* Art. 4 of the Proposal), establishes the legal presumption of the existence of an employment relationship between the digital platform and a person performing work on the platform, if the digital platform controls certain elements

[57] D.T. KAHALE CARRILLO, *La mejora de las condiciones de trabajo sobre las plataformas en la Uniòn Europea: consideraciones a la gestion algoritmica (salud y prevencion)*, in "Revista de Investigacion de la Catedra Internacional Conjunta Inocencio III", 2023, n. 17, p. 38.

[58] To this end, Article 3 of the Draft Directive, under the heading "*Correct determination of employment status*" requires *'Member States to put in place appropriate procedures to verify and ensure the correct determination of the employment status of persons performing work through digital platforms, so as to allow persons who may be misclassified as self-employed (or in any other situation) to ascertain whether they are to be considered in an employment relationship - in line with national definitions - and, if so, to be reclassified as employed. This will ensure that fictitious self-employed persons have the possibility to obtain access to the terms and conditions of employment established by EU or national law in line with their correct employment status. The provision also clarifies that the correct determination of the employment status should be based on the principle of the primacy of facts, i.e. it should be guided primarily by the facts regarding the actual performance of the work and remuneration, taking into account the use of algorithms in working through digital platforms, and not by the way the relationship is defined in the contract. Where there is an employment relationship, the procedures in place should also clearly identify who should assume the employer's obligations*" (EUROPEAN COMMISSION, *Proposal for a Directive of the European Parliament and of the Council on the improvement of working conditions in digital platform work*, in *www.eur-lex.europa.eu*, 2021).

The new version, in Article 4, under the heading "*Correct determination of the employment status*", provides that "*1. Member States shall have adequate and effective procedures in place to verify and ensure the correct determination of the employment status of persons performing work through digital platforms, in order to ascertain the existence of an employment relationship as defined by law, collective agreements or practice in force in the Member States, taking into account the case law of the Court of Justice, including through the application of the legal presumption of an employment relationship in accordance with Article 5. 2. The establishment of the existence of an employment relationship shall be based primarily on the facts relating to the actual performance of the work, including the use of automated monitoring systems or automated decision-making systems in the organization of work through digital platforms, regardless of how the relationship is qualified in any contractual agreement between the persons concerned. 3. Where the existence of an employment relationship is established, the party or parties responsible for the employer's obligations shall be clearly identified in accordance with national legal systems*" (Directive of the European Parliament and of The Council on the improvement of working conditions in work through digital platforms, in *www.data.consilium.europa.eu*, 2024).

relating to the performance of the work activity, which requires Member States to determine a regulatory framework that ensures the application of the legal presumption in all relevant administrative and judicial proceedings, also allowing law enforcement authorities, such as labor inspections or social protection bodies, to rely on this presumption[59].

In this sense, in the Spanish context, a regulatory provision was drafted, introduced in the Workers' Statute (Additional Provision 23), which states: "*In application of Article 8.1., the activity of persons who provide paid services of delivery or distribution of any consumer product or merchandise, for employers who exercise organizational, managerial and control powers, directly, indirectly or implicitly, through the algorithmic management of the service or working conditions, through a digital platform, is presumed to fall within the scope of the law*".

It follows from reading this article, on the one hand, that the burden of proof lies with the employer, who is required to prove the autonomy with which the worker carries out his or her activities, and, on the other hand, that the presumption of employment applies to platform workers in the delivery sector[60], unless the contrary is proven[61].

Starting from this last element, inherent to the presumption of subordination, it should be pointed out that, for the presumption to be applicable, three requirements must be met, consisting of the object of the platform's activity (delivery or distribution of products or goods), the exercise by the employer of organizational and control powers through a digital platform and, finally, the management of the service through the use of algorithms aimed at determining working conditions[62], which justifies the law's reduction of the criteria of the so-called "*legal dependence*", necessary to classify platform workers as employees.

The very factor of algorithmic management, as is evident from the tenor of the above-mentioned additional provision, and as a central element in the debate

[59] D.T. KAHALE CARRILLO, *La mejora de las condiciones de trabajo sobre las plataformas*, cit., p. 41.

[60] A. TODOLÌ SIGNES, *Cambios normativos en la digitalización del trabajo: comentario a la "Ley Rider" y los derechos de información sobre los algoritmos*, in "IUSLabor", 2021; R. RODIRGUEZ-PINERO, *Por Fin, La Ley Rider*, in *http://grupo.us.es/iwpr/2021/05/13/por-fin-la-ley-rider*, 2021.

[61] There are categories of workers, provided for in Art. 1.3, to whom this presumption does not apply, thus remaining classified as self-employed. These exclusions are: (a) civil servants; (b) compulsory personal services; (c) activities purely and simply limited to the performance of the functions of director or member of administrative bodies in companies that take the legal form of corporations, provided that such activities in the company relate exclusively to the performance of tasks inherent in that position; d) activities carried out of friendship, benevolence or good neighbourly relations; e) family duties; f) activities of persons intervening in business transactions on behalf of one or more entrepreneurs, provided that they are personally liable for the success of the transaction, assuming the entire risk; g) any work carried out in accordance with a relationship other than that defined in Article 1.1 of the Workers' Statute. See also A. TODOLÌ SIGNES, *Nueva "Ley Rider". Texto y un pequeño comentario a la norma*, in *https://adriantodoli.com*, 2021.

[62] A. BAYLOS GRAU, *Por fin la norma sobre los repartidores de plataformas (la ley "riders")*, *Según Antonio Baylos*, 2021.

on the work of digital platforms[63], poses the need to update the notions of dependency and subordination to the age of digitalization.

It is precisely in these circumstances that the presumption of subordination, as set out in the EU Directive, comes into action, given the significant implications it may have on *OSH* profiles.

In this regard, it should be noted that one of the effects of this reclassification is that they are entitled to a sort of minimum wage, since the high degree of instability in their income, due to the (very frequent) underpayment of services rendered, has a significant impact on their mental health, leading to an increase in stress[64], insecurity and anxiety, as well as an intensification of work activity itself[65].

Moreover, given the frequent payment on piecework, with no guaranteed earnings, there is a risk that some of them, especially those working in the transport and delivery services sector, may engage in risky behavior, such as speeding or not respecting the rules of the road, with serious consequences for their physical health and that of others, which leads to the assertion that compliance with payments, either in relation to a set minimum hourly rate or proportionate to the quantity and quality of work performed, could help mitigate these risks, while guaranteeing a more secure and stable income[66].

Secondly, another effect resides in the application of working time regulations to these workers; in this regard, the factor relating to working time, which acts as a key element in the determination of so-called "*computer fatigue*", encompasses issues such as the amount of time worked, the distribution of tasks, rest periods during the working day, etc.

It should be added that the organization of working time establishes a direct relationship with the onset of certain disorders of a physiological nature (such as fatigue or stress resulting from night work), which may also jeopardize a possible reconciliation of professional and private life[67].

Well, it has been found that many platform workers, finding themselves facing exhausting workdays and unfavorable working hours, with serious risks to their mental and physical health, including *stress*, anxiety, fatigue and accident risks, will be entitled to daily and weekly breaks as well as a maximum number of working hours, thus mitigating these risks[68].

A third consequence lies in the right to receive safety equipment free of charge, since it has emerged that certain types of work on platforms entail

[63] C. MOLINA NAVARETE, *La "Ley" de personas repartidoras en plataformas online ("riders"): ¿pequeño paso legal, gran paso para humanizar el precariado digital?*, in "Transformaework", 2021.

[64] See also *www.who.int*.

[65] EU-OSHA, *Digital platform work and occupational safety and health: overview of regulation, policies, practices and research*, in *https://osha.europa.eu*, 2022.

[66] N. CHRISTIE, H. WARD, *Delivering hot food on motorbikes: A mixed method study of the impact of business model on rider behavior and safety*, in "Safety Science", 2023, 158, 105991.

[67] F. TRUJILLO PONS, *La fatiga información en le trabajo. Un riesgo nuevo y emergente: su tratamiento juridico y preventivo*, Albacete, Ed. Bomarzo, 2022, p. 321.

[68] P. BERASTEGUI, *Exposure to psychosocial risk factors in the gig economy*, cit.

significant physical risks (including accidents, injuries, illnesses) that therefore require adequate protection, all of which is fuelled by an enormous outlay of money, borne by the workers themselves, to purchase safety equipment (e.g. helmets, lights, masks, gloves), including their replacement, since platforms have never assumed such a responsibility[69].

Fourthly, from the aforementioned presumption also derives the right to *OSH* training, which looms as essential to prevent many of the occupational risks mentioned above, since, until then, digital platforms were not obliged to provide this type of training to self-employed workers and, even when they did provide it, they merely offered minimal and superficial training, which was often inadequate to prepare workers for occupational risks.

Fifthly, there is the right to social security, which is necessary in order to protect such workers, as they are now classified as employees, from a wide range of *OSH-related* social risks, including accidents, injuries, disability, sickness, maternity and paternity leave, and old age, since, very often, workers who are regarded as self-employed have been excluded from many social security schemes or are enrolled in much less protective schemes[70].

Moreover, although platforms are able to offer private insurance schemes, they are often much less generous in terms of both amounts and duration than those provided by law[71].

Sixthly, another effect is access to protection against discrimination, since self-employed workers have frequently only had access to minimal protection against discrimination.

In this regard, one of the risks associated with the issue of discrimination that takes place in the context of digital platform work is that it is completely ignored, due to the presence of faulty reasoning; the latter, in fact, is characterized by a decision concerning a person and containing objective and subjective elements, by discrimination arising from subjective elements, by an algorithmic decision that, conversely, cannot arise from subjective elements, and by the final consideration that an algorithm could not discriminate.

However, the problem lies precisely in the definition of discrimination, which is only considered at an individual level: in a work environment, however, it must touch on several levels, such as organizational-structural and systemic.

Another risk lies in the opacity of the computer systems used, through a series of mechanisms, which consist of the presence of legal elements (such as industrial secrecy), technical ones, given the complexity that characterizes a computational system, such as to be rendered inaccessible to anyone who does not have a specialization in the matter, and obfuscation, which results in the computer

[69] FAIRWORK, *Fairwork Annual Report 2023: State of the Global Platform Economy*, Oxford, United Kingdom; Berlin, Germany, *https://fair.work*, 2024.

[70] ISSA, *Social security for the self-employed -in Europe: Progress and developments*, in "International Social Security Association (ISSA)", 2024, *https://www.issa.int*.

[71] FAIRWORK, *The Gig Economy and Covid-19: Looking ahead*, Oxford, United Kingdom, in *https://fair.work*, 2020.

program used being difficult to read.

A third risk relates to the so-called scale of the algorithm, where a computational system, which normally serves to process a large amount of data and as an aid to making a certain decision (such as a promotion etc.), may deal with a large number of cases and, if it is discriminatory, could generate damage (such as the loss of a job opportunity) on a large scale, proportional to the number of cases it is dealing with[72].

Therefore, as employees, they will be entitled to the full protection provided by each country's legislation, which generally includes age, gender, race, sexual orientation, religion or belief, and disability.

In this last regard, we can point out, by way of example, Real Decreto Ley 6/2019, of 1 March, aimed at preparing urgent measures to guarantee equality of treatment and opportunities between women and men in the labor sphere, which amended certain provisions of the Workers' Statute, such as art. 22 (regarding job classification), art. 28 (concerning the definition of equality at work and the obligation of wage registers in enterprises) and art. 64 (concerning the right of men and women workers to be informed annually on the application of the principle of equality, including the wage register and the proportion of men and women within the different professional levels)[73].

Seventh, the right to clear and transparent contractual terms should not be forgotten, since, while contracts for the self-employed are generally governed by commercial law, employment contracts are, on the other hand, governed by labor law.

In this way, the mandatory information that must be provided is strictly regulated, reducing the possibility for digital platforms to exempt themselves from certain obligations and responsibilities, including in relation to *OSH*, while at the same time improving the transparency of the contractual relationship, making it easier for employees to lodge a legal complaint in the event of a breach of contract[74].

It appears clear, therefore, how the "asymmetrical configuration" of the contractual relationship between the worker and the platform denotes a decisive imbalance in the synallagmatic nature of the employment relationship: this serves to ensure the application of the typical protections provided by labor law, accompanied by the measures provided for the protection of *OSH* by the Digital Platforms Directive, without the need to resort to a third intermediate category, given the adaptation of the fundamental categories of dependency and respect for the algorithmic management of working conditions.

As to the element relating to the burden of proof, it should be clarified how the presumption of the existence of an employment relationship shifts the

[72] P. RIVAS VALLEJO, *Discriminacion algoritmica en el ambito laboral: perspectiva de genero y intervencion*, Pamplona, Thomos Reuters Aranzadi, 2022, p. 75.

[73] P. RIVAS VALLEJO, *Discriminacion algoritmica en el ambito laboral*, cit., p. 240.

[74] EU-OSHA, *The EU Directive on platform work: improvements and remaining challenges related to occupational safety and health*, in *www.osha.europea.eu*, 2024.

burden of proof on the non-labor nature of the service to the company, which is required to prove that the workers providing services through distribution and delivery platforms are not employees.

For this reason, digital platforms, in an attempt to minimize their role as employers, often resort to informal and precarious labor practices, or to alternative contractual forms, such as labor cooperatives[75] or, as mentioned above, to subcontracting, in order to avoid assuming certain responsibilities although this legislation tries to counteract such tendencies[76].

However, given the manner in which the powers of organization and control of work are exercised, which may manifest themselves indirectly or implicitly, it will be very difficult for platforms to escape the application of the aforementioned law.

Therefore, labor regulation disputes in this area are likely to continue to proliferate, both collectively and in the courts, revealing the strategic nature of this issue for the reorganization of the cultural and ideological discourse around digitization and its alleged incompatibility with the formalization of work.

Ultimately, there has been an indirect and significant change introduced by the law, which lies in the unprecedented applicability of the legislation on the prevention of occupational risks (Law 31/1995) also to platform workers.

Well, first of all, the issue of the legal qualification of the employment relationship was addressed, which is also of no small importance in relation to *OSH*, as this aspect was strongly emphasized during interviews with the *Unión General de Trabajadores* (*UGT*) and the *RidersXDerechos* association, where it was stressed that *OSH* challenges in platform work can best be addressed by focusing, first and foremost, on the employment *status of* these individuals.

In fact, article 4 of the Workers' Statute guarantees employees the right to physical integrity and to an adequate occupational risk prevention policy, which are further specified in Law 31/1995, which establishes minimum *OSH standards* for employees in Spain, whose main responsibility falls on the employer, allowing, however, for collective agreements to detail and improve these *standards*.

One of the peculiarities of the aforementioned law lies in its inapplicability to the self-employed, with a few exceptions.

The first exception concerns situations where several companies operate in the same workplace: in such cases, the *OSH* cooperation and information obligations also extend to the self-employed workers present.

The second exception provides that companies that employ self-employed workers on their premises are required to monitor compliance with safety legislation.

Finally, the responsibility of the company emerges when self-employed workers are faced with the need to use, for the performance of their work,

[75] A. BAYLOS GRAU, *A brief note on the Spanish law on the employment of riders*, in "Labor & Law Issues", 2021, vol. 7, 1, p. 1 ss.

[76] A. ESTEVE SEGARRA, A. TODOLÌ SIGNES, *Cesión ilegal de trabajadores y subcontratación en las empresas de plataforma digital*, in "Revista de Derecho Social", 2021, 95, pp. 37-64.

machinery or tools provided by the company itself, which is obliged to ensure appropriate instructions, as specified in article 41.1 of Law 31/1995[77].

Secondly, other obligations, incumbent on the employer, have been included, such as, in the case of the provisions of article 14, risk assessment and the implementation of preventive measures, adopting, to this end, a management and planning system for preventive activities and making use of the necessary organization and means, as well as consultation and information to be provided to workers, especially when technological tools are implemented within the company organization, on all issues concerning *OSH* profiles (articles 18[78] and 33)[79].

These obligations must also be read in the light of the principle of preventive action laid down in Article 15 of the same law, according to which the employer is obliged to plan prevention by means of a coherent interconnection between technique, organization of work, working conditions, social relations and the influence of environmental factors in the work context itself[80].

However, the difficulties encountered with regard to concrete compliance with this law, as well as with the law on prevention, have led some platforms to resort to subcontracting or temporary employment agencies to avoid any liability, as was the case with the *Uber Eats* platform, which declared that it would continue to use *riders* from third-party logistics companies in order to avoid work safety obligations[81].

This approach is strongly criticized and could be challenged in court, since *Uber Eats* retains most of the management control, such as the connection between customers and *riders*, assignment of tasks and pricing.

In this regard, as far as the issue of subcontracting is concerned, the above-mentioned Directive, in article 3[82], states that persons performing platform work

[77] The latter exception could be particularly significant for platform workers when using machinery, equipment or tools provided by the platform, such as helmets, bicycles and the like.

[78] This provision, entitled "*Information, consultation and participation of workers*", reads as follows: "*1. In order to fulfil the duty of protection established by the present law, the employer shall take appropriate measures so that workers receive all the necessary information regarding: a) Risks to the safety and health of workers at work, both those affecting the company as a whole and each type of work or function. b) The protection and prevention measures and activities applicable to the risks indicated in the previous section. c) The measures taken in accordance with the provisions of Article 20 of the present law. In companies that have workers' representatives, the information referred to in this section shall be provided by the employer to the workers via these representatives; each worker, however, must be informed directly of the specific risks that affect their work activity or function and of the protection and prevention measures applicable to these risks. 2. The employer must consult workers and allow their participation in all matters concerning occupational safety and health, in accordance with the provisions of Chapter V of this Act. Workers shall have the right to make proposals to the employer, as well as to the participation and representation bodies provided for in Chapter V of this Act, aimed at improving the levels of safety and health protection in the company*".

[79] The article, entitled '*Consultation of workers'*, states in paragraph 1(a) that "*1. The employer must consult workers well in advance when making decisions concerning: a) The planning and organization of work in the company and the introduction of new technologies, in all that concerns the consequences that these may have for the safety and health of workers, derived from the choice of equipment, the determination and adequacy of working conditions environmental conditions and the impact of environmental factors on work*".

[80] F. TRUJILLO PONS, *La fatiga información en le trabajo*, cit., p. 311.

[81] See, *https://pledgetimes.com/the-riders-law-starts-amid-the-refusal-of-companies-to-hire-their-entire-fleet/*.

[82] This provision, entitled "*Intermediaries*", provides that "*Member States shall take appropriate measures to ensure that, where a digital job platform uses intermediaries, persons who perform work through digital*

through intermediaries are exposed to the same risks, analyzed above, that could arise from the misclassification of their employment *status* and from the use of automated monitoring or *decision-making* systems, just as is the case for persons performing platform work directly for the digital work platform.

Member States, therefore, should establish appropriate measures to ensure that, under this Directive, such persons can enjoy the same level of protection, including *OSH* protection, as persons performing work on a platform with a direct contractual relationship with the digital work platform, as well as appropriate mechanisms, including, where appropriate, joint and several liability systems[83].

3. *Algorithmic management in the work of digital platforms: impacts on workers' health and safety*

3.1. *Premise*

One of the main *OSH* challenges in the context of platform work concerns the use of algorithmic management[84], defined as the supervision, governance and control exercised by means of algorithmic *software* over many workers operating remotely[85].

In other words, algorithmic management looms large as an essential factor in the management, coordination and control of the platform workforce[86], through the implementation of so-called "*just-in-time*" labor practices that align the number of platform workers with expected business demand[87].

Algorithmic management, although the prerogative of a variety of systems with varying degrees of complexity[88], encompasses, broadly speaking, various aspects, including large-scale data collection and digital surveillance, reliance on

platforms and who have a contractual relationship with an intermediary enjoy the same level of protection as that guaranteed under this Directive to persons who have a direct contractual relationship with a digital job platform. To this end, Member States shall take measures, in accordance with national law and practice, to establish appropriate mechanisms including, where appropriate, joint and several liability systems".

[83] COUNCIL OF EUROPEAN UNION, *Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work - Analysis of the final compromise text with a view to agreement*, in *https://data.consilium.europa.eu*, 2024.

[84] EUROPEAN PARLIAMENT, *The platform economy and precarious work*, in *https://www.europarl.europa.eu*, 2020.

[85] M. MOHLMANN, L. ZALMANSON, *Hands on the wheel: navigating algorithmic management and Uber Drivers' Autonomy*, *Research Paper for the International Conference on Information Systems*, in *https://www.researchgate.net*, 2017.

[86] M.K. LEE, D. KUSBIT, E. MTSKY, L. DABBISH, *Working with machines: the impact of algorithmic and data-driven management on human workers*, *Association for Computing Machinery: Conference on Human factors in computing systems*, pp. 1603-1612; EUROPEAN COMMISSION, *Study to gather evidence on the working conditions of platform workers*, in *https://ec.europa.eu*, 2020.

[87] V. DE STEFANO, *Negotiating the algorithm: automation, artificial intelligence and labor protection*, in "Comparative Labour and Policy Journal", 2019, vol. 41, n.1.

[88] A. MATEESCU, A. NGUYEB, *Algorithmic Management in the Workplace*, in "Data Society", 2019, *https://datasociety.net*.

evaluation mechanisms (often by customers), as well as the use of indirect incentives, penalties and information asymmetry to influence the behavior of digital platform workers[89].

Management decisions, however, are implemented through (semi-) automated processes, the degree of human involvement of which is minimal, if any.

In particular, as analyzed above, digital platforms that intermediate work services with little professional content and performed both *online* and on-site, tend to exercise a rather penetrating control (the so-called "*managerial prerogatives*") over their workers, which raises several questions on the degree of direction (or subordination) of the work activity by the platform, conceived as a fundamental legal criterion to determine the *status* of employee in Spain.

From an *OSH* perspective, algorithmic management entails numerous risks, both physical and psychological[90].

First, it alters the balance of power between the platform, the client and the workers, favoring the platform (or, in some cases, the client)[91]; by way of example, reliance on evaluation mechanisms for assigning the most remunerative tasks can become a major source of *stress* and increase the emotional demands of working on the platform[92], not to mention, on the other hand, the sense of competition that such an evaluation system can instil among the workers themselves, due to the fear, in the event of low evaluations, of having fewer opportunities to obtain assignments at preferred times or risk suspension.

It should be noted, however, that such evaluation mechanisms incentivize a fast pace of work, as workers are constantly required to meet tight deadlines to maintain high evaluations, which further increases the likelihood of accidents.

In the Spanish context, for instance, the *Glovo* platform has adopted an evaluation system called "system of excellence", based on parameters such as efficiency (such as the time taken to deliver an order), which is able to increase the speed of execution and, consequently, the risks of accidents; stress risks, which can lead to strokes or heart attacks, also contribute to this, due to the platforms' continuous evaluation systems that feed on the evaluations expressed by customers, instead of relying on intermediate management.

Moreover, algorithms reward those who are available for more hours, leading to cases of workers exceeding 60 hours per week, who feel obliged to be available at all times.

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[89] N. SCHEIBER, *How Uber uses psychological tricks to push its drivers' buttons*, in "The New York Times", 2017; P. MOORE, M. UPCHURCH, X. WHITTAKER, *Humans and Machines at work: monitoring, surveillance and automation in contemporary capitalism*, London, Palgrave Macmillan, 2018.

[90] Y. SAMANT, *The promises and perils of the platform economy: occupational health and safety challenges and the opportunities for labor inspections*, in "ILO", 2019, *https://www.ilo.org*.

[91] P. BERASTEGUI, *Exposure to psychosocial risk factors in the gig economy*, cit.

[92] EU-OSHA, *Protecting workers in the online platform economy: an overview of regulatory and policy developments in the EU*, in *https://osha.europa.eu*, 2017; A. ALOISI, *Negotiating the digital transformation of work: non-standard workers' voice, collective rights and mobilisation practices in the platform economy*, in "ETUI Working Paper", 2019, No 3.

From this it can be deduced how algorithmic management, also fuelled by digital surveillance technologies, is used to coordinate and maximise the workload, which can lead to occupational overload, given the sometimes burdensome assignment of tasks to these workers (so-called *quantitative overload*) and often not in line with their competences (so-called *qualitative overload*), thus causing *stress* and anxiety.

It is clear, therefore, as stated by the Coordinator of the Occupational Health Secretariat of the Spanish trade union *UGT*, during an interview, that algorithmic management can reduce workers' autonomy, control over work and flexibility, causing exhaustion, anxiety and *stress*, negatively impacting health and well-being.

In order to curb such an issue, Organic Law 3/2018 on the *Protection of Personal Data* of 5 December introduced, for the first time, organic regulation of work-related digital rights**,** which have been brought together in Title X.

These rights, essentially related to the data protection profile, are configured as individual rights[93], the core of which lies in the concept of "informational self-determination"[94] and include the protection of *privacy* with respect to the use of company digital devices (art. 87), the right to digital disconnection (art. 88), *privacy* with respect to the use of video surveillance and sound recording devices (art. 89), and protection from geolocation at work (art. 90).

The objective of the aforementioned legislation, in particular, which was later transferred to the Workers' Statute, through the inclusion of article *20-bis*[95], is to limit the exercise of the company's management and supervisory power, which, as already mentioned, is amplified by the use of digital tools.

One of the aspects particularly deserving of attention concerns the involvement of employee representatives; in this regard, Article 87.3 stipulates that representatives must participate in the definition of criteria for the use of company digital devices by employees.

However, the term 'participation' is not clearly defined, as it is not clearly specified whether it is a mere obligation to inform and consult or whether representatives must participate in the actual decisions[96].

A similar problem of ambiguity also emerges from article 88, which aims to regulate the right to digital disconnection; it was introduced with a view to reinforcing workers' *privacy* in the face of audiovisual or geolocation systems used in work activities, acting as a factor enabling a better reconciliation of professional and private life, and is valid, outside working hours, for both

[93] J.L. GONI SEIN, *El impacto de las nuevas tecnologías disruptivas sobre los derechos de privacidad (intimidad y "extimidad") del trabajador*, in "Revista de Derecho Social", 2021, 93, pp. 25-66.

[94] M. FERNANDEZ RAMIREZ, *El derecho del trabajador a la autodeterminación informativa en el marco de la actual empresa 'neopanóptica'*, Cizur Menor, Aranzadi / Thomson Reuters, 2021.

[95] A. BAYLOS GRAU, *El papel de la negociación colectiva en la ley de protección de datos personales y garantía de derechos digitales en España*, in "Labour & Law Issues", 2019, 5 (1), p. 5.

[96] M. MIÑARRO YANINI, *La 'Carta de derechos digitales' de los trabajadores ya es ley: menos claros que oscuros en la nueva regulación*, in "Revista de Trabajo y Seguridad Social", 2019, 430, p. 8.

employees and civil servants (while self-employed workers would be required to organize themselves individually in this regard)[97].

Well, the aforementioned article, in its second paragraph, provides that the modalities of exercise are to be established through collective bargaining.

Nonetheless, the third paragraph seems, on the other hand, to allow companies to draw up an internal policy on the right to disconnection, while limiting themselves to hearing workers' representatives; this overlapping of rules only leads to confusion about the priority between collective bargaining and company policy, thereby undermining the role of representatives and weakening the centrality of social dialogue.

Moreover, it should be pointed out that, although article 91 offers an opportunity to improve the protection of digital rights through collective agreements that may provide additional guarantees, the overall regulation of these rights has been drafted without the full involvement of social actors, limiting their participation in the *governance* of digital transformations in the world of work.

This underlines the need for a strengthening of social dialogue to address, in a more inclusive manner, the challenges of the digital transition, thus ensuring effective protection of workers in the technological era[98].

Although research on the topic is growing, the risks associated with algorithmic management are still underestimated and insufficiently researched: this is also due to the lack of transparency that characterizes algorithmic management in platform work (the so-called "*black box of intermediation*")[99], given that automated or semi-automated decision-making requires the collection of a large amount of data, often with little transparency and accountability, since platform workers, who are often influenced by the algorithms' decisions, are very often not made aware of the criteria used to make certain decisions, just as they rarely have the opportunity to contest them, thus causing anxiety and uncertainty[100].

In this regard, regulation and/or collective bargaining can play a crucial role in mitigating *OSH* risks, particularly addressing the use of algorithms to monitor, direct and discipline the digital workforce.

Precisely in this respect, the *Ley Rider* in Spain represents an important step forward[101].

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[97] F. TRUJILLO PONS, *La fatiga información en le trabajo*, cit., pp. 127-128.

[98] L. RODRIGUEZ, *La participacion del las personas trabajadoras en la gobernanza de la transicion digital: las experiencias de la Union Europea y de Espana*, in "Revista de Derecho Social", 2023, 101, pp. 107-140.

[99] J. BURRELL, *How the machine thinks: understanding opacity in machine learning algorithms*, in "Big Data and Society", 2016.

[100] N. VAN DOORN, A. BADGER, *Platform capitalism's hidden abode: Producing data assets in the gig economy*, in "Antipode", 2020, 52(5), pp. 1475-1495.

[101] EU-OSHA, *Spain: The "Riders' Law", new regulation on digital platform work*, in *www.osha.europa.eu*, 2022.

3.2. *Algorithms and labor: towards a new era of transparency and rights in the dialogue between the* Ley Rider *and the Digital Platform Work Directive*

Both the Tripartite Agreement and subsequent legislation introduced a relevant reference to the automation of work management and performance appraisal through algorithmic control by the employer.

However, it should be noted that such a way of monitoring work *performance* is characterized, as partly anticipated in the preceding paragraph, by a high degree of opacity, being, moreover, authoritatively presented as an immutable and objective element aimed at measuring worker productivity.

Law No. 12/2021 addresses this issue within the traditional model of corporate collective representation, which, in the Spanish system, is divided into a dual model: on the one hand, elective unitary representation, such as the Works Council or Staff Delegates, and, on the other hand, trade union representation through the trade union sections in the company.

In this regard, the explanatory report of the law justifies the inclusion of this topic by starting a sort of "shared reflection" within the social dialogue, highlighting the need to consider the impact of new technologies on work and to adapt labor legislation accordingly to these changes, taking into account the individual and collective rights of workers, as well as competition between companies.

Well, the importance of algorithms in the work context, already highlighted by some studies in view of their use in personnel selection processes, had given rise to warnings of the risk of bias and discrimination, thus posing the need to ensure algorithmic transparency, especially in this area[102].

Thus, Law No. 12/2021 deals with these aspects, also focusing on the control of artificial intelligence systems and the algorithmic management of working conditions, where the first provision of this law amends Article 64.4 of the Workers' Statute, adding a new paragraph d), which reads as follows: "*The Works Council of any company shall have the right, periodically and as necessary, to: be informed by the company about the parameters, rules and instructions on which algorithms or artificial intelligence systems are based that influence decisions that may have an impact on working conditions, access to employment and its retention, including profiling*".

This is a regulatory innovation appreciated for its originality and timeliness[103], which could even represent a precedent for other EU Member States, as it demonstrates a significant responsiveness in the face of a vast productive and organisational transformation, being, moreover, applicable to all types of platforms, thus not limited to those active in the delivery sector.

[102] A. TODOLÌ SIGNES, *La gobernanza colectiva de la protección de datos en las relaciones laborales: big data, creación de perfiles, decisiones empresariales automatizadas y derechos colectivos*, in "Revista de Derecho Social", 2018, 84, pp. 69-88; P. RIVAS VALLEJO, *La aplicación de la Inteligencia Artificial al trabajo y su impacto discriminatorio*, Cizur Menor, Aranzadi / Thomson Reuters, 2020.

[103] R. GOMEZ GORDILLO, *Algoritmos y derecho de información de las personas trabajadoras*, in "Temas Laborales", 2021, 157, pp. 161-182.

The right to information, granted to elected representative bodies and trade union delegates in large companies, is linked to a duty of algorithmic transparency, which should manifest itself in the collective control both before and after the adoption of algorithms (often referred to as "*black boxes*"[104]) by companies for personnel selection, performance appraisal, remuneration and the taking of automated or semi-automated decisions on working conditions and work distribution.

This can be explained, as examined above, in relation to the ability of algorithmic management to amplify the power of management and control through sophisticated technological tools, facilitating both the monitoring and evaluation of workers' performance and the collection of large amounts of personal data, with potential negative repercussions on employees' mental health and well-being.

However, although Article 64 of the Workers' Statute stipulates that information on the functioning of algorithms must be appropriately communicated, it does not specify a precise moment at which this communication must be made, whereas, on the contrary, a part of the doctrine suggests that a posthumous check is not sufficient, thus advocating involvement already at the design stage[105].

However, it appears that the additional information rights guaranteed by the *Ley Rider* are limited to a merely passive, general and prior explanation (i.e. before the algorithm is used in specific cases) of the parameters, rules and instructions on which the algorithm relies to make decisions relevant to working conditions and work allocation[106].

In this regard, prior to the adoption of the law, article 64.5 of the Workers' Statute already stipulated that the Works Council had the right to be informed and consulted on all company decisions that could lead to significant changes in the organization of work: from this it can be assumed that this provision implicitly includes changes to algorithms that influence the organization of work, thus granting the Works Council the right to be consulted prior to the implementation of such algorithms[107].

There remains, however, a certain degree of uncertainty and confusion as to the concrete application of this provision, since the law itself has not clearly delineated the boundaries of what is to be disclosed.

In fact, according to the interpretation given, what falls under the definition of "*which may have an impact on working conditions, access to employment and its retention [...] including profiling*" could vary considerably.

There is, therefore, a need for more detailed and technical regulation that establishes precise conditions on how and what should be shared, which,

[104] See, *https://www.wired.co.uk/article/spain-gig-economy-algorithms*.

[105] A. TODOLÌ SIGNES, *La gobernanza colectiva*, cit., p. 88.

[106] A. TODOLÌ SIGNES, *Cambios normativos en la digitalización del trabajo: comentario a la "Ley Rider" y los derechos de información sobre los algoritmos*, in "IUSLabor", 2021, 2.

[107] A. TODOLÌ SIGNES, *Cambios normativos en la digitalización del trabajo*, cit.

according to a representative of *Adigital*, may not be easy to implement given that an algorithm is composed of thousands of parameters, being, for this reason, complicated to isolate the lines of code needed to fulfil the platforms' obligations.

In this regard, the Directive plays, once again, an extremely important role, which, in an attempt to regulate algorithmic management, has introduced a series of safeguards for the use of such systems, at the same time improving psycho-social working conditions, reducing, by way of example, perceptions of organizational injustice, rebalancing power asymmetries and also allowing workers to acquire a semblance of control over their work, as these are known risk factors associated with algorithmic management in platform work.

Well, the Directive, first of all, after having established, in Articles 7[108] and 8, respectively, the limitations on the processing of personal data when automated monitoring and decision-making systems are used, and the impact assessment of the processing of such data by such systems, provides that the digital work platforms will be required to provide detailed information (which may well make up for the lack of such information, as mentioned above, in the context of the *Ley Rider*) on the use of automated decision-making systems, which must be presented, according to paragraphs 1 and 2 of Art. 9 of the Directive, in a "*transparent, comprehensible and easily accessible manner, using clear and plain language*" (as also enshrined in Article 12(1) of the *GDPR*) and made available to workers, their representatives and national authorities prior to their implementation, thereby resolving the time dilemma, referred to above, that the *Ley Rider* was facing in relation to the provision of such information).

This can enable the various stakeholders to get hold of the information needed to assess any negative impact the use of automated decision-making might have in terms of *OSH*, such as excessive workloads or discriminatory practices, while reducing power asymmetries between the platform and the workers, enabling the latter to gain clarity about the processes and outcomes of

[108] This Article, entitled "*Limitations on the Processing of Personal Data by means of Automated Monitoring Systems or Automated Decision-Making Systems*", provides that "*1. Digital working platforms, by means of automated monitoring systems or automated decision-making systems: (a) shall not process personal data relating to the emotional or psychological state of the person performing work through digital platforms; (b) shall not process personal data relating to private conversations, including exchanges with other persons performing work through digital platforms and representatives of persons performing work through digital platforms; (c) do not collect personal data of a person performing work through digital platforms when that person is not performing work through digital platforms or proposing to perform work through digital platforms; (d) do not process personal data in order to provide for the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action, or the right to information and consultation set out in the Charter (e) do not process personal data in order to infer racial or ethnic origin, migrant status, political opinions, religious or philosophical beliefs, disability, health status, including chronic illness or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation of a person (f) do not process biometric data, as defined in point (14) of Article 4 of Regulation (EU) 2016/679, of a person performing work through digital platforms in order to establish his or her identity by comparing them with biometric data of natural persons stored in a database. 2. This Article shall apply to all persons performing work through digital platforms from the beginning of the recruitment or selection procedure. 3. In addition to automated monitoring systems and automated decision-making systems, this Article also applies to digital job platforms where they use automated systems that make or support decisions affecting persons performing work through digital platforms in any way*".

automated decision-making.

Secondly, according to article 10(1) of the aforementioned directive, the use of automated decisions will have to be subject to supervision and evaluation by a human operator, especially with regard to its impact on working conditions and discrimination at work.

Furthermore, continues paragraph 2 of this article, there is a need to make adequate resources available so that the person carrying out the assessment has the necessary training and skills and, if necessary, may be able to override automated decisions; this may allow for an assessment by a human operator of automated decisions, including their impact on *OSH*, and which, in the event that an impermissible risk is identified, will allow for a modification or interruption of the automated system.

It should be added that human supervision probably has the potential to improve psychosocial working conditions and, more specifically, organizational fairness and the balance of power, as procedural opacity has been used by platforms to circumvent negotiations and impose unfair practices according to the "take it or leave it" principle.

Third, according to Art. 11(1), workers will have the right to obtain an explanation of any decision made or supported by an automated process and to request a human review of the decision, which enhances workers' autonomy regarding automated decisions affecting them and may help mitigate the *OSH* risks associated with automated decisions[109].

Such a provision is likely to rebalance power asymmetries and improve fairness at work, as well as gain, again, a kind of control over one's work (being able to react in the event of unfair decisions) since one of the sources of frustration and anxiety most commonly reported by platform workers lies precisely in the lack of means to challenge unfair platform decisions or unethical client behavior[110].

Fourthly, there is a section specifically devoted to *OSH* in art. 12(1), which specifies that digital work platforms must assess the risks arising from automated decision-making and monitoring with regard to *OSH*, with particular attention to ergonomic and psychosocial risks, as well as occupational accidents, assess the adequacy of safeguards for such systems, given the specifics of the work environment, and introduce appropriate preventive and protective measures[111].

To this end, the Directive, from paragraphs 2 to 5 of that article, prescribes, in addition to the non-use of such systems to the extent that they endanger the physical and mental health and safety of workers themselves (para.

[109] EU-OSHA, *Digital platform work and occupational safety and health: overview of regulation, policies, practices and research*, in *https://osha.europa.eu*, 2022.

[110] P. BERASTEGUI, *Exposure to psychosocial risk factors in the gig economy*, cit.

[111] COUNCIL OF THE EUROPEAN UNION, *Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work - Analysis of the final compromise text with a view to agreement*, in *https://data.consilium.europa.eu*, 2024.

3), information and consultation (provided for, specifically, also in Art. 13[112] and 14[113]), by the platforms, workers on the platform and appropriate reporting channels from the platforms, established by the Member States, which also applies with regard to any modification or change to the automated decision-making system, as well as when it is used to prevent certain events, such as violence or harassment.

Ultimately, it should be pointed out that digital platforms often suffer from a lack of transparency and accountability, making it difficult for public authorities to obtain information on workers and their working conditions.

Platform workers, in this sense, often struggle to assert their rights, including those related to *OSH*, due to the lack of adequate information and communication channels, which can generate *stress* and anxiety.

Article 17(1) of the directive, therefore, introduces several measures to address such problems, placing an obligation on platforms to provide the authorities with data on workers, hours worked, earnings and working conditions[114].

On the other hand, it should be noted that a partial solution to these issues seems to have also been provided by the *General Data Protection Regulation* (*GDPR*) of the European Union, which already provides information rights to individuals with regard to algorithms.

In this regard, articles 13, 14 and 15 of the *GDPR* stipulate that where "*automated decision-making processes, including profiling*", mentioned in article 22 (1)

[112] This Article, entitled "*Information and consultation*", provides that "*1. This Directive is without prejudice to Directive 89/391/EEC as regards information and consultation, and to Directives 2002/14/EC and 2009/38/EC. 2. Member States shall ensure that the information and consultation, as defined in Article 2(f) and (g) of Directive 2002/14/EC, of employees' representatives by digital work platforms also cover decisions which may involve the introduction of automated monitoring systems or automated decision-making systems or substantial changes to their use. For the purposes of this paragraph, the information and consultation of employees' representatives shall be carried out in the same way as for the exercise of information and consultation rights under Directive 2002/14/EC. 3. The employees' representatives of digital platforms may be assisted by an expert of their choice to the extent that this is necessary for them to examine the matter being informed and consulted and to give an opinion. If a digital work platform has more than 250 employees in the Member State concerned, the expenses for the expert shall be borne by the digital work platform, provided that they are proportionate. Member States may determine the frequency of requests for an expert, while ensuring the effectiveness of the assistance*".

[113] This provision, headed "*Provision of information to workers*", states that "*Where there are no representatives of digital platform workers, Member States shall ensure that digital platforms directly inform the digital platform workers concerned of decisions that may involve the introduction of automated monitoring systems or automated decision-making systems or substantial changes to their use. The information shall be provided by means of a written document, which may be in electronic form, and shall be provided in a transparent, intelligible and easily accessible form, using simple and clear language*".

[114] Article 17, under the heading "*Access to information relevant to work through digital platforms*", provides that "*1. Member States shall ensure that digital work platforms make available to competent authorities and to representatives of persons undertaking work through digital platforms the following information (a) the number of persons performing work through the digital work platform concerned disaggregated by level of activity and their contractual or employment status; (b) the general terms and conditions established by the digital work platform and applicable to those contractual relationships; (c) the average duration of the activity, the average weekly number of hours worked by each person and the average income derived from the activity of persons regularly performing work through the digital work platform concerned; (d) the intermediaries with whom the digital work platform has a contractual relationship*".

and (4), are implemented, clear and meaningful information must be provided about how the system works, as well as details of any consequences for the data subject.

In this sense, the *GDPR* seems to support the right of platform workers to receive an explanation, whereby digital platforms, in fact, are obliged to provide general information useful to the worker in order to enable the latter to possibly challenge a certain decision[115].

Moreover, as specified in the guidelines provided by the *Article 29 Data Protection Working Party*[116], they may challenge such decisions or express their views insofar as they fully understand the assumptions and the manner in which that decision was taken.

However, no reference is made to collective rights in this context, which makes it difficult to effectively enforce these rights in practice, were it not for the fact that the *Ley Rider*, responding in part to these concerns, considered information rights to be collective in nature.

Furthermore, the rights conferred by article 22 (1) of the *GDPR* only apply to those decisions that are exclusively based on automated processing[117]: in the opinion of the Article 29 Working Party, this means that there is no human intervention in the decision-making process.

The *Ley Rider*, on the other hand, far from placing such a limitation, allows information rights to be applied even in cases where the systems affect the working conditions of digital platform workers.

3.3. Ley Rider *reforms: new measures for the protection of digital platform workers*

As mentioned in the preceding paragraphs, the adoption of the *Ley Rider* met with much resistance from some platforms, thus jeopardizing one of the greatest achievements of social dialogue and probably of the entire legislature.

Well, one of the first reactions was to intensify labor inspections, as this area was one of the priorities of the inspectorate.

However, when *Uber Eats* also adopted the same position of rejection as *Glovo*, it became clear that new measures would have to be implemented.

In particular, two significant reforms were introduced, called "*Glovo Law I and II*", as they were created primarily to address the situation on this platform.

The first reform, certainly the most relevant, concerned the introduction of new sanctions: this was done with *Ley Orgánica* 14/2022 of 22 December, which

[115] EUROPEAN COMMISSION, *Study to gather evidence on the working conditions of platform workers*, in *https://ec.europa.eu*, 2020.

[116] Article 29 Data Protection Working Party, *Guidelines on Automated individual decision-making and profiling for the purposes of Regulation 2016/679*, in *https://ec.europa.eu*, 3 October 2017 (as last revised and adopted on 6 February 2018), p. 27.

[117] Article 22 (1) of the *GDPR* states that "*The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or significantly affects him or her in a similar way*", in *www.eur-lex.europa.eu*.

transposed European directives and other provisions in order to adapt criminal legislation to the European Union order, also reforming some offences against workers' rights and which saw the addition of a new paragraph to the second paragraph of article 311 of the Penal Code[118], which punishes those who impose illegal conditions on workers, maintaining them despite administrative sanctions or demands.

In order to fully understand the *rationale* of such a rule, it is necessary to briefly analyze the context in which the need to give rise to it was felt.

It is worth noting that, for a long time, self-employment was associated with small entrepreneurship, as it was representative of people running small businesses with sufficient resources to live on and sometimes employing other people.

This conception was rooted in the context of the market economy, as enshrined in article 38 of the Spanish Constitution, and included the self-employed outside the labor legislation, recognizing them as enterprises subject to the competition rules typical of Community law.

Subsequently, however, self-employment was increasingly used as a fraudulent means, as it appeared to be of great use in disguising employment relationships and thereby circumventing legal and social security obligations; this led, on the one hand, to the emergence of the phenomenon of so-called "*false self-employed*", who were not recognized as having the rights guaranteed to employees and, on the other hand, to an ILO Recommendation No. 198, 2006, through which the various countries were invited to adopt measures to combat such practices and thus protect workers.

Moreover, during the financial and euro crisis, governments, in order to cope with rising unemployment and devalued wages, incentivized self-employment as a cheaper alternative to salaried work.

With the advent of digitalization, self-employment has been further promoted as a flexible form, adaptable to the new *business* models of digital platforms.

However, such a novelty has raised serious questions about the real autonomy of these workers, underlining their strong dependence on platforms, with often disguised criteria of subordination.

As analyzed above, the so-called "expansive trend" in labor law attempted to resolve these issues through Law 12/2021, which brought *riders* and other platform workers within the scope of labor law.

In spite of this, many digital platforms continue to resist, keeping workers working for them as self-employed and finding themselves subject to sanctions by the Labor Inspectorate.

That said, recalling how article 311 punishes the imposition of unlawful working conditions or social security conflicting with legal provisions, collective

[118] This legal provision applies to "*those who, by deception or abuse of a situation of necessity, impose on workers employed by them conditions of work or social security that infringe, suppress or limit the rights granted to them by provisions of the law, collective agreements or individual contracts*".

or individual agreements, especially in contexts where there are exploitative situations such as abuse of necessity or employment without registration or work permit, it should be noted that such behavior can also include violations of rules on wages, working hours, safety and health, which can be assimilated, in certain cases, to serious exploitation, while remaining distinct from forced labor or slavery.

The new paragraph, added to the article, aims to extend punishability to those who impose unlawful conditions by hiring workers with formulas other than employment contracts, thereby depriving them of the individual and collective rights guaranteed by labor law.

In particular, two specific situations were foreseen, consisting in the expulsion from employment protection by means of fraudulent contractual arrangements and the persistence concerning the violation despite the provision of administrative sanctions or prescriptions.

This rule therefore extends protection against exploitation, strengthening workers' rights and striking at fraudulent practices by companies[119].

In the light of this, it should be considered how this regulatory change was presented as a necessity: as can be seen from the explanatory statement of the law, faced with the ineffectiveness of the preventive and sanctioning measures of the labor context in repressing the conduct (which often conceals unprecedented forms of criminality) of platforms, it is inevitable to resort to criminal law.

In fact, the new criminal offence was aimed at targeting precisely those fraudulent hiring practices that avoid the use of regular employment contracts, such as the phenomenon of bogus self-employed workers, which is very common in digital platforms; this was sanctioned with penalties that could include up to six years' imprisonment and fines, with harsher penalties if carried out with violence or intimidation.

The second measure was introduced by *Ley* 3/2023, of 28 February, which amended Ley 36/2011 on social jurisdiction.

This reform abolished a provision that allowed for penalties related to the employment of false self-employed persons to be delayed until the conclusion of legal proceedings, a practice widely used by platforms to postpone their legal responsibilities, such as the payment of fines and social security contributions, thereby accelerating the imposition of fines and making it more difficult to maintain irregular employment practices.

In summary, these two reforms aimed to strengthen the protection of digital platform workers by speeding up the enforcement of sanctions and ensuring that companies could not avoid their responsibilities through legal loopholes[120].

[119] A. BAYLOS GRAU, *Una norma penal para castigar la resistencia a aplicar la laboralidad de las personas trabajadoras al servicio de plataformas digitales*, in *www.net21.org*, 2023, pp. 3-6.

[120] M. RODRIGUEZ-PINERO ROYO, *La Ley Rider dos anos despues*, cit., pp. 23-26.

4. *Conclusions*

In light of the considerations made so far, it is reasonable to conclude that the implementation of the *Ley Rider* represents a significant step in the legal landscape of digital platform work in Spain, as it has courageously addressed emerging challenges and issues related to the protection of workers' rights.

In fact, this legislation not only responds to needs that have historically been ignored, but stands as a concrete example of how social dialogue can play a leading role in innovative and necessary solutions in a labor context that is known to be rapidly changing.

The Ley Rider approach, which integrates algorithmic transparency and platform empowerment, marks a new era in the labor relationship between digital companies and the workers operating in them.

In this context, the emphasis on the protection of individual and collective rights proves to be crucial, especially in a sector characterized by considerable opacity and the use of technologies that, if not properly regulated, can exacerbate existing inequalities.

In this sense, the reform has the merit of recognizing the importance of regulating the use of algorithms and performance monitoring, allowing for collective control that aims to override the authoritarian logic of companies.

However, the path to effective implementation of the *Ley Rider* is not without obstacles. In this respect, resistance from platforms, coupled with possible legal conflicts and ambiguous interpretations, raises questions about the actual implementation of protective measures, especially in support of *OSH*.

Another aspect that needs to be taken into great consideration is the continuous training of workers on their new prerogatives and on the profiles that affect their safety and psycho-physical well-being in the context in which they work, in order to guarantee their rights and the full effectiveness of the *Ley Rider*; only in this way will it be possible to envisage the possibility of transition from a condition of vulnerability to a more conscious and active participation in the labor market.

Regarding *OSH* issues specifically, it was found that platform work, which is often characterized by flexible conditions and increased fragmentation, presents specific risks.

And it is precisely on this that the synergy between the *Ley Rider* and the provisions of the European Directive on digital platforms emphasizes, since the ultimate goal is to ensure that workers are adequately protected both physically and mentally.

The Directive, in fact, is an essential support, as it harmonizes regulations at EU level, providing a much more robust regulatory framework, which can, without doubt, contribute to improving platform working conditions across the EU, providing, in particular, tools to ensure that digital platforms are obliged to

guarantee safe and decent working conditions, as well as mechanisms for the continuous monitoring of compliance with safety standards.

In addition, the *Ley Rider* could serve as a model for other EU member states, stimulating a broader debate on the regulation of platform work at the European level, as issues of social justice, protection of workers' rights, including *OSH* aspects, and corporate responsibility need to be addressed in a global context, considering the impact of digital platforms on different economies and societies.

In conclusion, the aforementioned law, far from being a mere regulatory achievement, represents an opportunity aimed at redefining labor dynamics in the context of digital platforms, as it aims to promote a working model that recognizes and values the dignity of workers, while ensuring a fairer and more transparent working environment.

Such an opportunity can be realized through a collective effort, including the competent authorities, workers' representatives and the platforms themselves, in order to jointly address common challenges and find solutions that can benefit all parties involved, thus ensuring the full and effective achievement of the law's objectives and the construction of a labor ecosystem that respects workers' fundamental rights.

This, of course, requires constant efforts to monitor and evaluate the effects of the legislation and any necessary corrections.

Therefore, only through the synergy of the social partners, also accompanied by continuous regulatory developments, including the impact of the newly adopted Digital Platform Work Directive, will it be possible to ensure that the benefits of digitization are fairly distributed and that all workers, regardless of their occupation, can exercise their rights in a context of respect and dignity.

Abstract

Questo studio analizza l'evoluzione normativa del lavoro su piattaforma digitale in Spagna, evidenziando le sfide legali affrontate prima dell'adozione della Ley Rider. Si esplora, in particolare, il ruolo del dialogo sociale nell'origine di questa legge e le difficoltà nell'attuazione, ponendo l'accento sull'opposizione delle piattaforme ed i conflitti legali emergenti. La questione dell'inquadramento giuridico dei lavoratori delle piattaforme e la presunzione legale di subordinazione vengono esaminati quali elementi chiave che consentono di comprendere la nuova legislazione, così come verrà approfondita la questione riguardante la gestione algoritmica nel lavoro delle piattaforme digitali, prestando una particolare attenzione agli impatti sulla salute e sicurezza dei lavoratori, il tutto alla luce del dialogo tra questa legge e la Direttiva UE sul lavoro su piattaforma digitale. La Ley Rider, in tale contesto, supportata dalle previsioni della Direttiva, ha avuto il merito di introdurre misure significative per la tutela dei diritti dei lavoratori, promuovendo la trasparenza ed il controllo delle pratiche algoritmiche. Attraverso una riflessione critica, il paper conclude sull'importanza sia di riforme alla legge, volte ad assicurare un concreto rispetto della stessa, sia della sinergia tra le parti sociali e tra le legge e la Direttiva, il tutto in un'ottica di miglioramento delle condizioni lavorative e di garanzia della sicurezza e del benessere dei lavoratori in un contesto in continua evoluzione.

This study analyses the regulatory evolution of digital platform work in Spain, highlighting the legal challenges faced prior to the adoption of the Ley Rider. In particular, the role of social dialogue in the origin of this law and the difficulties in its implementation are explored, with an emphasis on platform opposition and emerging legal conflicts. The issue of the legal framework of platform workers and the legal presumption of subordination are examined as key elements for understanding the new legislation, as well as the issue of algorithmic management in digital platform work will be explored, paying particular attention to the impacts on workers' health and safety, all in the light of the dialogue between this law and the EU Digital Platform Work Directive. The Ley Rider, in this context, supported by the provisions of the Directive, had the merit of introducing significant measures for the protection of workers' rights, promoting transparency and control of algorithmic practices. Through a critical reflection, the paper concludes on the importance both of reforms to the law, aimed at ensuring its concrete compliance, and of the synergy between the social partners and between the law and the Directive, all with a view to improving working conditions and guaranteeing the safety and well-being of workers in an ever-changing context.

Parole chiave

Lavoro su piattaforma, Ley Rider *e Direttiva UE lavoro piattaforme digitali, Salute e sicurezza, Trasparenza algoritmica, Diritti dei lavoratori, Dialogo sociale*

Keywords

Platform work, Ley Rider *and EU Digital Platforms Work Directive, Health and safety, Algorithmic transparency, Workers' rights, Social dialogue*