

Redefining the regulatory space for **collective bargaining rights** in the age of **AI**

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19 June 2026



Madrid



The digital firm

Transformative labour market dynamics

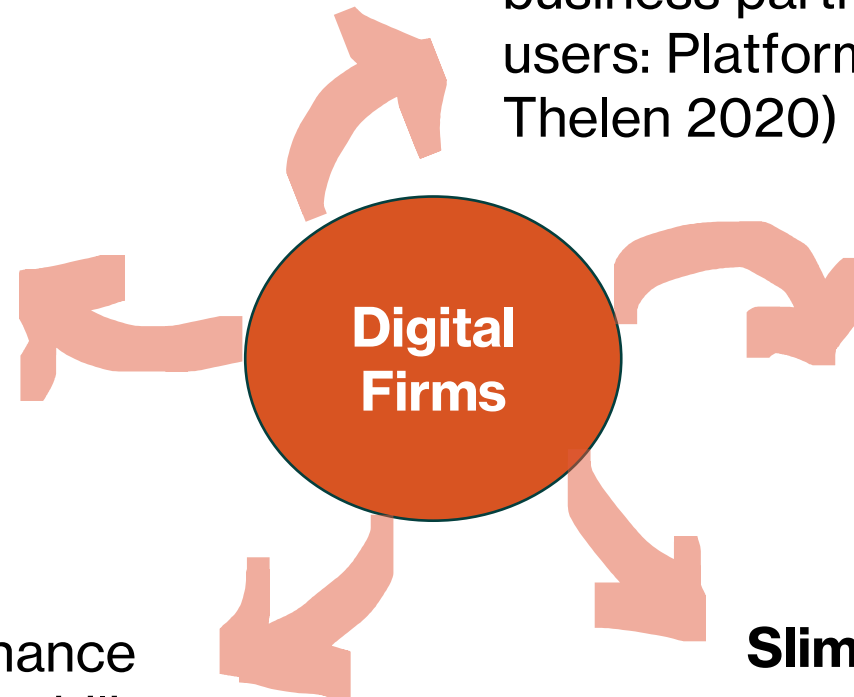
Exert influence also on contingent sectors – control of digital ecosystems and value chains, with downward pressure on working conditions

Regulatory structure and function – dictate the terms of interaction among business partners, contractors and users: Platform power (Culpepper and Thelen 2020)

Global actors – repartition of processes GN vs GS

Slim companies – relatively small hired workforce – **corporate and contractual fragmentation**

Data control – dominance of digital technology, ability to monetise data without redistributory mechanisms



Monopsonistic dynamics

Monopsony:

Nowdays broadly refers to the situation where wages are below a competitive rate equal to marginal revenue product

Causes:

- **There is only one employer:** workers have little choice but accepting the offer even if below competitive level (coal mine in a remote area)
- **One firm has dominant position in a specific market or in contingent ones** (Amazon and last mile delivery companies)
- **Non-compete clauses:** workers are locked-in and don't leave even if conditions are not competitive
- **Agreements that eliminate competitions:** e.g. no-poaching or wage agreements between companies which, secretely, decide not to hire or attract workers from each others. **See European Commission v Delivery Hero and Glovo**

Notion of employer & exercise of labour market power

An emerging mismatch

- **Labour law's function:** to rebalance the unequal distribution in economic and labour market power between the parties of the employment relationship.
- **Who is the employer?** It should be the actual holder of labour market power.
- Otherwise: uneffectiveness of labour norms, particularly collective labour rights → **how to negotiate with an employer who is not in charge** of the work organisation because is dependent on a dominant economic actor?
- Digital firms challenge normative paradigms and successfully **deflect the attribution of employer's accountabilities**



Rethinking normative paradigms for collective rights

Looking at AI system through empowerment dynamics

AI systems	Examples	Empowerment dynamics
MANAGEMENT AND HR SUPPORT	AM management system	Empower employers & those in control of AM systems in case of subcontracting. Loss of autonomy and heighten pressure on workers
ENHANCEMENT OF WORKERS CAPABILITIES	AI-based assistants for constumer support, writing and translation tools	Value distribution can be positive for both employers and workers. Still: risks for workers (alteration of job profile, career development and employability linked to digital literacy)
EMULATION AND SUBSTITUION OF WORKERS' CREATIVITY, JUDGMENT AND DISCRETION	Synthetic actors, AI-generated script; automated journalism; diagnostic tools, educational platforms	Employers benefit from lower labour costs and productivity gains + empowerment dynamics go beyond employment relationship (technology providers). Workers: disempowerment with substitution risks

Trasversal issue: workers dispossessed of their data and related value

The available collective rights «arsenal»

Information and consultation rights

- **General frameworks** (Directive 2002/14/EC; Directive 2009/38/EC (EWC))
- **Business restructuring** (Directive 2001/23/EC; Directive 98/59/EC)
- **Ad hoc** (PWD; Art. 26(7) AI Act; EP initiative on AM)

Collective bargaining

- **Sectoral / company level**
- **National / transnational / GFA initiatives**

Regulatory codetermination (Social Dialogue)

- **Two-stage consultation** : Article 154 TFEU – social partners inputs directed at steering legislative initiatives
- **Framework agreements**: Article 155 TFEU – social partners have full agency and co-create legislation

The current situation

Information and consultation rights

- Mostly **transparency rights**
- **No obligation** to discuss how technology affects substantial terms of employment
- **No involvement of technology controller** (except PWD)
- Same picture confirmed by analysis of **EWC agreements**: very rare explicit mention of AI

Collective bargaining

- EU level: focus mostly on **transparency and data rights, surveillance and skills**. Very few example with digital transition social plans, performance assessment, OSH
- National level: small but growing number of agreements but mainly on **data protection, transparency, skills, monitoring and I&C mechanisms**. Exception: creative sector (NL and DE)
- **No involvement of corporate actors beyond employers**

Social dialogue

- **Yes** on: PWD and potential future initiative on AM/AI at work (Quality Job Act)
- **No** on the commercialisation and use of AI technologies **beyond algorithmic management**
 - Issue with legal basis (no Title X TFEU)
- Examples: **Machinery Regulation** (EU 2023/1230), relevant for OSH; **Copyright Directive** (EU 2019/790), regulating reuse of creators works for text and data minimim purposes; **AI Act** (EU 2024/1689), establishing governance framework for high risk AI

A re-articulation of collective rights

AI systems	I&C	Collective bargaining	Social dialogue
MANAGEMENT	Transparency , how data impact managerial decisions	Redefinition of all dimensions affected (working time, wages , dismissal protection), data processing limitations	Key principles, limitations to monitoring, distribution of accountability
ENHANCEMENT OF HUMAN CAPABILITIES	Automation plans , training needs, impact on employment, third party access data	Training plans , automation plan trajectory, corporate policy, specific OSH safeguards, redistribution productivity gains	Machinery standards, OSH safeguards , use of data, distribution of corporate accountability
LEARNING FROM AND REPLACING HUMAN ASSESSMENT AND CREATIVITY	Distribution of worker- generated value to third parties	Sector specific prohibitions (use; content reproduction, data processing), redistribution of corporate gains , automation plan trajectory	Copyrights, general prohibitions , compensatory mechanisms

***With involvement of technology provider / controller of the technology extracting value from work process**

Translating into statutory and institutional reforms

Reform scope for institutional social dialogue: the pervasive implications of AI technology require a functional reinterpretation of the scope of Title X TFEU as legal basis

Progressive omnibus: Revision labour law acquis to recast scope of existing legislative norms in the AI context (e.g. I&C frameworks)

Accountability and negotiating agency: allocated at the proper level to also involve controller / provider of the technology

Industrial relations: Cross-sectoral and transnational fertilisation

Empowerment dynamics: transversally embedded into governance

**Thank you
for your attention!**