Chapter 17
Collective bargaining and AI in Italy

Luciana Guaglianone

1. Introduction: the Italian production model and its impact on collective bargaining

The industrial structure in Italy is extremely fragmented with 99.5% of companies having fewer than 50 employees (according to Istat data). The adoption of AI-based production technologies is limited by the reduced investment capacities of companies, particularly of the smallest firms. Financial difficulties are not the only ones holding back the introduction of artificial intelligence systems in companies; poor managerial skills and organisational flexibility, which also characterise them, are further obstacles (Bannò et al. 2021).

The results of research carried out by the Artificial Intelligence Observatory of Politecnico di Milano confirm this. In 2021, 59% of large companies launched artificial intelligence projects compared to just 6% of small and medium-sized enterprises. Financial and organisational difficulties determine the types of systems installed: in 35% of cases, the introduction of technologies concerned chatbots and virtual assistants, while in 32% it was intelligent data processing (via algorithms to analyse and mine information from data).

The low presence of artificial intelligence systems and the nature of the solutions adopted condition both the number and the content of collective agreements, which are few and rather repetitive concerning the terms (Guaglianone 2021). The number of agreements rises if we consider jobs connected to the use of platforms where the most significant contractual issues concern, in Italy as elsewhere, the work of couriers (Cruz 2022).

1.1 The industrial relations system and model as a key to understanding bargaining trends in digital and automated work

The Italian industrial relations system is highly anomalous. Although collective bargaining is the prevailing method of action and the backbone of industrial relations, it is voluntary, private in nature and not regulated by law. However, both trade unions and collective bargaining are recognised by Italian law as fundamental, and the legislature has intervened and continues to intervene to promote their role. The historical interrelationship that exists between statutory law and collective bargaining applies to both branch and company levels of collective bargaining.

Meanwhile, the model of Italian industrial relations is, according to the classical classification, conflictual with weak participatory rights that mainly take the form of information rights. More participatory bargaining content, such as the right to consultation, is present in many collective agreements although most reproduce the legal obligations, merely indicating a time limit within which consultation procedures must be considered to have been completed (Guaglianone 2017).

2. Technological innovation and collective agreements – a brief overview

Digitalisation and automation have partially changed the attitude of all trade unions towards modes of participation which are now seen as fundamental to define and implement digitalisation[1] (Patto per la fabbrica 2018). This change in attitude has led to a broadening of the areas of bargaining, reflecting a real interest in sharing knowledge (e.g. the health of the company's finances; technological and organisational innovation plans; production quality).

For example, the duty to extend information rights also to the subject of technological innovation which, by way of interpretation, could already be inferred from the text of Article 5 of Legislative Decree no. 25 of 6 February 2007 (transposing Directive 2002/14/EC, which established a general framework for informing and consulting employees), in Contratto Collettivo Nazionale Lavoro (CCNL; branch collective agreement) per i lavoratori addetti all'industria metalmeccanica privata e alla installazione di impianti (for workers employed in the private engineering and plant installation industry), signed on 5 February 2021, also includes codetermination as well as the duty to provide, in any case, written reasons in the event that companies do not accept the trade unions' proposals.

On the whole, we cannot speak of a change in the model of the industrial relations system but what is innovative lies in the awareness, which has grown on the part of all trade unions, of the need to consider themselves not only antagonistic actors but also partners in the transformation of the enterprise. In concrete terms, this new conviction has meant that many branch collective agreements have introduced joint observatories to monitor and analyse digital transformation processes (e.g. CCNL Gas e Acqua, 30 July 2022; CCNL Chimica-Farmaceutica, 1 July 2022; CCNL per i lavoratori addetti all'industria metalmeccanica privata e alla installazione di impianti, 5 February 2021; CCNL Credito, 19 December 2019).

3. Case studies – couriers and a variety of collective agreements

The interest of both trade unions and lawmakers in Italy has, when it comes to platform work, mainly focused on couriers who make up about 12% of platform workers.

1. Accordo interconfederale Attuazione del patto per la fabbrica, 12/12/2018. https://olympus.uniurb.it/index.php?option=com_content&view=article&id=19549:patto2018&catid=233&Itemid=139

Evidence of this interest can be seen in a growing number of collective agreements – currently three – that regulate this form of work (CCNL Logistica e Trasporti (Logistics and Transport); CCNL UGL/Assodelivery supplementary sector agreement; Just Eat/Takeaway supplementary company agreement).

In order to reconstruct the bargaining context, we must first outline the legal framework within which, due to the interrelationship of the legal and contractual provisions, collective agreements are concluded. Article 2 of Legislative Decree no. 81/15 (as amended by Art. 47ff. of Law no. 128 of 2 November 2019), while defining work organised through platforms, including digital platforms, as 'hetero-organised' work,[2] extends the protections specific to paid employment to this form of work. The same law (Art. 2 para. 2(a)), however, authorises branch collective agreements – entered into by trade unions that are comparatively more representative at sector level – to derogate from it in the event that the social partners consider the sector to have particular production and organisational needs affecting pay and conditions. In 2019, this law was amended (Article 47ff. of Legislative Decree No. 81/15) with specific reference to couriers. The new law limits the social partners' power to derogate as regards the conditions of the employment relationship; however, it does entrust them with the task of defining the criteria for setting the overall remuneration, respecting the prohibition on piecerates but taking into account the manner in which the service is performed and the organisation of work.

The possibilities left open by the new legal provision have led to two collective agreements (see sub-sections below). It should be noted that neither of the collective agreements make the slightest reference to rights linked to the digitalisation of work. The core of the Logistica e Trasporti branch agreement and of the CGIL-CISL-UIL/Just Eat supplementary company agreement is the regulation of work based on the Protocol implementing Art. 47ff. Legislative Decree 81/2015; the UGL/Assodelivery sector agreement aims to define the employment relationship and to regulate some of its areas.

3.1 Protocol implementing Art. 47ff. Legislative Decree 81/2015

In November 2019, the Italian Parliament adopted a law which, while defining couriers as hetero-organised workers, delegates the setting of pay to collective bargaining (Art. 47ff. Law no. 128 of 2 November 2019). The following year, the trade unions Confederazione Generale Italiana del Lavoro (CGIL; Italian General Confederation of Labour), Confederazione Italiana Sindacati Lavoratori (CISL; Italian Confederation of Trade Unions and Unione Italiana del Lavoro (UIL; Italian Labour Union) and the Logistica e Trasporti employer associations signed a Protocol implementing Art. 47ff. Legislative Decree 81/2015. This Protocol commits the social partners to apply to couriers not only the pay set out in the Logistica e Trasporti branch collective agreement,

2. The term introduced by Article 2 to define quasi-subordinate workers, i.e. those who exclusively supply personal labour in favour of an employer who organises the work with reference to the time and place at which it occurs.

as supplemented by the Protocol of 18 July 2018 signed by the same parties, but all the contractual provisions contained in this agreement.

The inclusion of digital platform workers as hetero-organised workers has left untouched the issue of information rights and participation rights. The text of the new branch collective agreement (CCNL Logistica e Trasporti 2021) contains only the commitment to include the challenges of technological and digital innovation and structural changes in future negotiations.

3.2 The UGL/Assodelivery supplementary sector agreement

Assodelivery (an employer association including Deliveroo, FoodToGo, Glovo, SocialFood, Uber Eats and Just Eat as affiliates) was not one of the signatories of the Protocol implementing Art. 47ff. Legislative Decree 81/2015 (see Section 3.1). As a result, a large proportion of couriers (and therefore the large majority of those involved in platform-based food delivery) were not covered by it. The gap was filled by a collective agreement signed in September 2020 between Assodelivery and the Couriers' Union of Unione Generale del Lavoro (UGL), the first of its kind to regulate the employment relationship of platform-based food delivery couriers. This agreement, which made use of the regulatory provisions that allow collective bargaining to derogate from the law in the presence of the specific needs of the sector (Art. 2 of Legislative Decree 81/15, as amended by Art. 47ff. of Law no. 128 of 2 November 2019), defines couriers as self-employed workers while extending to them certain essential protections specific to employees. Again, however, nothing was said in the agreement about the right of trade unions to be informed of the algorithmic management of work, nor is the newly established joint committee involved in this issue.

The validity of this agreement has, however, been called into question by several rulings[3] that have declared it invalid due to UGL's lack of representativeness (Martelloni 2020).

3.3 The Just Eat/Takeaway agreement

In November 2020, Just Eat left Assodelivery and, in March 2021, signed a company agreement with CGIL, CSIL and UIL. Just Eat's goal was to experiment with its own work organisation model which defined the service as paid employment but, unlike in other countries (such as, for example, Spain), the terms of the collective agreement state that trade unions are not involved in discussions on algorithmic management and only individual rights are protected.

3. In its ruling of 30 June 2021 the Bologna Tribunal held that the collective agreement signed by Assodelivery and UGL Couriers Union to be unlawful since it was signed by a union which was not representative at branch level, as required by articles 2 and 47 of Legislative Decree no. 81/2015. The ruling was upheld in Bologna Court, decision no. 1332/21 of 12 January 2021.

The Logistica e Trasporti branch collective agreement, with appropriate adaptations, once again provides the legal basis for the employment relationship of couriers (Barbieri 2021; Forlivesi 2021).

4. Case studies: AI-based technologies in the Wind and TIM agreements in the telecommunications sector

Between 2020 and 2021, two telecommunications companies (Wind and TIM) deployed software known as Afiniti Advanced Routing which pairs customers with call centre agents using artificial intelligence. The implementation of this technology was preceded by the signing of collective agreements with the CGIL, CISL, UIL and UGL. The interesting part of the texts of the agreements (both have the same content) concerns the description of how the Afiniti system works. The data collected by the software, both through matching calling customers and telephone operators as well as those generated by agents' activities, are anonymised: each agent is assigned a code which is different from the usual code and of which only the system is aware. The system acquires the data independently through a predefined route that cannot be modified and, therefore, no reports can be generated that correlate the work done to the performance of individual workers since the software is designed to process data for commercial purposes only.

The key issue for the unions, however, was the fear that the system could indeed covertly monitor agents' work; the agreement therefore intervenes on this aspect, citing the provisions contained in Article 4 of Law no. 300/70 (Statuto dei lavoratori; Workers' Statute) as a limit to the legitimacy of the operation of the software and as the legal basis of the agreement itself. Consequently, Afiniti Advanced Routing software may only be used for organisational and production needs, and for work safety and the protection of company assets; it may not be used to monitor the workplace secretly and neither may its use entail any negative consequences for the management of labour relations. This prohibition, demonstrating the strong interest that trade unions have in the protection of individual rights, is reinforced by repeated references in the collective agreements to the provisions of the Privacy Code (Legislative Decree no. 196/2003, transposing EU Regulation on data protection 2016/679) which prohibit covert monitoring by technological means.

As far as collective rights are concerned, the desire to negotiate the management of the software with trade unions can only be clearly understood if all the agreement clauses dealing with this subject are read in conjunction with each other. At first reading, trade union participation seems to be limited only to annual bargaining rounds aimed at monitoring the effects of the introduction of the system. In reality, as is clear from the subsequent contractual provisions, trade unions also have the right to propose improvements, which the companies undertake to assess, as well as the duty, in the event that the unions identify critical issues, to discuss jointly how to overcome them. Finally, unions have the right to terminate the agreement in the event that the critical issues raised prove to be unresolvable, not only at company level, but also following the joint assessments that are to take place subsequently (at territorial and branch levels).

5. Conclusions

The introduction of digital systems, especially software with content generation, prediction, recommendation and decision-making capabilities that influence the contexts with which those systems interact, would suggest there is a need to rethink decision-making models, extending them to forms of governance that include civil society (Guaglianone 2020) and the social partners. However, the situation at present, even at European level, sees a tension between the regulatory models proposed by lawmakers and the expectations expressed by the social partners. The contrast between the social partners' aspirations for participation, contained in the Framework Agreement on Digitalisation (Rota 2020), and the text of the AI Act (COM (2021) 206 final) should be read in these terms. Whereas the latter classifies as high-risk those artificial intelligence systems that generate outputs such as content, predictions, recommendations and decisions related to labour relations, it does not envisage any role for trade unions (Ponce Del Castillo 2021).

As far as the situation in Italy is concerned, at least with regard to the social partners' right to codetermine the changes brought about by new technologies, this split does not concern the tension between the regulatory models proposed by lawmakers (e.g. legal regulations) and trade union will, but is instead created by the same model chosen and proposed by collective organisations (Patto per la fabbrica). We are therefore faced with a gap between participatory techniques that are imagined and actual bargaining practice. Only one of the collective bargaining agreements examined (see Section 2) includes a duty to consult on AI systems, even if the subject is rather generically indicated with the expression 'technological innovation plans' (in the metalworking and engineering branch collective agreement); while in the other collective bargaining agreements participation takes the form of the establishment of joint observatories. This form of participation is extremely bland, especially given the nature of the issues which would require, at the very least, information procedures, if not consultation (Ponce del Castillo 2021).

One exception is bargaining related, and not confined to a specific sector,[4] which is that concerning the deployment of AI-based software (see Section 4), part of a particularly participatory element of industrial relations characterised either by the signing of protocols (CCNL in the electricity sector, 15 January 2021) or by greater awareness of digitalisation (in the telecommunications sector). In this case, the bargaining subject is the monitoring of the use of an algorithm which, by combining artificial intelligence and big data in real time, predicts the behaviour of people contacting a call centre in order to match them with like-minded call centre agents (Carchidi 2022).

Bargaining related to the work of couriers may be assessed differently. Driven by the need to find a non-judicial form of protection (a path followed by many couriers themselves)[5] (Bellavista 2022; Razzolini 2020), and under pressure as a result of the

4. In January 2022 ENEL (energy sector) signed a collective agreement with CGIL, CISL, UIL and UGL regulating the use of the Afiniti Advanced Routing system. The text is identical to the TIM and Wind agreements.

5. See, among others, Palermo Court decision no. 3570/20 of 24 November 2020 and Turin Court decision of 18 November 2021.

intense media attention, the government issued a law that, according to the traditional model of intervention, weaves together legal provisions and references to collective bargaining.

In all these cases, however, collective bargaining has not gone beyond the bargaining of standard protections; that is, simple protections that do not take into account the peculiarity of the work model entailed by labour platforms or the means by which that work is carried out. In other words, bargaining concerns the form and the conditions of work but does not seek to guide or control the digital mechanisms that drive it. In short, collective bargaining remains an active instrument in regulating work, but the main scope of bargaining content is related to protecting 'traditional' and basic individual rights. What is being negotiated is the effects that the organisation of work performed using digital platforms have had, but no demand is being made for control over these, i.e. for joint management of the decisions being made.

6. Prospects

An interesting intertwining of tradition and innovation is what could/should be produced by the legislation contained in Legislative Decree no. 104 of 27 June 2022 (implementing Directive 2019/1152 on transparent and predictable working conditions in the European Union). Article 1a requires the employer to inform:

> the employee of the use of automated decision-making or monitoring systems intended to provide indications relevant to the recruitment or assignment, management or termination of the employment relationship, task allocation as well as indications affecting the monitoring, evaluation, performance and fulfilment of the contractual obligations of employees.

Paragraph 2 of the same Article models the duty on the particular type of work and, in an analytical manner, indicates all the points that the information must both touch on and seek to make workers aware of, and then comprehend, in terms of the purposes, aims and limits of automated systems. The functioning of the system, the parameters used to train it, the repercussions (if any) on the systems themselves, the control measures that are taken and the correction processes carried out, or that can be carried out by human personnel, are all subjects that must be brought to the knowledge of the worker.

The interest of these provisions to industrial relations scholars is twofold. First, the text of the directive does not make any specific reference to information rights linked to work that uses automated monitoring or decision-making systems. The Italian legislator, therefore, has chosen to broaden the scope and subject matter of the requirement to inform. Second, ownership of the right to information is also assigned (under paragraph 6 of Art. 1a) to trade unions. More specifically, in accordance with branch practice (see recital no. 49), it is the company-level representatives or, if these are not present, the territorial ones (of those trade unions that are comparatively more representative at branch level) that own the right. Furthermore, this right would seem to be reinforced by the possibility of requesting further information, if the information given is deemed

insufficient, as well as by the employer's duty to comply with this request within a period of 30 days (Iodice 2023).

The additions made by Legislative Decree no. 104/22 to the text of the directive – even though no application of it has yet come to light – certainly constitute an extension of information rights. They fit, however, into the model of weak participation typical of Italian industrial relations since they lack any reference not only to the duty to negotiate (which is never present in the Italian legal system) but also to consult, which could have been indicated as a precondition to decisions being made about the organisational measures to be introduced. What has already been stated regarding the split between the abstract tension towards a more intense participation model and the weight of tradition therefore continues to be a hindrance also in this specific case (Donini and Ingrao 2022).

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