POLICY PAPER

DIGITALIZATION OF INDUSTRIAL LABOUR RELATIONS

AGE-OLD VALUES IN A NEW DIGITAL WORLD

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INTRODUCTION

Since the elaboration of the DIGILARE project's research proposal in 2022, technological advances have been occurring at a dizzying pace. According to European Commission estimates[1], 5% of people employed in the European Union work in the information and communication technology sector. The number of people teleworking via computer, which increased dramatically during the pandemic, has remained high, and by the end of 2024, 13.5% of people employed in the Eurozone were teleworking, reaching peaks of 38% in the Netherlands, according to Eurostat[2].

But digitalisation goes far beyond occupation in the tech-sector or teleworking. Changes in the means and modes of production ultimately place the European Union in a scenario of paradigm shift where labour rights may be significantly altered. This change may lead to job cuts, as predicted by some studies on the impact of artificial intelligence, or exclusion from employment based on gender, age or social status, depending on differences in access to these technologies. However, other changes may benefit workers, for example through productivity improvements that result in shorter working hours. Digitalisation is a multifaceted process.

The starting point for this document is the conviction that social dialogue, and with it the rights to information and consultation, are essential tools for the European Union and its Member States to address the world of work of the future in the context of digitalisation. For decades, the European Union has advocated dialogue within companies as a tool for anticipating change. Rarely has there been a change as significant as the one Europe is now facing, and social dialogue must be a central tool in this process.

On 10 September 2025, the consultation process launched by the European Commission on the possible preparation of a new Action Plan for the European Pillar of Social Rights came to an end. This document is, to a certain extent, the DIGILARE project's contribution to that debate.

[1] https://ec.europa.eu/eurostat/web/interactive-publications/digitalisation-2025

[2] For a general perspective on the increase of the use of ICT tools by companies, https://ec.europa.eu/eurostat/web/interactive-publications/digitalisation-2025#businesses-online

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We believe that a well-designed information and consultation system in the digital world is not a luxury, but a decisive competitive factor. If the challenges are addressed from the right perspective, individual and collective rights will be guaranteed, productivity will increase, and innovation will be enhanced.

SOCIAL DIALOGUE AS AN ESSENTIAL ELEMENT FOR INNOVATION

Collaboration, and not necessarily conflict, must be the foundation on which a new Action Plan or any initiative in the debate on the future of industrial relations is built. Naturally, there must be strong institutional support, both from the European Union and from Member States, to back up actions within companies. The use of EU funding or the consideration of tax advantages can be very useful tools.

The model of collaboration that we advocate for must begin with European social dialogue, in line with the provisions of the Action Plan itself. In accordance with Article 154 TFEU, before submitting proposals in the field of social policy, the Commission shall consult the social partners on the possible direction of EU action, before moving on to a second phase in which the consultation focuses on the content of the action.

An examination of the proposals that have led to effective legislation in recent years shows that the consultations promoted by the European Commission go beyond the provisions of Article 154 TFEU. In the case of rules whose legal basis lies outside Title X of the TFEU, and which therefore cannot be considered “social policy” in the strict sense, current practice is to consult the parties concerned. In addition, a general public consultation phase takes place. The European Social Dialogue Pact of 5 March 2025 (in the following: ‘the Pact’) reflects this evolution in its text.

The most prominent example thereof is Directive (EU) 2018/957, which amends Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. This is a Directive based on Articles 53 and 62 TFEU, the freedoms of establishment and provision of services. There can therefore be no reference to Article 154 TFEU. However, the section of the Commission’s proposal that led to this Directive devoted to consultation with interested parties sets out in detail, unlike other proposals, the opinions of all social, cross-sectoral and sectoral stakeholders on the proposed amendment. The mechanism has crossed the technical boundaries of social policy to reach areas that are materially so, even though they are treated differently in European Union law.

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In view of this precedent, we consider that the most appropriate course of action when implementing any of the proposals included in this document is to consult with social partners on the appropriateness and, to a greater extent, on the measures that may be developed, in accordance with the philosophy of the Pact. The knowledge we have gained in the DIGILARE project from exchanges with stakeholders allows us to affirm that they are the ones who can diagnose, in many respects, what the needs are. On the 40th anniversary of the start of European social dialogue in Val Duchesse, we believe that legislation should actually take into account this valuable opinion, without prejudice to the fact that it should not be used as a blocking tool.

As the best practices we came across during the DIGILARE project show, well-designed digital work can be a strategic value shared between companies and workers. What management and labour should strive for together is quality digital work. In our view, this is digital work where collective workers' needs are catered for by functioning information and consultation mechanisms. At the same time, such quality digital work, and therefore also well-functioning information and consultation, is a factor that contributes to competitiveness –as knowledge co-created with stakeholders during the DIGILARE-project shows. Thus, quality digital work is not merely a social demand.

WHO

The first coordinate of the DIGILARE project aims to identify the subjective scope of information and consultation rights and to consider possible extensions of their field of effectiveness.

Digitalisation brings along a production model that significantly relies on production decentralisation and relocation. Companies reduce their workforces and resort to civil or commercial contracting formulas that were thought to be a thing of the past. The platform economy was one of the breeding grounds for this trend, which is now multiplying and gaining momentum, creating strong ties of precariousness and economic dependence in many cases. The negative effects on worker representation and information and consultation rights have already been highlighted on numerous occasions.

When considering possible remedies for this situation, in the debates that have taken place in the DIGILARE project, different options of how to protect

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economically dependent self-employed were discussed. These differences have both national and ideological origins: the position of self-employed workers and other non-standard forms of employment in relation to labour law, the role and interest of trade unions in defending them and, of course, technical issues relating to the implementation of European Union law.

The disagreement reflects a lively debate: concern for the protection of non-standard workers exists at present and can be found in numerous national and European documents. Here, we will not address the nature of these relationships, but rather the extent of the guarantee of information and consultation rights for these individuals, leaving aside the discussion about their contractual status.

The starting point at EU-level is Article 27 of the Charter of Fundamental Rights of the European Union, which recognises the right of workers or their representatives to information and consultation but does not define “worker”. For years, the EU law concept of worker in Article 45 TFEU has been projected onto this gap. However, its automatic transposition is not entirely satisfactory. There are groups that would fall under this concept but should not be required to inform and consult themselves, such as managers or members of boards of directors. Others, however, such as economically dependent self-employed workers, for example, would be excluded even though they might share some of the risks that justify the rights to information and consultation. Hence the proposal for a specific standard interpretation: to define the protected subject according to the purpose of Article 27 (collective participation and democratic control of corporate power), which opens the door to covering persons with a status other than that of worker, who are not salaried but are dependent.

An analysis of numerous directives within the framework of the DIGILARE project shows that information and consultation rights are often listed as complementary measures serving specific purposes (health and safety, restructuring, equality). Therefore, any potential extension of the personal scope must be compatible with each objective pursued with the respective directive. The regimes vary, but from a teleological point of view, workers and economically dependent self-employed often share risks of information asymmetry and bargaining power in the face of business decisions that affect them equally. This teleological approach is not new; it is, for example, also reflected in the Commission's Guidelines on Collective Agreements for the solo self-employed (2022/C 374/02).

EU law has opened significant prospects for development in this field. The contrast between Directive (EU) 2019/1152, which was itself a step forward in widening the

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personal scope from earlier Directives, and Directive (EU) 2024/2831 in this regard, is remarkable. When defining their subjective scope, the difference is clear. Directive (EU) 2019/1152 adopted a strict formula: "every worker in the Union who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice". Directive (EU) 2024/2831 extends the scope as regards certain rights. Apart from the above-mentioned strict formula for workers, there is a second definition for 'persons performing platform work': "an individual performing platform work, irrespective of the nature of the contractual relationship or the designation of that relationship by the parties involved". Those rules in the Directive which aim at protecting personal data through measures on algorithmic management (Chapter III) and which are based on Article 16 TFEU also apply to those 'persons performing platform work' without an employment contract.

The lesson to be learned from Directive (EU) 2024/2831 is crucial. Firstly, if there is political will, mixed labour standards can be adopted. The Directive itself, by defining the concept of "representatives of persons performing platform work", paves the way for measures such as those we are proposing. Secondly, there are legal bases outside Title X of the TFEU that can be used to adopt legislation with 'social' content.

Given this reality, it is possible to formulate a proposal for European Union legislative action that extends the subjective scope of information and consultation rights, and with it their protection by current workers' representatives, whether trade unions or elected bodies, according to Member States' national law and industrial relations practices. There are two possible bases for such intervention: Articles 114 TFEU and 115 TFEU.

The first involves the use of the ordinary legislative procedure, which is much simpler in political terms as it requires a qualified majority in the Council, contrary to Article 115 TFEU, requiring unanimity in the Council. The main obstacle to its use could be the clause in Article 114(2) TFEU, which prohibits its use for provisions "relating to the rights and interests of employed persons". Although the proposal in this policy paper is the extension of such rights to persons who actually do *not* have that status, doubts about the legitimacy of the action could arise.

The second potential legal basis is Article 115 TFEU, the general clause on the internal market, which is as old as the Treaty itself. It is true that in recent years, due to the existence of specific legal bases, it has been used much less frequently. However, it should not be forgotten that Directive 75/129/EEC, which first enshrined

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rights to information and consultation, was adopted on the basis of Article 100 of the EEC Treaty, the first version of current Article 115 TFEU.

Whatever basis is chosen, the legal form that this intervention should take is that of a directive, especially in the case of Article 115 TFEU, where the Treaty does not allow for any other alternative. The content of the directive should focus on a redefinition of the subjective scope. There are two ways to achieve this.

Firstly, the definition of worker could be amended in each piece of legislation containing information and consultation rights. Based on the study carried out in the DIGILARE project, detailed amendments could be proposed in each of the existing pieces of legislation[3].

Secondly, it might be considered sufficient to include an Article 2 bis in Directive 2002/14/EC, stipulating that, for the sole purposes of the information and consultation rights set out in the *acquis communautaire*, including the calculation of thresholds, the term 'worker' shall be understood as also including those persons covered by the new definition inserted therein. In our opinion, the criterion for drawing up this extension should be that of economic and functional dependence, in line with the criteria used by the European Commission in its Guidelines on collective agreements for the solo self-employed. In the *Elite Taxi* case, the Court of Justice referred to the idea of "decisive influence", and this could be the criterion for determining inclusion:

> Article 2 bis. Definition of worker for the purposes of information and consultation rights
>
> 1. For the sole purpose of exercising the rights of information and consultation provided for in the *acquis communautaire*, including the calculation of thresholds, 'worker' shall mean any natural person who, irrespective of the legal classification of their relationship under national law, provides services for another person, under their influence or certain control, relying primarily on his or her own personal labour, in return for remuneration, provided that there is a situation of economic and organisational dependence on the entity organising the activity.

[3] See in this respect our First Synthesis Report: https://www.digilare.eu/documentation/first-synthesis-report-digilare/

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2. The decisive criterion for assessing such dependence shall be the decisive influence over the essential conditions of the service provision exercised by the entity, in particular regarding:

a) The setting of prices or rates.

b) The allocation or distribution of tasks.

c) Performance monitoring through technological or direct means.

d) The effective possibility of sanctioning or excluding the provider from the system.

3. The provisions of this article shall not affect the definitions of worker established in other instruments of Union law, nor the powers of Member States to extend protection to other categories of persons.

WHERE

The second coordinate of the DIGILARE project has highlighted the absence of a conflict-of-law rule in EU law regulating the treatment of information and consultation rights at the transnational level. Whereas for Community-scale undertakings and Community-scale groups of undertakings, Directive 2009/38/EC establishes rules on information and consultation as regards transnational matters, there are no rules on which information and consultation procedures actually apply in those cases where work is performed in a 'transnational' way. Digital work, telework, work from home and other new forms of collaboration, such as in matrix organisations, might lead to situations where some workers are simply not covered by information and consultation rules and practices, because according to the respective jurisdictions, the necessary connection or link is not given. This is highly problematic, taking into account that Article 27 CFREU guarantees a fundamental right to information and consultation.

Discussions with stakeholders during the project revealed that, in practice, easy solutions are sought, sometimes by setting up companies or subsidiaries in all the countries involved or in which the workers actually work. While this often serves tax and social security related purposes, at the same time it allows for the application of the information and consultation rules of the country in which the company is established. This company frequently is also the contractual party to the

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employment relationship under the law of that country. This solution obviously cannot be generalised to all European labour practices.

Within the framework of the DIGILARE project, once again the variety of how information and consultation rights are vested at national level and which is the 'connection factor' for information and consultation rights to be established, was revealed. While some jurisdictions favour a more contractual nature, others follow different approaches, linking the application of information and consultation rights not to the existence of an employment contract, but to other connecting factors. This discrepancy in the national traditions and rules is decisive as regards determining a sound way to approach the proposed conflict rule: whether it should be through amendments to existing rules on applicable law or the creation of specific regulations.

On the form

The existing solutions under Directive 2009/38/EC are not applicable to all companies. Therefore, and this is one of the central proposals to emerge from our research, we consider that a set of conflict-of-law rules should be created to establish which legislation is applicable (and which jurisdiction is competent) in each case. We consider four possible alternatives.

A first possibility would be to amend each of the directives regulating information and consultation procedures to add a new article regulating the transnational aspects of these rights and their exercise. This amendment could run parallel to the one we have proposed to broaden their subjective scope. Articles 153.1.e TFEU and 153.2.b TFEU would be the legal basis for this, with this option being processed by the European Parliament and the Council through the ordinary procedure, as was recently the case with the proposed amendment to the European Works Councils Directive.

Another, perhaps more visible possibility would be to amend either of the two Rome Regulations (although we recognise that neither is 100% consistent with the understanding of information and consultation rights in the various national systems) and establish the respective rules for the applicable law. Regarding jurisdiction, the option of incorporating the matter into Regulation (EU) No 1215/2012 is not controversial, and it seems necessary to ensure access to justice to make these rights truly effective.

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A third option, which is more pragmatic and to a lesser extent dependent on doctrinal considerations, but at the same time more daring, involves the adoption of a specific regulation for information and consultation rights in transnational scenarios, without the need to rule on their nature, opting instead for a comprehensive EU regulation. This regulation could be limited to the aspect of setting up which law would be the applicable one, or could also include the matter of judicial competence, if the aim is to create a single legislative text that brings together all European legislation on the issue.

The indisputable legal basis for the processing of this Regulation is Article 81 TFEU, which empowers the European Parliament and the Council, through the ordinary legislative procedure, to adopt measures on "judicial cooperation in civil matters having cross-border implications", that include rules on conflicts of law and jurisdiction.

Previous versions of Article 81 TFEU, within the Treaty establishing the European Community, served as the basis for the adoption of Regulations (EC) No 593/2008 on the law applicable to contractual obligations and No 864/2007 on the law applicable to non-contractual obligations. With the current wording, the article served as the legal basis for the adoption of Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. There is therefore no legal debate as to which provision should serve as the basis for the adoption of this piece of legislation.

A final possibility would be to give the social partners a say through an agreement, within the framework of Articles 154 and 155 TFEU, which would then govern the matter autonomously, but possibly also heteronomously. Given that we consider that this matter should be regulated in a uniform and binding manner throughout the European Union, the role of the social partners would be better suited to drawing up proposals on the connecting factors to be used, contributing their knowledge of the practical reality.

On the substance

The criteria for determining jurisdiction and applicable law have been the subject of study and discussion throughout much of the DIGILARE project. Doctrinal analysis of the connecting factors for determining the law applicable to information and

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consultation rights in cross-border contexts reveals benefits and problems that must be carefully balanced.

Although the research has revealed that in many jurisdictions, 'territoriality' is an important criterion, as such it does not serve as 'connecting factor', since it does not relate to the question of which law is the applicable one. Rather, it is simply a rule stating that a specific country's rules on information and consultation only apply if, e.g., the establishment is located within the territory of the Member State, or if, e.g., the work is actually carried out in the specific Member State.

The connecting factor 'work within the establishment' can offer clarity and continuity with legal tradition in some Member States, but can prove insufficient in digital environments where there is no physical workplace, in particular in those cases where under national law, a physical workplace is required. This creates risks of regulatory gaps and might encourage forum shopping strategies.

The connection with the law of the individual contract, in turn, provides formal simplicity, but fragments the unity of the collective procedure and weakens the effectiveness of information and consultation rights, as each worker, sitting and working in a different Member State, having an employment relationship with the subsidiary established mainly for tax and social security purposes in that Member States, could be subject to a different regime.

Trade union membership as a connecting factor reinforces collective autonomy and bargaining, but depends on trade union density and may leave unorganised groups without coverage. Also, it is a criterion which does not fit those national traditions and rules based on a dual channel system of representation, where the exercise of information and consultation rights actually does not depend on trade union membership.

The criterion of the usual place of work, for its part, is functional in areas such as health and safety, where the risk is physically located, but does not guarantee consistency in organisational decisions affecting distributed teams.

The notion of collective interests and the link to the place where decisions are made provide solutions that are more adapted to the digital reality, as they align representation with the centre of power and preserve procedural unity. However, they require a precise definition of what constitutes the 'decision-making centre' and how to prove it, in order to avoid uncertainty and litigation.

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The idea of a virtual "collective workplace" is innovative and allows teleworkers to be included in representation thresholds, although it poses challenges in terms of evidence and objective delimitation.

Finally, the registered office as a residual criterion offers a clear anchor, but it must be accompanied by anti-circumvention safeguards to prevent manipulation based on letterbox companies or similar fraudulent practices.

Therefore, there is no perfect criterion that meets all needs, which makes it necessary to build a cascade system similar to the one that exists for contractual obligations.

Preamble/Recitals

- Bearing in mind that generally speaking, application of two or more different national regimes on employee representation is not excluded by any rule, but on the contrary is, in cases of non cross-border work, e.g. accepted in cases of temporary agency work
- But also bearing in mind that this might lead to complex situations
- These provisions aim at facilitating cross-border telework.
- Where employees perform habitually perform their work in a cross border telework context, it is difficult to detect which country's rules shall apply
- These rules are intended to ensure that employees are involved in the affairs and in decisions which affect them by the central management
- Based on case law in the Member States, it can be assumed that in a cross border telework context it is usually central management which decides on matters relevant to employee representation.

Article 1: Scope

1. This Regulation shall apply, in situations involving a conflict of laws, to employee representation within establishments and undertakings.
2. This Regulation shall not apply in situations where employees work in only one Member State, namely the Member State where the company's central management is located.
3. This Regulation shall not apply in situations where central management is situated in one Member State and employees are situated in two or more Member States, but do not work together via digital tools or where the

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amount of working time via digital tools is less than 25 %[4]/less than 50 %[5] of the total working time.

4. Where the central management is not situated in a Member State, but where this Regulation refers to the central management, it shall be instead the central management's representative agent in a Member State, to be designated if necessary, to whom reference is being made. In the absence of such a representative, it shall be the management of the establishment or group undertaking employing the greatest number of employees in any one Member State to which reference is being made[6].

Article 2: Definitions

For the purpose of this Regulation:

(a) Establishment means a unit of business defined in accordance with national law and practice, and located within the territory of a Member State, where an economic activity is carried out on an ongoing basis with human and material resources, with material resources also including digital-ones, unless stated otherwise in this Regulation

(b) Undertaking means a public or private undertaking carrying out an economic activity, whether or not operating for gain, which is located within the territory of the Member States, unless stated otherwise in this Regulation

(c) Employee representation means information and consultation as defined in Article 2 (f) and (g) Directive 2002/14 as well as any further employee participation in accordance with national law and practice

(d) Employee representative body means the bodies to be established in accordance with Directive 2002/14 as well as any further employee participation in accordance with national law and practice

(e) Cross-border telework[7] is an activity which can be pursued from any location and could be performed at the employer's premises or place of business and:

i) is carried out in a Member State or Member States other than the one in which the employer's premises or the place of business are situated and

[4] Cf. Article 13(1)a Reg 883/2004 together with Article 14(4) Reg 987/2009.
[5] Cf. Article 3 Framework Agreement on telework (regarding Reg 883/2004).
[6] Cf. Article 4(2) Directive 2009/38.
[7] Cf. the Framework Agreement on telework (regarding Reg. 883/2004).

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ii) is based on information technology to remain connected to the employer's or
business's working environment as well as stakeholders/clients in order to fulfil the employee's tasks assigned by the employer

Article 3: General rule

In situations where the central management is situated in one Member State[8] but more than x % of employees perform cross-border telework in two or more Member States[9] (at least 25 % of the afore-mentioned x % in one MS) to an extent of at least x %[10] of their total weekly working time, as regards employee representation all employees of the establishment/undertaking are covered by the rules of the law of the Member State where central management is situated, irrespective of which country's laws govern their individual employment contracts, provided that the employees in each single Member State reach the respective thresholds for establishing an employee representative body.

Article 4: Alternative determination of the law governing employee representation

1. In situations where employees in each single Member State where cross-border telework is carried out from fulfil the thresholds according to national law and practice for establishing employee representative bodies, and where those employees spend at least 50 % of their working time in this Member State, the employees may decide separately according to their national laws and practices to establish a joint employee representative body by simple majority vote.
2. The sole purpose of this joint employee representative body is to take a decision according to the subsequent paragraph 4.
3. As regards voting rights within this joint employee representative body, the rule 'one Member State, one vote' applies.
4. This joint employee representative body shall decide by simple majority vote on the employee representation rules of which Member State shall be applicable. This can be either the law of the central management or the law

[8] E.g. Ireland.
[9] E.g. AT 25 % and GER 55%.
[10] Suggestion: 25% or 50%.

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of any Member State where the thresholds for establishing employee representative bodies are fulfilled.

HOW

Work on the third coordinate of the DIGILARE project has revealed a heterogeneous European landscape in terms of the digitisation of information and consultation procedures[11]. This was to be expected, as no other area so intensely reflects the configuration of a system of industrial relations. The designation of the entity exercising information and consultation rights, whether through a single channel or a dual channel, is so decisively characteristic of national identity that supranational legislative action is extremely difficult and could even be considered prohibited by Article 153.5 TFEU. Hence, our proposals are limited to representation within the company, without addressing trade union action outside it.

One of the main challenges identified is the disparity between countries, for example, in terms of the regulation of digital elections, virtual media and meetings, and online voting. While some legal systems have made progress in specific areas, others remain in grey areas or even impose restrictions.

For this reason, the third coordinate of our project is the most difficult for European legislative action to harmonise the digital tools available to workers' representatives in companies and overcome the regulatory fragmentation on the digitisation of representative bodies. The development of recommendations or good practice guidelines, on the other hand, can be very useful in addressing issues through soft law that should not be legislated at European level but within the framework of each national legislation, such as digital elections. A combination of legislative and non-legislative action seems most appropriate.

As far as legislative action is concerned, the formula we consider most advisable would be to reform Directive 2002/14/EC, respecting its philosophy of minimal intervention in labour law, but guaranteeing a floor of digital rights that allows Member States to transpose it. Articles 153.1.e TFEU and 153.2.b TFEU would be the legal bases for this, with this option being processed by the European Parliament and the Council through the ordinary procedure, as was recently the case with the

[11] See in this respect our Second Synthesis Report: https://www.digilare.eu/documentation/second-synthesis-report-digilare/

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proposed amendment to the European Works Councils Directive (and, at the time, for the 2009 Directive, on the former Article 137.2 TEC).

There are several areas that could be harmonised, in parallel with existing obligations under EU law. An appropriate place to introduce some of these would be the creation of a second paragraph in Article 4.1 of Directive 2002/14/EC, concerning the practical arrangements for information and consultation.

The results of the DIGILARE project show that, even where legislation allows for digitisation, effectiveness depends on the availability of technical means and access to data. The lack of equipment, connectivity or secure platforms limits the actual capacity of representatives.

We therefore propose establishing clear obligations for employers to provide adequate digital tools (hardware, software, intranet access) and training in their use in companies above a certain threshold of employees. Naturally, this obligation should be qualified by the possibilities of the company itself. Wording similar to that of Article 13.3 of Directive (EU) 2024/2831 would pave the way in a manner that has already been politically agreed:

Proposal for an amended Article 4.1 of Directive 2002/14/EC

> '2. (...). Where a company has more than 250 employees in the Member State concerned, employee representatives may obtain the necessary digital tools and relevant training to the extent that they need them to carry out their information and consultation tasks. The costs shall be borne by the company, provided that they are proportionate. Member States may determine the frequency of requests for equipment, while ensuring the effectiveness of assistance.'

Similarly, access to workers' contact details could be regulated under data protection parameters, preventing privacy from becoming an obstacle to trade union action. This right could be included in a new Article 6a of Directive 2002/14/EC, thus extending the limits that already exist in EU law to this new area:

> Article 6a. Access to workers' contact details
>
> In order to ensure the effective exercise of the rights of information and consultation recognised in the *acquis communautaire*, workers' representatives shall have the right to access the professional contact details of workers, e.g. professional email-addresses, to the extent strictly necessary for the performance of their representative functions.

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> The processing of such data shall be carried out in accordance with the principles laid down in Regulation (EU) 2016/679 and in national data protection legislation, ensuring that it is carried out for a purpose limited to representation tasks, respecting data minimisation and with all due guarantees of security and confidentiality.
>
> Member States shall ensure that the protection of privacy is not used as an obstacle to the exercise of information and consultation rights.

In turn, a second paragraph could be added to Article 7 of Directive 2002/14/EC, which would serve to include new prerogatives for employee representatives. Along these lines, national reforms could be promoted to remove formal obstacles (e.g. the requirement for physical presence or handwritten signatures) and expressly recognise the functional equivalence of digital means in the exercise of these rights. There is no great difference when comparing the herein made suggestion to the step that has been taken in accepting the virtual format in the reform of the European Works Councils Directive:

> 2. Member States shall ensure that employee representatives can exercise the prerogatives recognised in this Directive through the use of digital means, ensuring their functional equivalence to face-to-face means, unless objective and proportionate reasons require otherwise.
>
> To this end, Member States shall take the necessary measures to, inter alia:
>
> a) Remove formal obstacles that make the exercise of these rights subject to physical requirements, allowing the use of electronic signatures and other secure authentication mechanisms.
>
> b) Recognise the legal validity of virtual meetings, deliberations and votes conducted by electronic means, provided that the identity of the participants, the integrity of communications and the confidentiality of information are guaranteed.
>
> c) Promote the accessibility of digital tools, avoiding discrimination based on a lack of digital resources or skills.
>
> National provisions must ensure that digitisation does not undermine the rights to information and consultation or the protection of personal data, in accordance with Regulation (EU) 2016/679.

To offset this expenditure, financing mechanisms should be created to help companies meet this investment. Whether through tax advantages, such as making

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this type of expenditure tax-deductible in corporate income tax returns, or through direct financial contributions from the State or European Funds, it is necessary that companies do not bear the burden of this digital transition alone.

Outside the realm of legislation, in the field of good practice or soft law, we propose the drafting of documents setting out initiatives in this area. Given that these are actions that directly affect the practice of social dialogue, the views of the social partners should be heard in each Member State.

With regard to the use of digital tools for the election of employee representatives (not for use by trade unions, which are governed by their own autonomous rules), it may be proposed to Member States that they guarantee the possibility, not the imposition, of digital elections and meetings, while respecting the principles of transparency, secrecy and effective participation. To this end, it seems necessary to develop technical and legal standards to ensure the validity of digital processes, avoiding disputes over electoral legitimacy. The existence in some Member States of mechanisms allowing this type of election for workers' representatives in public administrations can provide a clear model for centralised intervention.

European works councils

One of the unknowns with which the DIGILARE project began, the reform of Directive 2009/38/EC, has now been resolved with the approval by the European Parliament and the Council and the imminent publication of the new legislative text. When the new Directive enters into force, Article 6.2.d will establish as mandatory content of the Agreement regulating information and consultation procedures "the format" of European Works Council meetings. This makes it clear that virtual meetings can be agreed upon.

It seems clear that it is not appropriate to propose any legislative changes, but rather to suggest the establishment of mechanisms for monitoring the measure using various parameters: cost, frequency of meetings, results obtained. Digitalisation is not an end in itself, but a tool. If the number of useful agreements does not increase, if consultation processes are not streamlined, the digital format is useless.

Looking ahead, European works councils can play an active role in shaping the digitalisation of European companies. To this end, we suggest that they incorporate into their activities the systematic collection and analysis of information on digital processes at the company's various national sites. Converting practical experience into structured knowledge can enable the anticipation of risks and opportunities, to

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the benefit of both the company and its employees. The creation of a database, similar to the one that exists for transnational collective agreements on the European Commission's website[12], could be extremely useful for co-creation and mutual learning.

In our opinion, the future of digitalisation in Europe will depend on cooperation between management and worker representation. European works councils, within their sphere of influence, have the opportunity to become catalysts for innovation and guardians of fair, sustainable and competitive digital work.

Going one step further, it is essential to promote transnational collective agreements that establish uniform standards on algorithmic transparency, data protection and non-discrimination, complementing European regulations and avoiding regulatory fragmentation in companies. They are the ideal instrument for including specific clauses on digital health and well-being, including the right to disconnect, limits on surveillance and periodic assessments of psychosocial risks. These measures would consolidate a model of participatory governance that guarantees socially sustainable digitalisation in transnational companies.

WHAT

The fourth coordinate of the DIGILARE project takes into account that digitalisation not only affects channels of representation, but also the content of business decisions. The deployment of surveillance tools, algorithms and artificial intelligence systems poses risks to fundamental rights and the quality of employment. Hence, our central proposal in this field is to strengthen the participatory dimension of digital governance, in a moment when the European Parliament is pledging for a new directive about algorithmic management at work [13].

Algorithms and Artificial Intelligence

The incorporation of artificial intelligence systems into the organisation of work poses significant risks to fundamental rights. In this context, we propose, first and foremost, the integration of collective rights to information and consultation in all

[12] https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/labour-law/database-transnational-company-agreements_en

[13] https://oeil.secure.europarl.europa.eu/oeil/en/procedure-file?reference=2025/2080(INL)#section6

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phases of the life cycle of AI systems, in accordance with Articles 26 and 27 of Regulation (EU) 2024/1689, ensuring their preventive nature against power and information asymmetries, in a participatory design.

Firstly, there are already national and European precedents on specific information and consultation rights regarding AI and algorithms, which require the disclosure of the parameters, logic and objectives of automated systems. The Artificial Intelligence Regulation, in Article 26.7, establishes in general terms the information to be provided to "employees' representatives and affected employees that they will be exposed to the use of the high-risk AI system". For its part, the Platform Work Directive devotes Article 13 exclusively to information and consultation rights.

On this basis, we propose extending Article 4.2.d of Directive 2002/14/EC to include content parallel to that established in Directive (EU) 2024/2381, thereby expressly guaranteeing that workers' representatives (which, in line with our proposal as regards 'WHO', can also represent other economically dependent self-employed, if provided so under national law) are informed about business decisions in this area. There is nothing new in relation to the content already approved for digital platforms, so this is simply an extension of content that has already been politically endorsed. Articles 153.1.e TFEU and 153.2.b TFEU as well as Article 16 TFEU would be the legal basis for this, with this option being processed by the European Parliament and the Council through the ordinary procedure:

> 'd. information and consultation on decisions that may lead to the introduction of automated decision-making systems or to substantial changes in the use of such systems. Workers' representatives may be assisted by an expert of their choice, to the extent necessary to examine the matter subject to information and consultation and to formulate an opinion. Where an undertaking has more than 250 employees in the Member State concerned, the costs of the expert shall be borne by the undertaking, provided that they are proportionate. Member States may determine the frequency of requests for experts, while ensuring the effectiveness of the assistance.'

Beyond these duties, the only option is to make suggestions, again through codes of good practice or similar documents. An essential proposal in this field is the incorporation of algorithmic governance clauses in collective bargaining, including monitoring committees, audits and transparency protocols. It is better to build a labour system of algorithms with guarantees than to face costly proceedings for breaches of data protection regulations.

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It is also recommended that joint committees specialising in AI be set up, with powers to monitor data quality, detect bias and propose corrective measures, in coordination with active employment policies aimed at professional retraining.

Digital disconnection

On 6 October 2025, the second phase of the European Commission's consultation on the right to disconnect and teleworking was closed. It contemplates the possibility of drafting a directive, which would be accompanied by non-binding acts, such as a recommendation. This was the conclusion reached in the development of the DIGILARE project, which aims to consolidate the right to digital disconnection as a European standard.

The most appropriate legal basis for the adoption of a directive is found in Articles 153.1.a TFEU (health and safety, due to the obvious connection with the regulation of working time), 153.1.b TFEU (working conditions) and 153.2.b TFEU, with this initiative being processed by the European Parliament and the Council through the ordinary procedure. Alternatively, non-binding instruments (Recommendation, Communication or Guidance) could facilitate gradual implementation, but they lack binding force and could lead to regulatory fragmentation. From the perspective of legal effectiveness and consistency with the *acquis communautaire*, the legislative option is preferable, without prejudice to the possibility of complementing it with soft law to guide practical application.

In terms of content, the evolution of the right to digital disconnection in Europe reveals a marked diversity in regulatory, institutional and cultural approaches. Some countries have developed explicit legal frameworks, with mandatory annual negotiations, legal sanctions or sectoral agreements that guarantee trade union participation and mandatory consultation. In these contexts, it is configured as a worker's right, backed by solid structures of collective bargaining and consultation, which allows for its effective implementation. Other countries have interpretative models or implicit protections, where disconnection depends on organisational culture or fragmented business practices. In some cases, the lack of specific legislation and weak social dialogue create risks of informality and discretion, leaving the protection of rest time in the hands of the employer. A third group is characterised by limited regulatory and negotiating activity, with an absence of specific laws, low trade union participation and informal practices. Here, the right to disconnect is perceived more as a recommendation than a legal obligation, which limits its effectiveness and institutionalisation.

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The European Union's intervention must therefore be highly creative, as it introduces a new concept in many Member States. The right to disconnect can be configured as a subjective right of all workers, linked to the fundamental rights to health (Art. 31.1 Charter), privacy (Art. 7 Charter) and fair and equitable working conditions set out in the European Pillar of Social Rights. Its content should not be limited to refraining from responding to communications outside working hours, but should include effective guarantees against undue extension of working hours, permanent availability and digital intrusion. Taking into account the more recent approach of the Union legislator in employment matters, i.e. focussing on enforcement of already existing rules, it comes of no surprise that also within the DIGILARE project, this enforcement approach as regards the right to disconnect was explored, specifically in the context of the Woking Time Directive. This conceptualisation requires a regulatory framework that includes employer obligations regarding the organisation of working time, algorithmic transparency and preventive measures in relation to psychosocial risks.

The legislation should expressly recognise the competence of the social partners to develop and adapt its content through collective bargaining. European intervention must establish a minimum framework that enables collective agreements to specify aspects such as disconnection times, control mechanisms (such as server blocks or automatic alerts), justified exceptions and possible compensation, and training and awareness-raising measures.

Digital surveillance tools

The use of digital surveillance tools at work is not entirely new. What is new, though, is the evolution of pre-existing techniques, made more accessible and powerful by digitisation, since it facilitates the collection and analysis of large amounts of data. This phenomenon raises the need to strengthen information and consultation rights of workers' representatives to ensure human oversight in these scenarios.

The European regulatory landscape studied by the DIGILARE project can be categorized in four main approaches. Some legal systems lack specific regulation and refer to general information and consultation frameworks or data protection regulations, sometimes with limited enforcement mechanisms. Others adopt co-management models, which require agreement with representatives to implement control technologies, under penalty of nullity. A third group focuses on transparency, proportionality and compliance with the General Data Protection Regulation, imposing information duties and, in certain cases, express prohibitions

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on uses aimed at direct performance monitoring. Finally, there are legal systems which, while recognising generic information and consultation obligations, lack specific instruments or effective participation.

On this fragmented basis, European regulatory intervention should guarantee, at a minimum, prior and effective consultation for all monitoring technologies, especially when behaviour or dignity are affected or there are significant algorithmic risks. This obligation could be incorporated, in line with other proposals we have made, into Article 4.2 of Directive 2002/14/EC:

> e. information and consultation on decisions that may lead to the introduction of digital surveillance and monitoring systems.

Going beyond this recommendation for minimum intervention, it would be advisable to incorporate substantive transparency obligations, limits on invasive practices such as continuous geolocation or heart rate monitoring and guarantees of human supervision with the right to explanation and rectification, recognised by the Court of Justice as essential in order to exercise the fundamental right of access to justice. Given the regulatory differences between States, this content might be more appropriately included in a soft law instrument.

Environment

The DIGILARE project proposal also addressed another of today's major transitions, the environmental one, which is not receiving as much attention in social dialogue. It therefore seems appropriate to incorporate environmental sustainability into the agenda of labour and management.

The results of the DIGILARE project have highlighted the – albeit at rather slow pace – growing relevance of environmental measures in collective bargaining and in information and consultation rights, at least in some Member States. The green transition and digitalisation are interconnected processes that require participatory governance.

To reinforce this commitment, it might be appropriate to create an Article 4.2.f in Directive 2002/14/EC recognising the right of representative bodies to be informed and consulted on the environmental impact of business decisions.

Beyond this amendment, one possible way forward is to encourage the inclusion of 'green clauses' in collective agreements, addressing issues such as sustainable mobility, energy efficiency and waste management. For this idea to be effective,

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representatives need to be trained in environmental skills, integrating sustainability into trade union and corporate culture.

To offset this expense, financing mechanisms should be created to help companies meet this investment, as we mentioned beforehand. Whether through tax advantages, such as making these types of expenses tax-deductible in corporate income tax returns, or through direct financial contributions from the State or European Funds, it is necessary that companies do not bear the burden of this environmental transition alone.

THE IMPORTANCE OF TRAINING

The DIGILARE project shows that information and consultation in times of digitalisation is not just a technical issue, but a structural challenge that affects democracy at work, the protection of rights and business competitiveness. The proposed lines of work point to a comprehensive approach that combines regulatory reforms, collective bargaining and transnational cooperation. The aim is not only to adapt labour institutions to the digital age, but also to ensure that this transition is carried out under the principles of transparency, fairness and sustainability.

A key element in this will be training and professional retraining. Digitalisation requires new technical skills, problem-solving abilities and emerging profiles such as data analysis specialists. Companies and trade unions must promote continuous training plans that prevent professional obsolescence and strengthen employability, ensuring that the technological transition does not result in labour exclusion.

The effectiveness of any of the above reforms depends on the technical and strategic preparedness of representatives, both of workers and employers. The DIGILARE project has shown that, in many cases, a lack of digital skills limits real participation.

For this reason, it seems necessary to design continuing training programmes in digital skills and data analysis for trade union representatives and works council members, on the one hand, but also for human resources managers, so that they can assess, for example, whether the algorithms used by the company are truly providing the most appropriate solution in terms of efficiency and productivity.

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The Digital Europe Programme can serve as a model for the creation of a European Digital Adaptation Fund. It should not only deal with basic digital literacy, which is of course essential. It should include advanced content, at European level and in each Member State, to facilitate the digital transition in the workplace, including algorithmic literacy to make information and consultation rights effective. The action of the social partners within the framework of this hypothetical programme would be decisive in designing specific training initiatives.

In this context, it would be advisable to set up European observatories on digitalisation and labour relations, with a mandate to systematically collect and compare data, identify good practices and monitor national case law, acting as reference points and expert advisers for institutions and social partners.

Likewise, joint research projects and training programmes could be promoted at European level, aimed at standardising interpretative criteria and strengthening the negotiating capacity of the social partners, ensuring the adequate transfer of knowledge and the inter- institutional coordination necessary for their effective implementation.

OTHER POLICY OPTIONS

The proposals in this document are minimal in nature. However, the work carried out by the DIGILARE project has opened the door to more ambitious or different types of actions, which would include more advanced content than that proposed here. We refer our readers to the theoretical results of the project, which will be published shortly, for consideration.

In any case, we conclude this document by pointing out what these alternative courses of action could be:

- A global, *omnibus* directive on algorithmic or digital governance in companies, which would include many of the proposals we have outlined as soft law measures in a binding form.

- A directive of enforcement of the Working Time Directive, to guarantee the right to disconnect from that perspective.

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