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SHIFT OF POWER IN THE DIGITAL WORK ENVIRONMENT – THE GERMAN CASE

Employees need new rights!

OVERVIEW

As part of the digital revolution, it becomes ever more clear that the balance of power in work environments is shifting at the expense of labour. There have been calls for years for new policies and regulations, but so far with very little success. Without them, the risks mount of an increasing loss of security and collective coherence, and disempowerment of human workers. In order to bring the power structure in the digital work environment back into balance, lawmakers need to enact appropriate and innovative measures without delay to strengthen the position of workers.

Regardless of their differing assessments of individual aspects of the digital shift in the work environment, the abundance of academic, journalistic, and political publications on the subject all come to the same conclusion – if we want to exploit the potential of digitisation and keep its negative consequences in check, we need policies to shape its structure. In reality, the intense discussions of the last few years about how to shape the digital working world have resulted in very few legislative initiatives. The question of whether, how, and when labour policy and legal reforms will actually be implemented has become increasingly urgent.¹ But what would happen if those policy measures are never enacted? If the digital revolution in the work environment is shaped only by issues of corporate efficiency and financial considerations?

That would have grave consequences. Without a policy framework, there is no chance of fully exploiting the opportunity for better and, above all, more self-determined working practices that arise from digital flexibility in the space-time structure of the work world and the expanded scope for autonomy it offers workers.² In addition – and this development has profound consequences across society – digitisation increasingly changes the power structure in the employment sphere. Even now, the influence of management is growing amid the digital upheaval. Without a policy and legislative framework, those who control the digital machinery would be able to further skew the already asymmetrical power balance

between capital and labour to their advantage. Without political regulations, the digital revolution fosters a loss of security and collective coherence, and a disempowerment of human labour. Those developments, both on their own and together, strengthen the dominance of capital, and weaken, individually and collectively, the power resources of the labour force.

DIGITAL LOSS OF SECURITY

The tendency towards less job security is not a something that has appeared just recently, and neither can it be attributed exclusively to the digital revolution. Nonetheless, it is undeniable that digital technology and its application have accelerated the loss of security in two ways in the service of streamlining business management practices. First of all, all prognoses predict an increase in ways to replace human labour with technology. We do not need to evoke an “end of all work” scenario to reach the conclusion that the digital revolution poses a danger to the jobs, or at least the skill set, of many workers. Even if not directly threatened with temporary unemployment, they will be confronted with unstable employment situations, the danger of their knowledge and skills becoming obsolete, and the necessity of complete professional re-orientation in a turbulent work environment. Without a political framework, the possibility alone of threatening workers with being (digitally) replaced strengthens the position of management. As a result, individual employees, unions, and works representatives, whose power derives largely from shortages of labour, could find their negotiating positions weakened.

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An additional source of insecurity is the spread of platform based business models. Platforms enable a hyper-flexible concept of labour exploitation. For many workers they are generally associated with a bare minimum of income and social stability. In a short period of time, the spectrum of those platforms has evolved into different models, with a variety of different descriptions, such as Crowdwork, Cloudwork, or Gigwork. What they all have in common is a new type of employment that can be identified as a “digital contingency labour force” (Nachtwey/Staab, 2015: 81). Work in the platform economy, which usually means functioning de facto as an independent contractor, is hallmarked by structural insecurity and a significant skewing of power towards the clients. They have access to labour that “can be turned on and off like a lamp” (Hill 2017: 10).

Although not much data is yet available on the current extent of the platform economy in Germany, its upsurge shows that it is “a fringe phenomenon that is entering the mainstream” (Apt. et al. 2016: 21).

DIGITAL LOSS OF COLLECTIVE COHERENCE

The second digitally accelerated trend contributing to a shift in the power balance is the attrition of collective labour units, which is also not a new phenomenon. But the applied technology contributes significantly to the erosion of the historical configuration in which the individual worker is protected by the collective. Digitisation can foster separation and hinder solidarity, thus influencing the balance of power between labour and capital in favour of the latter, who already possess greater structural force. There are three primary constituent factors in the digital revolution’s potential to erode collective labour coherence:

1. The first is that digitally networked labour is no longer linked to a fixed workplace, with its traditional spatial environment within a business or company. The company has double significance in the working world. On the one hand, it is a legal and organisational unit and as such “the central location for regulating specific working conditions” (Trinczek 2010: 841). On the other hand, a business represents a social entity, within which salaried employees can develop a collective identity, display solidarity, organise, and represent their joint interests. Both functions of the business, the regulatory and the collective building, are now losing force due to digital networking. Conversely, external “working worlds with no collectivisation” (Vogel 2016: 11) are expanding. Clients in those worlds have the upper hand in dealing with workers who are no longer organised, have no guaranteed rights, and are not represented by unions or works councils; instead they are scattered lone warriors with no effective collective to represent their interests.
2. An ever denser tapestry of data makes possible ever more detailed “X-rays of the working world” (Kucklick 2014: 22 f.), that continuously make visible the subtle differences between working individuals and – particularly – their performance. That means employees are subject to “new evaluation standards that are more exacting and relent-

less than they have ever been. Mathematically precise data reveals how useful we are, how much we advance the company’s success, and what comprises our exact contribution to productivity” (Kucklick 2014: 32). That form of differentiation hinders the processes of community building and solidarity, for which a greater or lesser sense of equality is normally a prerequisite.

3. It is not only the potential described here for examining and evaluating individual workers that fosters competition between employees in the digital age. Many of the above-mentioned platforms are also characterised by a culture of underbidding on jobs. Competition not only dominates on the platforms, but is also practised by the platform providers. The simple fact of the existence of a “pool” of labour that, from the point of view of a business, is less expensive and more flexible exerts an increasingly noticeable pressure to adapt on the zones where normal employment (still) exists. In addition, the worldwide advance of digital networks creates a “tendency toward global competitive labour markets” (Staab 2016: 104), which are characterised by a distinct imbalance of power to the detriment of those proffering their work.

DIGITAL DISEMPOWERMENT

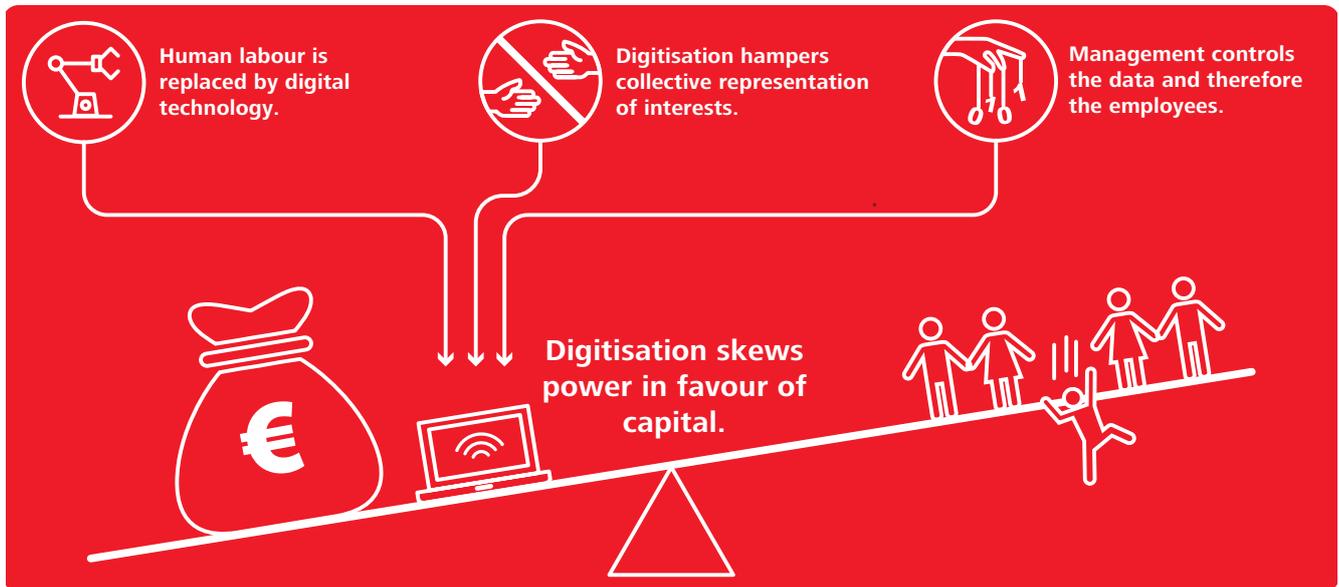
The loss of both job security and collective work structures skews the balance of power in the work environment. It has a negative influence on the relationship between supply and demand for many of the gainfully employed, expands zones for workers and independent contractors where rights are curtailed, and hinders collective resistance. Another trend in the disempowerment of wage earners is a result of the rising flood of data and the potential for verification it represents. The digital permeation of the revenue stream is inevitably accompanied by an immense increase in the amount of data gathered on labour processes. And at the same time, storage and analysis of the data is continuously being perfected. Both things expand and refine the potential to monitor employees, endangering their personal rights and their privacy in the workplace. So far, the consequences to the balance of power in the work world of that increasingly closer monitoring of employee data has rarely been examined.

If no regulatory limits are established, then a scenario of “digital bondage” (Staab 2015: 5) is not unthinkable in the long term.

Digital monitoring is aimed at observing and documenting the behaviour, performance, and mental state of people at work in order to draw conclusions from the data and, possibly, to determine sanctions or bonuses.

Digital control mechanisms, in turn, are aimed at influencing and guiding workers in the performance of their tasks with standardised, technically imparted specifications. This is done – with varying degrees of binding specifications – by the use of assistant programs, such as smart glasses, navigation systems, or hand scanners, which have long been obligatory at Amazon logistics centres. Those devices provide information about the work process, and give the user instructions for the ostensibly optimal way to accomplish each task. While they can be useful for support and lessening the workload,

Illustration 1
Digitisation as power factor



Source: Own Figure.

they also curtail the user's operational autonomy, and uncouple know-how learned in practice from the specific person, reproducing it digitally, which makes workers easier to replace.

Added to that, the mass of data generated by the digital permeation of production, labour, and communications flows completely asymmetrically to the benefit of employers. Under currently prevailing conditions, individual employees as well as their collective representatives if they have any, are largely barred from independent access to that data. That hegemony of data is unquestionably ideal for strengthening the side of capital in labour negotiations and disputes, since it enables management to extract information and facts about structures, processes, and people that is not available to the "other side".

LEGISLATORS MUST STEP IN

To sum up, digitisation of the work sphere brings mounting risks of an increasing loss of security and collective coherence, and disempowerment of human workers. That will not be due to the dystopian vision sometimes conjured up of machines seizing power – whether in the form of robots, algorithms, or artificial intelligence. The far greater threat is a massive enhancement of authority for the people who control those digital instruments and make decisions on how they will be developed and used. In order to put the brakes on and correct the course of that power shift, which bodes momentous consequences for society, there is a need for changes in labour policy and labour law.

Of particular significance and urgency would be the following seven recommendations for action. Their goal is to expand the rights of employees within the changed spatial and time structures of the digital work sphere, and to bring the balance of power back into balance.

1. Mobile working, and in particular telecommuting from home must be protected by legal standards. In addition to a general "right to telecommute", specific regulations are needed on labour and health safeguards, liability, and data protection. Collective bargaining or corporate agreements alone are not constructive; if we look at the last 30 years, they have not been sufficient to establish safety standards for telecommuting.
2. Employees who are required to be available at all times is at variance with mandatory elements of occupational safety and health law (for instance, on maximum working hours). That discrepancy could be solved with a regulation providing the "right not to be reachable". Compulsory accountability for implementing that would have to be assigned to management.
3. The continuous use of ergonomically unsuitable hard and software could be counteracted by legislation that enforces the principle of the "polluter pays" regulation in occupational safety law. That principle would have to be tied to a regulation shifting the burden of proof directly to employers, so that they would be responsible for any damages to the health of employees that might result of working long-term with sub-optimal hard or software.
4. On the collective level, co-determination rights need to be expanded, for instance by applying industrial relations law to the entire "digital manufacturing chain". That would mean that the jurisdiction of works councils would extend to all employees, including those in crowd-working situations, in order to enable equal representation for all workers.
5. The new EU General Data Protection Regulation calls for employee data protection to be regulated via collective bargaining agreements. Implementation presumes a new "co-determination right to data protection", which is to be formulated as an enforceable right of initiation.

Strengthening the rights of platform workers is a particularly urgent requirement for correcting the power asymmetry in the working sphere. The core of any legislative initiatives on this issue should be the assumption that platform workers can be classified as employees. Based on a “rebuttable presumption of a contract employment relationship” (Biegoń et al. 2017: 11), the burden of proof in the event of rebuttal attempts must be placed on the platform providers. That would mean that existing labour law would be applicable to many platform workers, “without substantially constraining the potential of that economic form” (Biegoń et al. 2017: 12).

6. A “right to continuing education” could counteract the loss of security that the digital revolution has on labour markets. The right of workers to qualifications and continuing education would have to be bolstered by appropriate measures in terms of financing, exemption from work, and continued (partial) remuneration. One approach might be similar to the Austrian model, in which the state subsidises the loss of income for part-time work during training or continued education.

This list of potential measures is not definitive. However, it shows that the legislative branch is called upon to come up with suitable and innovative safeguards without delay that protect the interests of workers in the digital work sphere.

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Notes

This article is a resume of the following studies by the authors: Schwemmler, Michael; Wedde, Peter 2018: *Alles unter Kontrolle? Arbeitspolitik und Arbeitsrecht in digitalen Zeiten*, WISO Diskurs, Bonn.

1 – So far at least – despite the welcome increase in pertinent discussion, particularly the “Work 4.0” dialogue initiated by the German Ministry of Labour and Social Affairs – this has not been the case: in our study (Schwemmler/Wedde 2018), extensive analysis brought us to the conclusion that if you take the real legislative output in Germany on the digitisation of the working sphere as a yardstick, there has been little to no movement in labour policy and labour law in the last few years.

2 – The best potential for this is in the growth of sovereignty over location and time for certain self-determined mobile work or telecommuting. At the same time, increased mobility in the digital working sphere is, as we know, linked to certain problematic trends, such as the expansion of work-related reachability, or the increased use of ergonomically unsuitable hard and software while “on the road”.

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