Where do we stand with the inclusion of vulnerable workers in the European labour market? Trade unions' new and old objectives compared.
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Where do we stand with the inclusion of vulnerable workers in the European labour market? Trade unions' new and old objectives compared.

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1. Introduction. 2. The dissemination of *diversity, equity & inclusion* models in contemporary societies and the response of trade unions. 3. The European framework as a field for the dissemination of *DE&I* models. 4. Trade unions' actions in the area of *diversity, equity and inclusion* in the labour market. 5. Which relationship between trade unions and companies' *DE&I* models in the inclusion of vulnerable workers? Concluding remarks.

Abstract

The essay investigates the role played, or that could be played, by trade unions for the inclusion of vulnerable workers in employment, in the wake of a recent propensity for *diversity, equity and inclusion* (*DE&I*) strategies adopted by several companies. In order to do so, after an analysis of *DE&I* strategies, the research takes into consideration the reaction of trade unions and their potential interest in these approaches. In particular, several tools used by trade unions in different European Member States are compared, such as collective bargaining, awareness-raising measures, individual support, training, collaborations with other actors, and litigations. Among these instruments, the research confirms the primary role played by collective bargaining. Lastly, a reflection is made on the relationship that is established, or could be established, between *DE&I* models and trade unions: a strong correlation between the two is recognised, which sometimes takes the form of a real cooperation and, in some other cases, of a true dependency.

Keywords: Vulnerable Workers; Trade Unions; Factors of Discrimination; Equality; DE&I.

1. Introduction.

Nowadays, discrimination and lack of diversity in the workplace entail significant human and economic costs, while seriously affecting in general the whole society.

Identifying effective inclusion strategies for vulnerable workers requires a deep study of several aspects related to the participation of individuals in work, whatever the nature and the characteristic of the job performed.

To be accurate, the vulnerable workers addressed here are those who experience significant difficulties and disadvantages entering and remaining in the labour market due to one, or more, personal characteristics that distinguish them in terms of gender, ethnic origin, race, religion, disability, age, sexual orientation, or nationality.

In this framework, the inclusion of vulnerable groups of workers consists of a complex process, which begins with the recognition of the barriers between these individuals and their entry or stable permanence in the labour market, and then proceeds with work planning oriented towards the valorisation of their skills and characteristics. Moreover, the identification of inclusion strategies beneficial for both the employee and the employer is very complicated, though engrossing, especially given the characteristics of a market and an economy constantly oriented towards short-term profits, and the transformation of a world of work brought by the digital revolution.

Social dialogue gives both employers and employees a voice,[1] allowing the negotiation of interventions and policies oriented by the often counterposed interests of the parties involved in the labour market. Under this premise, social dialogue and its tools are usually employed to achieve better living and working conditions for workers, build a democratic system in the workplace, and still ensure the growth of production following the interests of employers and entrepreneurs. Moreover, within the current European social model, the participation of the social partners in the decision-making process helps to ensure the reduction of inequalities in contemporary European societies.

In this context, it looks interesting to focus on the role that social actors, and in particular trade unions, play or could play nowadays in the inclusion of vulnerable workers in employment.

The research shows potential especially because of the intertwining of different dynamics:[2] in the first place, the labour market is radically changing concerning the organisation of work and the management of workers due to the ongoing technological revolution; as a consequence, the regulatory framework is constantly changing in order to respond to new challenges of labour law governance; thirdly, we have witnessed the emergence of groups of precarious workers, who are vulnerable not because of some personal characteristics, but because they are often unable to secure stable employment due to the use of non-standard or short-term employment contracts with few social protections;[3] and finally, trade unions come from years of apparent decline due to the decrease in both the

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[1] Dianišková E., Pisiotis A., Rieff J., *The role of social dialogue for fairness and inclusion*, in Directorate-General for Employment, Social Affairs and Inclusion, *Employment and Social Developments in Europe 2020. Leaving no one behind and striving for more: Fairness and solidarity in the European social market economy*, European Commission, Luxembourg, 2020, 127.

[2] Pulignano V., *Workplace inequality, trade unions and the transnational regulation of the employment relationships. The case of Europe*, in *Employee Relations*, 39, 3, 2017, 351-354.

[3] Kirov V., Hohnen P*., Trade unions strategies to address inclusion of vulnerable employees in "anchored" services in Europe*, in *International Journal of Manpower*, 36, 6, 2015, 850-853.

average density of their membership and in the percentage of workers covered by collective agreements in almost all the European Member States.

The reaction of trade unions to the new challenges posed by the technological revolution appeared positive, revealing a new spirit of activism for the protection of precarious workers and those impacted by the introduction of new technologies. This activism, even if in a more "timid" manner, has been also observed in the management of vulnerable workers, as traditionally conceived, in the wake of a recent propensity for *diversity, equity and inclusion (DE&I)* models, especially in line with the interest shown for them by companies.

The field of study of the conducted analysis is the European labour law. This area makes it possible to conduct research into those that are the general objectives of inclusion set by the European Union's institutions, and how they are pursued internally in the various Member States, considering the different social dialogue systems that can be found in each of them. The analysis is organised as follows: a first part in which the dissemination of *diversity, equity and inclusion* models among companies is observed, taking into consideration the reaction of trade unions and their potential interest in such an approach; a second part concerning the European framework and the specific actions implemented by social partners in matters of equal opportunities in the workplace; afterwards, a third part in which several inclusion strategies and tools used by trade unions in different Member States are compared; and a final part in which a reflection is made on the relationship that is established, or could be established, depending on one's points of view, between *DE&I* models and trade unions.

As a whole, the structure and interventions of trade unions have undergone a profound renewal in recent years, somehow compatible with this new model as well, but it remains crucial to observe how the intertwining of new and old objectives is managed, why not, also in a mutually beneficial perspective.

2. The dissemination of *diversity, equity & inclusion* models in contemporary societies and the response of trade unions.

To fully understand what inclusion processes in the workplace imply, it is fundamental to start from the meaning attributed to the concepts involved. Notably, models of *diversity, equity and inclusion*[4] applied in and pursued by companies have foundations in the idea that *diversity* presupposes the conscious acknowledgement of the existence of differences among workers, deriving both from personal innate factors (gender, ethnic origin, race, religion, disability, age, sexual orientation) and external acquired ones (geographical origin, education, nationality); at this point, *inclusion* requires that a value is attributed to these different characteristics in order to provide every individual with the opportunity to be considered as a unique resource for the company.[5] From a legal perspective, when dealing with topics and

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[4] The study of diversity and the attribution of value to it in order to generate sustainable social change dates back to the 1980s, mainly in the United States, while only recently has interest in DE&I practices spread to Europe.

[5] *See* IndustriAll - European Trade Union, *Equal opportunities, diversity and non-discrimination. Recommendations to coordinators & worker representatives in SNBs, EWCs and Ses*, Brussels, July 2022, 1-2; Ceresa C., D'Alessio E., De

issues related to *diversity, equity and inclusion* models, reference must be made to the principle of equal treatment and the right to non-discrimination, deeply rooted in the European legal framework.[6] *Equality* is therefore pursued through a system of protective measures built on several norms whose aim is to provide the means to recognise, remove and sanction unjust behaviours against workers resulting from their personal characteristics. Lastly, inclusion in the workplace is strictly linked to the concept of *democracy*, intended in some cases as the active participation in the organisation of the business and in others as the membership in a trade union which takes consideration of the needs of all workers in the development of its strategies.

DE&I models imply a comprehensive change in the organisation of a company that must be performed on technical, cultural, and political levels. Core values[7] of this transformation are: in the first place, the ethical responsibility which guides the company in a series of arrangements in order to guarantee equity among workers; secondly, the *rationale* of the strategy which is not only the increase in the recruitment of workers belonging to the considered disadvantaged groups, but also the effective enhancement of all the human resources of the company throughout their working life; thirdly, to deliver a change, an including internal culture should be developed as a general corporate strategy, with no level of the organisation exempted; and lastly, people involved in the process should be conscious that one of the main results deriving from the implementation of such a business model is the creation of value for the company.

The actors involved in the definition of new goals, policies and practices following the *diversity, equity and inclusion* scheme are many, as well as those impacted by the adoption of such policies: effects can be recognized in terms of working conditions by the employees in the first place, but employers, entrepreneurs and other stakeholders involved with the organisation similarly notice a development in terms of performance and results on one hand, and as far as the reputation of the company on the other hand. Social partners, in particular trade unions, are likewise involved and affected.

Analysing the overall context, historically, trade unions have suffered in guaranteeing the dissemination of effective anti-discrimination practices for several reasons.[8] In the early 1990s, embracing diversity and actively protecting vulnerable workers was considered counterproductive given that traditional unions' strategies consisted of building strength

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Luca C., Degl'Innocenti S., Ferretti F., *La diversità, l'uguaglianza e l'inclusione*, in Rinaldi R., Carraro W. (eds), *La Sostenibilità e il giurista in azienda. Le prossime sfide e gli strumenti per la gestion*e, Giuffrè, Milan, 2023, 252-254; UN Global Compact Network Italy, *Guidelines on Diversity & Inclusion in the workplace: UN Global Compact Network Italy Observatory's experience*, December 2021, 8-10.

[6] Relevant here are art. 19 of the Treaty on the Functioning of the European Union, on the prohibition of discrimination on the ground of personal characteristics, and art. 157 TFEU, extending equal treatment and non-discrimination to the area of working conditions and employment. Furthermore, there are multiple references to non-discrimination also in the *EU Charter of Fundamental Rights*, such as: arts. 21 and 23, on the prohibition of discrimination on the basis of one's personal characteristics; art. 22, on the right to the preservation of one's cultural, religious and linguistic diversity; and art. 26, on the full participation of persons with disabilities in community life.

[7] UN Global Compact Network Italy, nt. (5), 8-10.

[8] Cazes S., Garnero A., Martin S., Touzet C., *A Hard Day's Night: Collective bargaining, workers' voice and job quality*, in OECD, *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*, OECD Publishing, Paris, 2019, 199-203.

through the identification of a common collective interest and identity, shared by all represented workers. The first change was registered at the European level later in the 1990s: in 1995, the European social partners signed the *Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment in the Workplace,*[9] soon followed by the adoption of the anti-discrimination directives by the European institutions in the early 2000s.[10] Trade unions positively responded to this first renewal appeal, making changes in their structural organisation in terms of recruitment of specialised figures and the creation of dedicated departments, or by starting to discuss non-discrimination clauses in collective bargaining.

But why should trade unions, nowadays, embrace the change towards *diversity, equity and inclusion* schemes? First and foremost, the position of trade unions in this context must be investigated under two different profiles: an inner profile linked to the internal organisation of trade unions themselves, and an external profile linked instead to the practices put in place to keep up with the general transformation of the working environment. The former profile is tied to the levels of representativeness of each trade union, the active participation of its membership, and the system of internal democracy developed within it; on the other hand, the latter profile depends on the means and strategies, products of the negotiations conducted both within and outside the trade union, used to further increase inclusion in the workplace, either through collective bargaining or by building partnership schemes.

The reasons for unions to adopt *DE&I* strategies are several and somehow interconnected. First and foremost, trade unions come from a period of general decline and the commitment to act during the current social, digital and ecological transformations could be a remarkable opportunity to "re-emerge", both in terms of representativeness and power.[11] Actually, by focusing on the development of dedicated strategies for the integration of vulnerable and precarious workers, trade unions would attract new members, responding to the negative trends registered in membership in recent times. Linked to that, unions would be in a good position to regain power, by preserving and reinforcing their social role of workers' representatives.[12] Moreover, trade unions would improve the quality of life of all their members, and they would also guarantee the continuity of current business models in the future through their actions.[13]

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[9] Union of Industrial and Employers' Confederations of Europe, European Trade Union Confederation, European Centre of Enterprises with Public Participation, *Joint Declaration on the Prevention of Racial Discrimination and Xenophobia and Promotion of Equal Treatment in the Workplace*, EN/05/95/61370300.P00 (FR), 28 October 1995.

[10] In the 2000s, the EU adopted a series of acts enshrining a new phase of anti-discrimination law, among which: Dir. 2000/43/EC, *implementing the principle of equal treatment on grounds of racial and ethnic origin*, and Dir. 2000/78/EC, *establishing a general framework for equal treatment in employment and occupation on grounds of sex, religion, disability, belief, age and sexual orientation*.

[11] *See* Nitsche-Whitfield P., *Beyond economic growth. The role of trade unions in the transition to well-being*, ETUI, Brussels, Report 2023.03, 2023, 5-7; Trif A., Paolucci V., Kahancová M., Koukiadaki A., *Power resources and successful trade union actions that address precarity in adverse contexts: the case of Central and Eastern Europe*, in *Human Relations*, 76, 1, 2023, 164.

[12] Keune M., Pedaci M., *Trade union strategies against precarious work: Common trends and sectoral divergence in the EU*, in *European Journal of Industrial Relations,* 26, 2, 2020, 140–141.

[13] *See* Garnero A., *The impact of collective bargaining on employment and wage inequality: evidence from a new taxonomy of bargaining systems*, in *European Journal of Industrial Relations*, 27, 2, 2021, 193-196; Hyman R., Klarsfeld A., Ng E.,

From a societal perspective, the adoption of *diversity, equity and inclusion* practices by both companies and trade unions entails potential advantages and risks. As far as benefits are concerned, the overall development of this model would guarantee that pluralism is not only present in the labour market, but is also well supported and protected by social partners. Furthermore, using such an approach would strengthen vulnerable workers in the first place, allowing to increase at the same time the minimum standards of working conditions, therefore contrasting social dumping, and would also provide a possible solution to the problem of labour shortages.[14] Conversely, about the hypothetical risks, the fear is that this model would be adopted just for reasons linked to reputation and image, a scenario that is similarly conceivable for both companies and trade unions. Within this framework, another risk relates to the potential marginalisation that vulnerable workers would be forced to experience within the trade union itself.[15]

While examining in-depth trade unions' commitment to develop *diversity, equity and inclusion* schemes by way of different tools and practices, several influencing external and internal factors must be taken into consideration. External influences derive firstly from the supranational dimension, consisting of the guidelines and policies developed by the European institutions and the European social partners. Concerning the national dimension, the institutional context represents a major factor of influence,[16] in addition to the political orientation of the government, and in particular the position held by social actors and trade unions in the society and their level of autonomy; secondly, structural factors like the characteristics of the labour market or the "health" of the economy play another important role;[17] thirdly, the type of sectors under consideration and the levels of employment, unemployment and precariousness registered within it are likewise significant. As far as the internal factors[18] are concerned, many are the characteristics which diversify trade unions' actions, including their identity and their commitment to equality, their structure and the organisation of workers' representation, and finally their resources, such as proactivity, mechanisms of democratic representation, coordination with other actors and financial resources as well.

Haq R., *Introduction: social regulation of diversity and equality*, in *European Journal of Industrial Relations*, 18, 4, 2012, 285-287; Caspar S., Rieff J., Roelen E., *Sustainability and governance: the role of social dialogue*, in Directorate-General for Employment, Social Affairs and Inclusion, *Employment and Social Developments in Europe 2019. Sustainable growth for all: choices for the future of Social Europe*, European Commission, Luxembourg, 2019, 206-207.

[14] Garnero, nt. (13), 193-196; Hyman R., Klarsfeld A., Ng E., Haq R., nt. (13), 285-287; Foster D., Masso M., Osila L., *Work accomodation and sustainable working: the role of social partners and industrial relations in the employment of disabled and older people in Estonia, Hungary and Poland*, in *European Journal of Industrial Relations*, 27, 2, 2021, 150-151.

[15] Marino S., Bernaciak M., Mrozowicki A., Pulignano V., *Unions for whom? Union democracy and precarious workers in Poland and Italy*, in *Economic and Industrial Democracy*, 40, 1, 2019, 113-114.

[16] *See* Signoretti S., *Workplace processes and employment opportunities for vulnerable social groups*, in *European Journal of Industrial Relations*, 27, 1, 2021, 78-81; Trif A., Paolucci V., Kahancová M., Koukiadaki A., nt. (11), 145-151; Keune M., Pedaci M., nt. (12), 139-140.

[17] It has been noted that in times of crisis, trade unions tend to limit their action to the protection of basic needs, those shared by the majority of the population, to guarantee themselves people's favour.

[18] Marino S., Bernaciak M., Mrozowicki A., Pulignano V., nt. (15), 112-113; Keune M., Pedaci M., nt. (12), 140-141; Trif A., Paolucci V., Kahancová M., Koukiadaki A., nt. (11), 145-151.

On the whole, these factors, alongside all the underlined reasons, advantages and risks set a complex framework in which *diversity, equity and inclusion* schemes must be developed, bearing in mind that two different but interconnected perspectives coexist: a *macro* and a *micro* perspective. In particular, the former concerns the behaviour and actions of European institutions and the European social partners in the development of inclusion strategies, while the latter relates to the action of multiple social actors at the national level in several European Member States.

3. The European framework as a field for the dissemination of *DE&I* models.

The European legal and political framework represents a macro area of dissemination for the *DE&I* models here at stake, due to the natural pluralism which characterises the European Union and its citizens. However, the creation of inclusive societies and labour markets is still a main target for European institutions. Several discussions have been conducted about the weak competence of the EU in the area of labour market regulation,[19] which has brought often to the adoption of *soft law* measures, whose impact was quite poor among the Member States compared to the expectations. A different path seems to have been undertaken with the adoption of the European Pillar of Social Rights (EPSR)[20] in 2017, which has led the way to a period of intense legislative activism by European institutions. In addition, the same EPSR has been strengthened through the adaptation of the European Semester to constantly and timely monitor the achievements and progress of the Pillar and the related interventions. In this context, principle 8 of the EPSR specifically relates to "*social dialogue and involvement of workers*" with the aim to ensure social actors' development and adaptation to the new challenges of participation and representation posed by the transitioning society, as it has been successively confirmed by the European Commission in a Communication of early 2023, where a series of measures geared towards "*strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions*"[21] is set out, followed by a proposal for a Recommendation to the Council.

Therefore, social partners have been recognised as leading actors of change in the current transition, but curiously they have been addressed the same also in the context of dissemination of *DE&I* practices. This can be deduced, for instance, from a recent Opinion of the European Economic and Social Committee (EESC) related to the development of *diversity management* in the European Union.[22] In this case, the report concerned the use of this approach to increase the inclusion of migrants and ethnic minorities in the workplace, but food for thought can be drawn also for the general reflection conducted herein. First and

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[19] *See*, among others, Cinelli M., Siotto F., *La politica sociale europea*, in Cosio R., Curcuruto F., Di Cerbo V. e Mammone G. (*eds*), *Il diritto del lavoro dell'Unione Europea*, Giuffrè, Milan, 2023, 37-91; Ales E., *Lo sviluppo della dimensione sociale comunitaria: un'analisi "genealogica"*, in *Rivista del Diritto della Sicurezza Sociale*, 3, 2009, 527-592.

[20] European Commission, *Establishing a European Pillar of Social Rights*, 26 April 2017, COM(2017) 250 *final*.

[21] European Commission, *Strengthening social dialogue in the European Union: harnessing its full potential for managing fair transitions*, 25 January 2023, COM(2023) 40 *final*.

[22] European Economic and Social Committee, *Diversity Management in the EU Member States (Exploratory opinion at the request of the German Presidency)*, SOC/642, 29 October 2020.

foremost, it appears clear the need to use a holistic approach in matters of *diversity, equity and inclusion* policies, by applying this pattern to distinct areas to be successful. Only by providing vulnerable people with education, working opportunities, public services and social rights, it is possible to effectively achieve *inclusion*. Moreover, an intersectional approach is likewise necessary, especially because vulnerability, related to both innate and acquired factors, is characterised by heterogeneity and most of the time more than one factor causes the unjust treatment or the scarce inclusion of these individuals. Given the all-round intervention required, the Committee has assigned a key position to social partners, which have the opportunity and the duty to develop, implement and assess diversity management by resorting to collective bargaining and social dialogue. Not only this, trade unions will have to cooperate with employers to effectively apply diversity management practices that go beyond the simple statements of Corporate Social Responsibility.[23]

Another reference to the role of social partners can be found in two Opinions of the EESC about the employment guidelines for the Member States published respectively in 2022 and 2023.[24] In this instance, one of the main targets has been recognised as the necessary achievement of quality jobs, in the perspective of developing an "*environmentally and socially sustainable and competitive economy*"[25]: the employment of people belonging to vulnerable groups is considered fundamental to achieving this goal. To do that, the Committee suggests the implementation of personalised inclusive strategies for each vulnerable group, together with the full involvement of social partners and other civil society organisations, which can provide expertise in terms of vulnerability and pertinent needs.[26]

In this *macro* framework, many are the actors that can be involved in bipartite and tripartite forms of social dialogue,[27] such as European sectoral social dialogue Committees, cross-industry social partners and European Works Councils, which can all contribute to the dissemination of anti-discrimination and equality measures. Undoubtedly, effective instruments at the disposal of the European social partners are the Framework Agreements (FAs), which have proved to be very useful in providing national trade unions with more power and resources in the fight against discrimination, and by allowing profitable cross-border cooperation.[28]

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[23] *Ibidem*, 1-2 and 4-5; Kirov V., Hohnen P., nt. (3), 867-868. Corporate social responsibility initiatives are in any case ways through which the inclusion of vulnerable employees at work can be improved. Then, trade unions should verify that these initiatives are really put into practice and build an effective dialogue with the company management.

[24] European Economic and Social Committee, *Opinion - Guidelines for the employment policies of the Member States - Proposal for a Council Decision on guidelines for the employment policies of the Member States*, COM(2022) 241 final, SOC/737; European Economic and Social Committee, *Opinion - Employment guidelines - Proposal for a Council Decision on guidelines for the employment policies of the Member States*, COM(2023) 599 final – 2023/0173 (NLE), SOC/777.

[25] European Economic and Social Committee, *ibidem*, 2023, 3-5.

[26] European Economic and Social Committee, 2020, nt. (22), 6-11.

[27] In the European framework, social actors enjoy a unique role, given that, among all the provisions, the Treaty on the Functioning of the European Union itself guarantees them to be consulted by the Commission whenever a proposal is submitted in the social policy field (Art. 153 TFEU), in addition to the possibility granted to them to negotiate enforceable agreements through the procedure laid down in Art. 155 TFEU.

[28] Pulignano V., nt. (2), 356-360.

Among the agreements signed, in addition to the already mentioned 1995 *Declaration* on the prevention of discrimination on the grounds of race, we mention the 2003 *Declaration* promoting equal opportunities and access to employment for people with disabilities, the "*Framework of actions on gender equality*" of 2005 and the "*Framework Agreements on harassment and violence at work*" of 2007.[29] While it dates to 2010 the "*Framework Agreement on Inclusive Labour Markets*"[30] of March 2010, which addressed the general phenomenon of exclusion of vulnerable individuals from the labour market. In this case, the social partners have indicated some areas in which the action of social actors is particularly required to achieve success: firstly, in the management of information, including by organising awareness-raising campaigns and action plans; secondly, in the recruitment process, through the development of effective and transparent recruitment methods and cooperation with the third sector; thirdly, in the field of vocational training, by establishing partnerships with education institutes, by promoting means for the right recognition and validation of competences, and by developing individual training plans; and lastly, several interventions are suggested to improve work-life balance policies.[31]

Finally, a more recent development has been the "*Framework Agreement on active ageing and the intergenerational approach*"[32] of 2017, signed by Business Europe, the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), the European Centre of Employers and Enterprises (CEEP) and the European Trade Union Confederation (ETUC). With this document, the signatory parties have considered important to direct more efforts to the inclusion of older people in the workplace, especially in the context of the technology transition and the recording of a longer average working life. The plan proposes effective strategies for the optimal management of active ageing at work, ensuring safe and sustainable working conditions, while promoting high quality jobs and concrete actions for the transfer of knowledge and experience between older and younger workers in the workplace.

Once we have broadly analysed some aspects of the macro perspective derived from the European policy framework, and in order to create a bridge between it and the micro perspective that is characteristic of each Member State's national system, it seems appropriate to refer to and focus on a specific measure, namely the *EU Diversity Charters* with the annexed *EU Platform of Diversity Charters*.[33] This initiative was introduced in 2010 and is still in operation

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[29] ETUC, UEAPME, CEEP, *Declaration of the social partners for the European year of people with disabilities. Promoting equal opportunities and access to employment for people with disabilities*, 20 January 2003; ETUC, UEAPME, CEEP, *Framework of actions on gender equality*, 22 March 2005; ETUC, BusinessEurope, UEAPME, CEEP, *Framework Agreement on harassment and violence at work*, 26 April 2007.

[30] ETUC, BusinessEurope, UEAPME, CEEP, *Framework Agreement on Inclusive Labour Markets*, 25 March 2010.

[31] ETUC, BusinessEurope, UEAPME, CEEP, *Implementation of the European Framework Agreement on Inclusive Labour Markets*, 25 March 2010.

[32] ETUC, BusinessEurope, UEAPME, CEEP, *Framework Agreement on active ageing and the intergenerational approach*, 8 March 2017.

[33] *See* European Commission, *Diversity Charters by EU country*, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combatting-discrimination/tackling-discrimination/diversity-and-inclusion-initiatives/diversity-charters-eu-country_en; European Commission, *EU Platform of Diversity Charters*, https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/combatting-discrimination/tackling-discrimination/diversity-and-inclusion-initiatives/eu-platform-diversity-charters_en; European Commission, *EU Platform of Diversity Charters – Newsletter*, https://ec.europa.eu/newsroom/just/newsletter-archives/view/service/883.

nowadays with some very precise objectives. Firstly, the majority of the EU Member States have adopted their own *Diversity Charter* containing a set of values and practices to be implemented to create workplaces characterised by diversity, respect and inclusion. National *Diversity Charters* can in turn be signed and adopted by any organisation (including NGOs, public bodies, private companies etc.) that is willing to promote their application in its corporate structure. With the aim of creating cross-border collaboration between the various States participating in the initiative, the *EU Platform of Diversity Charters* has also been devised, which mainly enables the sharing of organised activities and best practices implemented by the various actors from all the States involved in the initiative. The value of this platform is certainly that it lays as much as possible the foundations for achieving higher common standards of inclusion of vulnerable workers.[34]

4. Trade unions' actions in the area of *diversity, equity and inclusion* in the labour market.

Turning now to the study of vulnerable workers' inclusion practices in the national dimensions, we see that the main role in this matter is played by trade unions, sometimes assisted by other actors.

The major drivers of trade unions' actions in the development and implementation of equality measures across the European Member States are three:[35] the first driver has been, curiously, the deeper awareness of increasing trends in discriminatory behaviours in the surrounding national society; secondly, internal debates within trade unions and with other actors have helped to learn about specific dangerous situations and how support could have been provided given the circumstances; and lastly, national legal frameworks have contributed to the active engagement of trade unions on the ground, although to a lesser extent than when anti-discrimination laws were firstly adopted.

In terms of the organisation and structure of the unions, embracing the challenge of *diversity, equity and inclusion* implies several thoughts about the more effective way to introduce this model: first and foremost, two alternatives must be discussed, namely whether to "reject" vulnerable workers or try instead to build a bridge between them and other standard workers represented within the trade union;[36] following, the union shall understand how to find a balance, the so-called "*organic solidarity*"[37], between the collective regulation of its members' interests and the fulfilment of the individual realisation's needs of each member. Although this constitutes the standard procedure for representative organs such as unions, it becomes more complicated when the interests under discussion are so different. On the one hand, trade unions can decide to pursue policies geared to satisfy the needs of a single group; on the other hand, the organisation can decide to implement a broader set of measures to meet

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[34] Hyman R., Klarsfeld A., Ng E., Haq R., nt. (13), 285-287.

[35] Directorate-General for Justice and Consumer, *Trade union practices on non-discrimination and diversity 2019. Follow-up to the 2010 study*, European Commission, Luxembourg, 2019, 51-54.

[36] Keune M., Pedaci M., nt. (12), 140-141.

[37] Kirov V., Hohnen P., nt. (3), 850-853.

the expectations of different groups of workers. Based on how the union decides to organise its activity, two main models can be distinguished: a *solidaristic/universalistic* model,[38] which brings together the needs of all workers into a unitary strategy, favouring stronger representativeness but being less sensitive to the needs of single workers; and a *diversity-based/particularistic* model,[39] which values autonomy at lower levels, thus being more powerful in representing individual interests, but probably less prepared to achieve cross-sectoral goals.

When it comes to the development and implementation of inclusion strategies, unions have also at their disposal different tools such as collective bargaining, awareness-raising measures, individual support, training, and collaborations with other actors.[40]

Among these instruments, the research confirms the primary role played by collective bargaining in several Member States. This process constitutes a very profitable tool primarily due to its flexibility, which allows the provision of rapid and tailored solutions to changing working environments and needs, both at the broader cross-sectoral level and the individual company level.[41] Linked to this, collective bargaining has proved to be a valid tool to improve the working conditions of different groups of workers, helping in the construction of socially sustainable working environments. As evidence of this, collective bargaining not only allows for an efficient combination of offer and demand but also contributes to the sharing and realisation of the needs of each group represented in it.[42]

The factors that led to the significant collective bargaining outcomes are manifold, beginning with the pressure of European institutions and social partners[43] to strengthen this instrument, proceeding with the proactive role of Member States in the transposition of the supranational guidelines, and finally considering the limited fragmentation of trade unions and employers' associations in some specific contexts.[44] Proof of this is the data showing a lower unemployment rate of vulnerable workers in those States where a coordinated collective bargaining system is in place, contrary to the situation in countries with a

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[38] Marino, nt. (15), 112-116; Signoretti, nt. (16), 78-81.

[39] Marino, *ibidem*; Signoretti, *ibidem*.

[40] Directorate-General for Justice and Consumer, nt. (35), 66. The collection of data regarding the instruments took place mainly through the reading of reports, collective agreements and various doctrinal articles listed from time to time in the bibliographical notes.

[41] *See* ILO, *Social Dialogue Report 2022. Collective bargaining for an inclusive, sustainable and resilient recovery*, Geneva, 2022, 33-34; Picard S., *Nuove frontiere per la contrattazione collettiva: breve guida ai temi emergenti*, Confederation European Syndicat Trade Union (CES/ETUC), October 2022, 9-10.

[42] Foster D., Masso M., Osila L., nt. (14), 152-153.

[43] As regards the identification of the most effective tools for the management of labour and workers, both vulnerable and not, in response to the new transitions, ETUI has placed its trust in collective bargaining, as indicated in the *"New Frontiers for Collective Bargaining"* project of 2021. Among the "emerging" areas of action that have been highlighted stands the "fight against the extreme right" and trade unions are seen as frontline forces able to fight for solidarity, social justice, and equal opportunities for every worker. *See* Picard S., nt. (42).

[44] Keune M., Pedaci M., nt. (12), 140-141.

decentralised bargaining system.[45] Furthermore, job strain is commonly lower where collective bargaining coverage is high, and coordination is likewise widespread.[46]

Specifically, trade unions have contributed to the dissemination of inclusion measures through collective bargaining in three main ways:[47] firstly, by adding equality clauses in the text of various collective agreements; secondly, by indirectly establishing new forms of dialogue with employers and other social actors on equality and new equality-oriented measures; and finally, by providing support and legal advice to those who directly negotiate collective agreements.

With regards to equality clauses,[48] they intervene in several areas, such as equal pay, the balancing of care and work responsibilities, training and support for school-to-work and retirement transitions, the identification and prohibition of violence and harassment at work, the promotion of inclusive labour protection measures, the elimination of discrimination, and the ensuring of equal opportunities and treatment at all stages of the employment relationship. As a whole, the research reveals a predilection for initiatives, undertaken by individual companies or extended to the sectoral level, oriented towards combating specific episodes or procedures that discriminate against one or more categories of vulnerable workers. This stems from the flexibility characterising collective bargaining, which can negotiate both wider-scope clauses and others tailored to the needs of the single company. Thus, on the one hand, we can find very specific equal treatment clauses, like the introduction in the collective agreement of an Italian luxury company of a clause aimed at favouring the integration in the workplace of people undergoing gender transition, given the presence of staff in this condition;[49] or like the clauses introduced by the trade union *Pro* in the Finnish collective agreements of the financial and technology sectors, in which an equality plan consisting of various activities for the integration of minorities and migrants was promoted.[50] On the other hand, we can find wide-ranging clauses like those provided for the management of the age factor[51] at work. Specifically, collective bargaining has defined in many cases the rules for a real education-to-work transition through a very diverse set of clauses, including the provision of work introduction mechanisms such as apprenticeships, workshops, and work/study programmes; adjustments for predictable working hours and a decent first wage; and finally, the expansion of professional training for young people. Not only that, at the opposite end of the spectrum, about the management of older workers, trade unions have mainly focused on interventions aimed at stabilising their employment, avoiding

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[45] *See* Garnero A., nt. (13), 188-191. The categorisation of countries provided in the research is the following: *Rather centralized and weakly coordinated collective bargaining systems* (France, Iceland, Italy, Portugal, Slovenia, Spain and Switzerland); *Predominantly centralized and coordinated collective bargaining systems* (Belgium); *Organized decentralized and coordinated collective bargaining systems* (Austria, Denmark, Germany, the Netherlands, Norway and Sweden); *Largely decentralized collective bargaining systems* (Australia, Japan, Greece, Luxembourg and the Slovak Republic); *Fully decentralized collective bargaining systems* (Canada, Chile, the Czech Republic, Estonia, Hungary, Ireland, Korea, Latvia, Lithuania, Mexico, New Zealand, Poland, Turkey, the UK and the USA).

[46] Cazes S., Garnero A., Martin S., Touzet C., nt. (8), 175.

[47] Directorate-General for Justice and Consumer, nt. (35), 74.

[48] *See* ILO, nt. (41), 96-101.

[49] Picard S., nt. (41), 9-10.

[50] European Economic and Social Committee, nt. (22), 6-11.

[51] ILO, nt. (41), 96-101.

redundancies, and providing transition paths to retirement, often through flexible work management. In addition, professional training is given an important role in ensuring active ageing, where skills and experience are maximised and complemented by new knowledge.

However, the action of trade unions goes beyond collective bargaining, although closely linked to it, in building a support and advisory structure to achieve the best possible clauses for the inclusion of vulnerable workers. This is the case in the Netherlands, for example, where the *FNV* confederation undertook an initiative in which it drew up a "*Rainbow Checklist*" and handed it over to Works Councils and other negotiators of company agreements to ensure that equality measures for LGBTI+ workers were discussed and added; similarly, in Poland, lawyers of the trade union *NSZZ Solidarność* provide counselling services to discuss non-discrimination clauses to be included in CAs and company regulations; while in Sweden, the trade union *Vision* supplies a set of guidance documents and checklists, in addition to the implementation of support services to help company managers with the introduction of equality measures.[52]

Although collective bargaining is still the most effective instrument for trade unions to act on the inclusion of vulnerable workers, it is possible to identify other suitable instruments that follow the same *ex-ante* approach, for example in those countries where collective bargaining coverage is not high or to complement its actions. The main registered activities have been the draft of codes of conduct and ethical codes within the companies, the negotiation and development of integration plans to achieve multiple diversity and equity goals, the provision of internal reporting mechanisms for discriminatory behaviours, the organisation of training activities both within the unions and for the employers of the companies, and similarly the planning of awareness-raising events and campaigns.[53] For example, a series of measures have been implemented to address the current issue of low employment rates of people with disabilities,[54] through actions put in place both within the unions and in the companies as well: firstly, some unions organise events to spread knowledge about disability and its correct integration in the work chain; linked to this, some found it more useful to build internal dedicated departments and/or committees to manage these workers and ensure their representation; sometimes they favour partnerships with other social actors, including national governments and government agencies, labour agencies and national disability commissions, and employers' organisations. Recently, we have also witnessed the creation of specific roles within companies, such as the disability manager or other disability representatives, following the provisions of company collective agreements.

Finally, the last tool at the disposal of trade unions is the establishment of partnerships and collaborations with other social actors. Behind a similar choice, which constitutes a well-defined strategy of the union, there are different reasons[55] linked, in the first place, to the

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[52] Directorate-General for Justice and Consumer, nt. (35), 74-76. All three examples were taken from here.

[53] *See* Keune M., Pedaci M., nt. (12), 145-148; Cazes S., Garnero A., Martin S., Touzet C., nt. (8), 199-203.

[54] ILO, *Trade Union Action on Decent Work for Persons with Disabilities. A Global Overview*, International Labour Office, Bureau for Workers' Activities (ACTRAV), Geneva, 2017, 12-16; Hammersley H., *Guide to inclusive and accessible Trade Unions. Making trade unions and collective bargaining accessible to and inclusive of persons with disabilities,* European Disability Forum Paper, September 2021, 9 and 17.

[55] Directorate-General for Justice and Consumer, nt. (35), 82-83.

willingness of unions to become part of networks and establish long-lasting relationships to become more powerful externally, or to the opportunity of hypothetically extending the target group to reach and finally to get technical support and acquire knowledge from these partnerships. As the research reveals, the type of partnership is usually connected to the aim: unions tend to rely on external experts when it comes to the organisation of training for the unionist; while partnerships are mainly started with NGOs, other unions or employers' associations in order to reach a wider audience and to attract the interest from the public opinion and media on a specific issue; moreover, trade unions favour collaborations with the public institutions to stop firmly illegal practices, through the establishment of bilateral commissions, compliance bureaux or the drafting of particular certification procedures.[56] There are also cases which highlight across-border partnerships, such as those established by unions of different States. A first example is provided by the already mentioned *EU Diversity Charters* initiative, but the *Work4Integration – Europe Project*[57] sets another example, considering its establishment in 2019 by the social actors of Italy, Belgium and Sweden, with the purpose of promoting the inclusion of migrants in the workplace.

It goes without saying that several factors influence the capability of unions to start a collaboration and its success, beginning from organisational and structural elements linked for example to the human and financial resources available in the union, or the level of commitment to the project of the union's members; following with the quality of the cooperation, in terms of the definition of objectives, roles and responsibilities; and finishing with the recognition and sharing of partners' mission and views.

Another possible strategy at the disposal of unions to pursue inclusion is the adoption of an *ex-post* approach, unlike all the tools we have just analysed. Recently, more unions have recurred to strategic and collective litigation to protect the new categories of precarious workers against discrimination stemming from atypical contracts and new forms of work organisation. The use of such an approach by unions, even if in a lesser extent, has been registered also for the protection of "traditional" vulnerable workers, often through collaboration with civil society organisations.[58] Usually, unions tend to recur to strategic litigation when certain conditions occur, such as the "young" age of the union itself, which needs to open to alternative forms of intervention to gain power, or in small companies where unions are not able to settle. Conversely, trade unions don't rely on strategic litigation when, due to the high degree of associationism, they would be unnecessarily exposed to criticism, or when their organisational structure is efficient and they are well integrated into the socio-political context.[59]

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[56] Keune M., Pedaci M., nt. (12), 145-148.

[57] *See* https://program4integration.org/en/work4integration/. About the program, *see* European Economic and Social Committee, nt. (22), 6-11.

[58] Protopapa V., *Uso strategico del diritto e azione sindacale*, Il Mulino, Bologna, 2021, 140-149. For example, the use of strategic litigation to combat discriminations on the grounds of race and ethnic origin is quite common, both among civil society organisations and trade unions. This stems from national acts of favourable reception of the EU regulations on discrimination.

[59] *Ibidem*, 65-71. *See*, also, Gaudio G., *Litigating the Algorithmic Boss in the EU: a (legally) feasible and (strategically) attractive option for Trade Unions?*, in *International Journal of Comparative Labour Law and Industrial Relations*, 40, 1, 2023, 32-34.

As a whole, the choice of the instruments more suitable to implement inclusion strategies is directly linked to how democracy is built within it. On the one hand, representative democracy is especially linked to the position that a union holds in the social dialogue framework and the negotiation with other actors, being the union in this case more prone to rely on the establishment of partnerships. Conversely, participatory democracy is connected to bottom-up approaches and organising activities, which could lead to a major implementation of other practical measures. As a result, organizing strategies could result to be less capable of the integration of vulnerable workers within the "classical" union's mechanisms of representation, while partnership strategies could constitute a shift too big from the "classical" internal democracy issues.[60]

5. Which relationship between trade unions and companies' *DE&I* models in the inclusion of vulnerable workers? Concluding remarks.

Drawing a correlation between *DE&I* models which are progressively and deeply spreading throughout a multitude of companies on one side and trade unions' role and actions in the development of inclusion strategies on the other side, has revealed to be the main objective of this research. A comprehensive analysis of the tools at the disposal of trade unions, of the actions undertaken to develop more inclusive workplaces and of the reasons behind this engagement has shown a strong correlation between *DE&I* models and trade unions, which sometimes takes the form of real cooperation and, in some cases, of a true dependency. As a matter of fact, the areas of intervention of the *diversity, equity and inclusion* models most often coincide with the fields of action of trade unions at various levels of social dialogue. The consequence is twofold, namely, on the one hand, trade unions assume a fundamental role in the dissemination of the *DE&I* models, while on the other hand, the same models must be effectively transposed in the organisation of trade unions themselves to build a so-called "inclusive representation".[61]

Specifically, areas of common intervention of companies which end to coincide with trade unions' activities are those related, firstly, to the elaboration and gathering of statistical data on diversity to become aware of the vulnerable groups needing support and the departments where intervention is strongly required; secondly, to the establishment of measures to combat discrimination in each specific phase of the working relationship; and thirdly, to the development of measures to effectively guarantee diversity and equality, often through the help of trade unions, their representative in the company, or other civil society organisations.[62]

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[60] *See* Marino S., Bernaciak M., Mrozowicki A., Pulignano V., nt. (15), 115-116. The authors indicate as hypothetical solution the instauration of a "*organizational democracy*": this system is based on the presence of traditional democratic procedures within the union, which give members the power to organise themselves at different levels of the union's organisation. As a consequence, representative approaches are legitimated also from the bottom, and at the same time, workers' organizing approaches and needs in the union's agenda are given recognition from above.

[61] Marino S., Bernaciak M., Mrozowicki A., Pulignano V., nt. (15), 115-116.

[62] IndustriAll - European Trade Union, nt. (5), 4-6.

In this adopted perspective of interdependence between unions and *DE&I*, certain practices appear to be even transferable from the company organisation to the trade union and *vice versa* for the ultimate purpose of cultivating inclusion.[63] In the first place, for instance, the organisation's strategic vision, which should be properly defined publicly and formally through an action plan to create inclusion, represents an element for the growth of both realities; a second element which can be implemented in both contexts is related to the organisational structures, for example, involving the creation of departments dedicated to representing specific vulnerable workers, the recruitment of competent staff and the establishment of partnerships with external bodies to maximise support; following, common to both organisations is the setting of an agenda with the provision of recurring actions against discrimination; furthermore, a variety of actions and measures can be exchanged between the two realities, especially considering that those practices that have proven effective for the inclusion of a group of vulnerable workers can be adapted to the needs of other groups; and finally, there are several training models that have been developed in the two different types of organisation, but that can prove useful for training in diversity and inclusion of both companies' employees and trade unionists.

The interdependency relationship between companies' *DE&I* models and trade unions proves to be essential due to the opportunity it offers of providing heterogeneous workforce with a voice both within the companies and outside them. This has positive effects on the subjective perception of the quality of work and working conditions in general, since the worker tends to feel more involved in the company and to perceive less both the risk of suffering discriminatory treatment and possible job loss.[64] Not only that, the presence of representative institutions such as trade unions also generates positive feedback from an objective point of view: there is a higher 66% probability that paid training experiences are provided to workers in those workplaces where formal representatives are present, at the same time diminishing the impacts of factors such as firm size or workers' poor education; moreover, awareness of health and safety risks and measures is 34% higher with unions' representatives; and lastly, career advancement perception is 28% higher in those companies where there is formal representation.[65] The primary role of trade unions is also witnessed where there is a negative relationship between the perception of job quality and the presence of trade unions. In these circumstances, vulnerable workers (whether due to working conditions or discriminatory behaviours) tend to seek representation through trade unions, so that they can express their discontent without the threat of retaliation from employers and company management.

The dissemination of *DE&I* models implies a certain transversality. The set of activities and strategies profitably implemented for the construction of inclusive workplaces must in turn be both a model to be replicated in the external society and a model to be enriched precisely through external impulses. Starting from this assumption, trade unions can fully

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[63] Directorate-General for Justice and Consumer, nt. (35), 119-125. Examples are here provided about the transferability of interventions aimed at eliminating discrimination in trade unions.
[64] Cazes S., Garnero A., Martin S., Touzet C., nt. (8), 177-178.
[65] *See* Caspar S., Rieff J., Roelen E., nt. (13), 211-214.

represent a figure that allows this "exchange" and this growth, also considering the impact that the actions of these bodies have.[66]

The first impact is registered within the union itself, where the implementation of new measures and strategies to pursue inclusion leads to, in the first place, increased awareness of the meaning of vulnerability at work, followed by upskilling of unionists through training, and up to renewed problem-solving skills related to the development of a broader, long-term oriented representation. The second impact is experienced at the workplace level, where *DE&I* models have provided workers in need with visibility and support, through an increased centrality of the equality agenda in companies' governance, and specific support both for vulnerable workers and employers who deal with them. Finally, the last impact is registered in the surrounding society, where trade unions implementing these measures help in drawing the attention of public opinion and policymakers on the topics related to *DE&I*, to favour the overall change required for the achievement of inclusion.

As a whole, the research conducted shows that trade unions are therefore the most appropriate social actors for the dissemination of the new business models of *diversity, equity and inclusion*, and for guaranteeing the right protection to the new workforce they enhance. Not only have trade unions already implemented several actions that turned out to coincide with the ones conducted for the adoption of such business models, but they also enjoy the appropriate flexibility needed in times of change, deriving from the numerous sets of tools and strategies at their disposal. Definitely, a cultural and ideological change is still required to broaden the scope of representativeness of unions, which traditionally have built their structures to gain power from unitary representation, more linked to the homogeneity of the workforce than to its heterogeneity. In this context, it has been interesting to observe how organs which have usually worked to develop strategies to serve a well-defined unitary slice of the entire workforce have been and are able to effectively improve their capabilities and find the instruments to extend their target groups.

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[66] Directorate-General for Justice and Consumer, nt. (35), 91-97.

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