Questionnaire – ASJP – 4th Study Commission

1. Similar to what is happening in the rest of Europe, the platform or "gig" economy has been experiencing considerable growth in Portugal over the past ten years, with a significant surge during the Covid-19 pandemic, due to the forced isolation and social distancing we all faced.

Its massive emergence began in 2014 with the Uber platform, immediately sparking political and social debates about its impact on the economy and labor relations (in comparison to other sectors of activity that do not use digital platforms). With the development of demand (which saw a sharp increase during the pandemic), both from customers and partners, other companies in the same sector emerged, leading to an exponential increase in workers engaged in the tasks necessary to establish commercial relationships between those partners/customers, always through the digital platform.

In a sociological study conducted in Portugal in 2021 (by Nuno Boavida and António Brandão Moniz, featured in the article "Perfil e representação de trabalhadores de plataformas digitais em Portugal" e publicado na em *Sociologia: Revista da Faculdade de Letras da Universidade do Porto*, Número Temático - Trabalho, plataformas digitais, cuidados: perspetivas pluridisciplinares, 2022, pp. 32-61), the authors concluded that Portugal had the third largest platform workforce among 14 European countries and that the percentage of adults who had ever done any work through an online platform was slightly over 10% (with the increase in commercial relations through this means, we believe the number is higher today). The main online professions in Portugal are creative and multimedia, related to software development and technology, and writing and translation activities; some platform workers perform more than one type of task on digital work platforms. Among workers who engage in significant platform work but not as their primary occupation, the women/men ratio was 0.91 in Portugal, where almost as many women as men spend at least 10 hours working on platforms or earn at least 25% of their income through platform work.

Individual passenger transport saw enormous growth in activity since Uber's arrival in 2014, as mentioned, leading to the emergence of the term "Uberization" (now a global term) as a work model describing the digital or "gig" economy. It was also with the advent of this digital platform's activity in Portugal that the need arose to create the law known as the "Uber Law" (Law No. 45/2018, of August 10), which establishes the legal framework for the activity of individual and remunerated passenger transport in unmarked vehicles via electronic platforms (TVDE).

2. In Portugal, companies that operate digital platforms classify the workers who work with them as service providers (independent contractors) as opposed to subordinate workers (covered by employment contracts).

Globalization and technological evolution have highlighted the need for companies to flexibly hire and fire workers within a short time frame, to scale their workforce up or down and adjust salaries based on short-term performance results, in order to align their operations and profits with fluctuations in the demand for their services/products.

There was no labor legislation in Portugal addressing work carried out through digital platforms, which caused a strong sense of vulnerability among workers in this sector, with uncertainty regarding the maintenance of their contractual relationship, the absence of a guaranteed minimum wage, paid vacations, and the burden of ensuring payment of Social Security contributions themselves (to benefit from health and unemployment protection), and securing and paying for work accident insurance (all of which an employment contract guarantees).

This social emergency worsened with the increase in the number of workers in this sector and the introduction of immigrant workers into this market, who are generally unaware of their rights and obligations in this dichotomy of independent and subordinate work, making them more vulnerable.

The internal political and social discussion culminated in the inclusion of this issue in a governmental project entitled the "Agenda do Trabalho Digno" (something like Decent Work Agenda), which aimed to introduce measures and legislative changes to improve working conditions and the balance between workers' personal, family, and professional lives.

Among these, the legislator intended for digital platform workers to be considered employees and to require transparency and information about the use of algorithms and AI mechanisms in the selection and dismissal of workers, introducing, for this purpose, Article 12-A into the Labor Code (through Law No. 13/2023, of April 3), under the heading "Presumption of an employment contract in the context of digital platforms."

Following this legislative change, the ACT (Authority for Working Conditions – a service promoting the improvement of working conditions, prevention, control, audit, and inspection, integrated into the direct administration of the State, endowed with administrative autonomy, and exercising its inspection activity within the scope of public authority powers) carried out a massive inspection action in the second half of 2023 on the activity and contractual relationship of couriers of Uber Eats, Glovo, and Bolt operators across the mainland, culminating in the Public Prosecutor's Office filing special actions for recognition of the existence of employment contracts across the country, numbering around a thousand.

As a result of the introduction of the aforementioned Article 12-A into the Labor Code and these ACT inspection actions, first-instance sentences have begun to emerge, recognizing the existence of employment contracts, currently known to us as follows:

- The sentence delivered by the Lisbon Labor Court (J8) in the case no. 29354/23.9T8LSB (in which no defense was filed by the defendant Uber Eats Portugal – Unipessoal, Lda., despite being summoned for this purpose) dated 1/2/2024, which recognized the existence of an employment contract between the defendant and the identified courier, effective from 1/5/2023; and

- The sentence delivered by the Labor Court of Castelo Branco in the case no. 1980/23.3T8CTB (to which the cases nos. 1981/23.1T8CTB, 1996/23.0T8TCB, and 1998/23.6T8CBT had been attached), dated 3/18/2024, which recognized the existence of an employment contract between the defendant Uber Eats Portugal – Unipessoal, Lda. and the identified couriers, effective from 1/8/2023 (common to all couriers involved).

No decisions from higher courts are yet known.

3. With the development of artificial intelligence (AI) implementation across various social, economic, and professional sectors, the government created the "National Artificial Intelligence Strategy" (AI Portugal 2030), promoting research and innovation in this specific area for its development and application in fields such as public administration, education, training, and businesses.

Integrated into the Observatory of Digital Skills (of the Directorate-General for Education and Science Statistics - https://observatorio.incode2030.gov.pt/), AI Portugal 2030 presents itself as a collective process for building a knowledge-intensive labor market with a strong community of cutting-edge companies that produce and export AI technologies, supported by an academia engaged in high-level, fundamental, and applied research.

Studies are emerging on the impact that AI implementation has, particularly in the process of worker selection and recruitment, recognizing the ethical and privacy challenges related to the use of AI in human resources and emphasizing the need for robust practices to protect employee data and prevent biases and discrimination in algorithms (see the study by students of the Higher School of Real Estate Activities, published at https://www.revistaminerva.pt/os-impactos-da-ia-e-da-automatizacao-na-gestao-de-recursos-humanos/).

An article in the Portugal Global magazine, no. 172 of February 2024, edited by AICEP (Agency for Investment and Foreign Trade of Portugal), states that AI is used by 7.9% of Portuguese companies (according to November 2023 data from the National Statistics Institute), with this percentage rising to 34.5% when considering only organizations with more than 250 employees; 44.7% of companies that integrated AI use these technologies to identify people and

objects through images, 40.8% for workflow automation; 35% for written language analysis; 34.9% to ensure information and communication technology security; 31.5% for administrative or management process organization, and 26.9% for production processes (published and available for consultation at http://www.revista.portugalglobal.pt/AICEP/PortugalGlobal/portugalglobal-n172-fev24/?page=8).

Regarding the positive or negative impacts of AI introduction in the labor market, no official data have been found yet, with the common sentiment in Portugal being similar to that experienced in the rest of Europe concerning fears of structural unemployment, wage inequalities, the need for professional requalification (as essential for job retention), difficulty in maintaining employment in traditional sectors such as agriculture and fishing, and ethical and social issues related to privacy and the impact on workers' quality of life. From a more positive perspective, there is an emphasis on increased efficiency and productivity, the creation of more qualified jobs, innovation in traditional sectors (such as agriculture and tourism), and improvement in quality of life.

4. In labor legislation, the references we find specifically about AI were introduced by the aforementioned Law No. 13/2023, of April 3 (which aimed to implement the measures of the Decent Work Agenda), and they are as follows:

- The amendment to Article 3 of the Labor Code, which concerns the relationships between sources of regulation of the employment contract, with the introduction of subparagraph (o), allows the provisions contained in this legal diploma to be overridden by collective labor regulation instruments that provide more favorable terms to workers regarding the use of algorithms, artificial intelligence, and related matters, particularly in the context of work on digital platforms;

- The introduction of paragraph 3 of Article 24 of the Labor Code, which, imposing the right to equality in access to employment and at work, stipulates that equal opportunities and treatment also apply in the case of "decision-making based on algorithms or other artificial intelligence systems" and without prejudice to the application of "legal provisions relating to the exercise of a professional activity by a foreigner or stateless person" and "provisions relating to the special protection of genetic heritage, pregnancy, parenthood, adoption, and other situations concerning the reconciliation of professional activity with family life" – paragraph 3;

- The introduction of subparagraph (s) of paragraph 3 of Article 106 of the Labor Code imposes on employers the duty to inform workers about "the parameters, criteria, rules, and instructions on which the algorithms or other artificial intelligence systems that affect decision-making about access and maintenance of employment are based, as well as working conditions, including profiling and the control of professional activity";

- The introduction of subparagraph (j) to paragraph 1 of Article 424 of the Labor Code directly grants the workers' committee the right to information about "the parameters, criteria, rules, and instructions on which the algorithms or other artificial intelligence systems that affect decision-making about access and maintenance of employment are based, as well as working conditions, including profiling and the control of professional activity";

- Finally, in the context of union activity in the company, the right of the union delegate to information and consultation was also recognized, specifically regarding "the parameters, criteria, rules, and instructions on which the algorithms or other artificial intelligence systems that affect decision-making about access and maintenance of employment are based, as well as working conditions, including profiling and the control of professional activity," with the introduction of subparagraph (d) to paragraph 1 of Article 466 of the Labor Code.

No sentences have been issued by Portuguese courts addressing any issues related to AI in labor relations.

Regarding the challenges and concerns of Portuguese employers, Portugal Global magazine No. 172 (aforementioned) states that the lack of knowledge to adopt and use AI tools is cited as the main obstacle by 65.3% of companies that do not yet use these technologies; 64.9% consider the costs too high, and more than half of the companies express concern about the legal consequences that may result from damages caused by the use of AI.

Moreover, Portuguese employers face common concerns about the privacy and data protection that AI processing and analysis of large amounts of data may not observe; the influence of biases in the training data of AI algorithms, resulting in discriminatory decisions; the impact on their workforce, particularly regarding the need to retrain workers to adapt to new technologies; workers' trust and concern about transparency and accountability in AI decision-making processes, excessive monitoring, and job replacement by machines (which can lead to resistance and poor acceptance of technology).