

ETHICAL AI SURVEILLANCE IN THE WORKPLACE

ADVANCES IN RESEARCH ETHICS AND INTEGRITY

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Janet Lewis FACSS who has been with the editorial group from the inception of the Series is now standing down to take up other work.

We thank her for her help in establishing the reputation of the Series and wish her well in future activities.

WE ALSO WELCOME THREE NEW MEMBERS OF THE ADVISORY BOARD:

Helen Busby, PhD, is an Independent Research Ethics Advisor who has worked with leading international organisations to improve the oversight of research. She now works with researchers and organisations to support the management of complex ethical issues, especially in relation to research involving fieldwork in multiple countries.

After studying Medical Anthropology and Sociology at the Universities of Brunel and Nottingham (UK) and a Postdoc Fellowship at the latter, she led Wellcome Trust and ESRC-funded research projects at the Universities of Nottingham and Leicester. Having a particular interest in health, she was the Principal Investigator for projects about blood donation, stem cell banking and frameworks of altruism. Her publications from this work were published in peer-reviewed journals in the fields of sociology, ethics and law.

Between 2017 and 2023, she worked with the WHO global health ethics unit, advised the WHO Research Ethics Committee (ERC), and provided specialist support to the ERC Secretariat at the WHO Geneva HQ. She is active as an expert, Vice-chair, and Chair of ethics evaluations for Horizon Europe, having also been involved in the preceding EU framework programmes.

Her most recent publication is the book chapter 'Modes of Influence: What Can We Learn from International Codes of Ethics for Health-Related Research?' in R. Iphofen and D. O'Mathúna *Ethical Evidence and Policymaking: Interdisciplinary and International Research*. Helen is currently co-editing a book, *Ethics Dialogues in Qualitative Research: Navigating the Divide Between Researchers and Research Ethics Review*, with Suzanne McMurphy.



Julian Kinderlerer attained his first degrees from the University of Cape Town with distinction in Chemistry. He won a scholarship to Cambridge to complete his Doctorate in Biochemistry. He was a Lecturer in the Department of Biochemistry and Biotechnology in the University of Sheffield before moving to a professorship in Biotechnology Law in the law faculty at the University of Sheffield. He has advised many governments on biosafety law and in 2000 acted as a Director at the United Nations Environment Programme with responsibility for



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He advised the University of Cape Town's Law Faculty on the setting up of a new research unit on Intellectual Property, took up a role as Professor of Intellectual Property Law and Head of the new unit, the first such group in Africa and is an Emeritus Professor at Cape Town. He was also a Professor of Biotechnology and Society at the Technical University in Delft, the Netherlands.

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ADVANCES IN RESEARCH ETHICS AND INTEGRITY
VOLUME 10

ETHICAL AI SURVEILLANCE IN THE WORKPLACE

BY

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INVESTOR IN PEOPLE

To Yiannis, Iasonas and Sofia

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ABOUT THE AUTHORS

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Mihalis Kritikos is Senior Associate Fellow at the Brussels School of Governance at the Vrije Universiteit Brussel (VUB)-Centre for Digitalisation, Democracy and Innovation and a Senior Research Fellow, Technology Law and Ethics, Governance of AI/Digital at the Hellenic Foundation for European and Foreign Policy (ELIAMEP) working on the ethical development and responsible deployment of new and emerging technologies with a special emphasis on artificial intelligence.

Before that, he worked for many years at the Scientific Foresight Service of the European Parliament as a legal/ethics advisor on Science and Technology issues (STOA/EPRS) authoring more than 50 publications in the domain of disruptive technologies and contributing to the drafting of more than 15 European Parliament reports/resolutions in the fields of artificial intelligence, robots, distributed ledger technologies and blockchains, precision farming, food technologies, gene editing and responsible innovation. During his term with the Ethics Review service of the European Commission (Directorate-General for Research and Innovation), he drafted several Guidance Notes in the domain of new and emerging technologies, moderated numerous expert panels on technology/research ethics and contributed to the design and operation of an ethically robust ethics appraisal framework for research funding at the EU level.

Mihalis is a legal expert in the fields of EU decision-making, legal backcasting, food/environmental law, the responsible governance of science and innovation and the regulatory control of disruptive technologies. His work on technology governance, green and digital transition, the regulation of emerging technologies and the ethical design and deployment of AI systems has been at the forefront of

nurturing 'law, regulation and technology'. His research and policy work feature frequently in daily newspapers, international journals and books as well as in several international technologies, law and society fora.

His current research interests include the development of technology ethics governance norms and practices, regulatory governance, innovation and sustainable development policies, the ethical and policy challenges of emerging digital technologies, in particular, Artificial Intelligence and the operationalisation of high-level ethical principles primarily in the context of digital technologies. His book *EU Policy-Making on GMOs, The False Promise of Proceduralism* (Routledge, 2017) has become an international point of reference in the science policy studies and in the domain of the regulatory control of disruptive technologies.

He has also worked as a Senior Associate in the EU Regulatory and Environment Affairs Department of White and Case, as a Lecturer at several UK Universities and as a Lecturer/Project Leader at the European Institute of Public Administration (EIPA) working on delegated and implementing acts. He is also a Visiting Fellow at the European Centre of Excellence on the Regulation of Robotics & AI at La Scuola Superiore Sant'Anna, a Module Leader at the Human-Centred Artificial Intelligence Programme of Mines Paris – PSL Université and a regular Lecturer at the College of Europe. He taught EU Law and Institutions for several years at the London School of Economics and Political Science (LSE) where he obtained a PhD in Technology Law (London School of Economics-LSE) that earned him the UACES Prize for the Best Thesis in European Studies in Europe.

SERIES PREFACE

Ron Iphofen (Series Editor)

This book series, *Advances in Research Ethics and Integrity*, grew out of foundational work with a group of Fellows of the UK Academy of Social Sciences who were all concerned to ensure that lessons learned from previous work were built upon and improved in the interests of the production of robust research practices of high quality. Duplication or unnecessary repetitions of earlier research and ignorance of existing work were seen as hindrances to research progress. Individual researchers, research professions and society all suffer in having to pay the costs in time, energy and money of delayed progress and superfluous repetitions. There is little excuse for failure to build on existing knowledge and practice given modern search technologies unless selfish ‘domain protectionism’ leads researchers to ignore existing work and seek credit for innovations already accomplished. Our concern was to aid well-motivated researchers to quickly discover existing progress made in ethical research in terms of topic, method and/or discipline and to move on with their own work more productively and to discover the best, most effective means to disseminate their own findings so that other researchers could, in turn, contribute to research progress.

It is true that there is a plethora of ethics codes and guidelines with researchers left to themselves to judge those more appropriate to their proposed activity. The same questions are repeatedly asked on discussion forums about how to proceed when similar long-standing problems in the field are being confronted afresh by novice researchers. Researchers and members of ethics review boards alike are faced with selecting the most appropriate codes or guidelines for their current purpose, eliding differences and similarities in a labyrinth of uncertainty. It is no wonder that novice researchers can despair in their search for guidance and experienced researchers may be tempted by the ‘checklist mentality’ that appears to characterise a meeting of formalised ethics requirements and permit their conscience-free pursuit of a cherished programme of research.

If risks of harm to the public and to researchers are to be kept to a minimum and if professional standards in the conduct of scientific research are to be maintained, the more that fundamental understandings of ethical behaviour in research are shared the better. If progress is made in one sphere everyone gains from it being generally acknowledged and understood. If foundational work is conducted everyone gains from being able to build on and develop further that work.

Nor can it be assumed that formal ethics review committees are able to resolve the dilemmas or meet the challenges involved. Enough has been written about such review bodies to make their limitations clear. Crucially, they cannot follow researchers into the field to monitor their every action; they cannot anticipate all of the emergent ethical dilemmas nor, even, follow through to the publication of findings. There is no adequate penalty for neglect through incompetence, nor worse, for conscious omissions of evidence. We have to rely upon the virtues of the individual researcher alongside the skills of journal reviewers and funding agency evaluators. We need to constantly monitor scientific integrity at the corporate and at the individual level. These are issues of quality as well as morality.

Within the research ethics field new problems, issues and concerns and new ways of collecting data continue to emerge regularly. This should not be surprising as social, economic and technological change necessitate constant re-evaluation of research conduct. Standard approaches to research ethics such as valid informed consent, inclusion/exclusion criteria, vulnerable subjects and covert studies need to be re-considered as developing social contexts and methodological innovation, interdisciplinary research and economic pressures pose new challenges to convention. Innovations in technology and method challenge our understanding of 'the public' and 'the private'. Researchers need to think even more clearly about the balance of harm and benefit to their subjects, to themselves and to society. This series proposes to address such new and continuing challenges for both funders, research managers, research ethics committees and researchers in the field as they emerge. The concerns and interests are global and well recognised by researchers and commissioners alike around the world but with varying commitments at both the procedural and the practical levels. This series is designed to suggest realistic solutions to these challenges – this practical angle is the *unique selling proposition* for the series. Each volume will raise and address the key issues in the debates, but also strive to suggest ways forward that maintain the key ethical concerns of respect for human rights and dignity, while sustaining pragmatic guidance for future research developments. A series such as this aims to offer practical help and guidance in actual research engagements as well as meeting the often varied and challenging demands of research ethics review. The approach will not be one of abstract moral philosophy; instead it will seek to help researchers think through the potential harms and benefits of their work in the proposal stage and assist their reflection of the big ethical moments that they face in the field often when there may be no one to advise them in terms of their societal impact and acceptance.

While the research community can be highly imaginative both in the fields of study and methodological innovation, the structures of management and funding, and the pressure to publish to fulfil league table quotas can pressure researchers into errors of judgement that have personal and professional consequences. The series aims to adopt an approach that promotes good practice and sets principles, values and standards that serve as models to aid successful research outcomes. There is clear international appeal as commissioners and researchers alike share a vested interest in the global promotion of professional virtues that lead to the public acceptability of good research. In an increasingly global world in

research terms, there is little point in applying too localised a morality, nor one that implies a solely Western hegemony of values. If standards ‘matter’, it seems evident that they should ‘matter’ to and for all. Only then can the growth of interdisciplinary and multi-national projects be accomplished effectively and with a shared concern for potential harms and benefits. While a diversity of experience and local interests is acknowledged, there are existing, proven models of good practice which can help research practitioners in emergent nations build their policies and processes to suit their own circumstances. We need to see that consensus positions effectively guide the work of scientists across the globe and secure minimal participant harm and maximum societal benefit – and, additionally, that instances of fraudulence, corruption and dishonesty in science decrease as a consequence.

Perhaps some forms of truly independent formal ethics scrutiny can help maintain the integrity of research professions in an era of enhanced concerns over data security, privacy and human rights legislation. But it is essential to guard against rigid conformity to what can become administrative procedures. The consistency we seek to assist researchers in understanding what constitutes ‘proper behaviour’ does not imply uniformity. Having principles does not lead inexorably to an adherence to principlism. Indeed, sincerely held principles can be in conflict in differing contexts. No one practice is necessarily the best approach in all circumstances. But if researchers are aware of the range of possible ways in which their work can be accomplished ethically and with integrity, they can be free to apply the approach that works or is necessary in their setting. Guides to ‘good’ ways of doing things should not be taken as the ‘only’ way of proceeding. A rigidity in outlook does no favours to methodological innovation, nor to the research subjects or participants that they are supposed to protect. If there were to be any principles that should be rigidly adhered to they should include flexibility, open-mindedness, the recognition of the range of challenging situations to be met in the field – principles that in essence amount to a sense of proportionality. And these principles should apply equally to researchers and ethics reviewers alike. To accomplish that requires ethics reviewers to think afresh about each new research proposal, to detach from pre-formed opinions and prejudices, while still learning from and applying the lessons of the past. Principles such as these must also apply to funding and commissioning agencies, to research institutions and to professional associations and their learned societies. Our integrity as researchers demands that we recognise that the rights of our funders and research participants and/or subjects are to be valued alongside our cherished research goals and seek to embody such principles in the research process from the outset. This series will strive to seek just how that might be accomplished in the best interests of all.

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Writing on such a dynamic and challenging issue is harder than I thought and more rewarding than I could have ever imagined. None of this would have been possible without my family.

I am especially grateful to my wife Sonia: for always being the person I could turn to during difficult moments, for her care for the people around her, and for her devotion. She sustained me in ways that I never knew that I even needed.

To my sons Yiannis and Iasonas and to my daughter Sofia who are a continuous source of love and inspiration, for putting up with me during this writing process and for making me appreciate the small moments of happiness in life.

I'm eternally grateful to Ron Iphofen, whose relentless support and helpful advice along with Isidoros Karatzas, whose profound belief in my work and unwavering guidance, have helped me bring this piece of work into light.

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Last but not least, I'm deeply indebted to all those who have been an inspirational part of this process and offered me an academic 'nest' throughout the last few years: Maria Gavouneli, Trisha Meyer and George Pagoulatos. Thank you for listening, offering me advice and supporting me through this entire process.

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INTRODUCTION TO VOLUME 10

Ron Iphofen

Series Editor

Readers familiar with this series will immediately see that this current volume represents a change of format which we hope to repeat from time to time. Instead of each volume containing a series of chapters from a range of experts covering different approaches to a central theme, we offer here an extensive monograph that focusses on one area of concern. In keeping with the rest of the series, we ask the author to approach the topic for an international audience, reflective of the current state of knowledge in the designated field and, most importantly, offer some workable suggestions for policy and practice. We hope you will agree that the author of this first monograph, Mihalis Kritikos, has achieved those aims in examining the nature of surveillance in the modern workplace and offering suggestions for how best to regulate it.

During the last 10 years, workplace surveillance has expanded beyond monitoring blue-collar workers to keeping a watch on high-level workers and to working from home. It is conducted via surveillance cameras, monitoring employees' workstations and internet activity, automated video pattern recognition systems, keylogging software and biometric access control. The emergence of new forms of exercising employment control, through a combination of real-time data collection and machine-learning analysis is challenging the adequacy of privacy and employment laws across Europe and elsewhere; so too is the capacity of traditional oversight structures to cope with these dynamic challenges in a comprehensive manner. The COVID-19 pandemic has expanded the use of Artificial Intelligence (AI)-empowered real-time workplace monitoring systems, location and social media-tracking applications and workforce analytics software as many employers feel the need to track employees remotely in a range of different ways.

As a result, digital workplace monitoring may induce employee stress leading to the blurring of the boundaries between public and private spheres and helping shape a culture of mistrust, an intensification of work and the alienation as well as the datafication of employees. Such technological practices have the potential to alter workplaces in fundamental ways and to undermine trust between employers and employees, thus raising concerns about the terms of this technological deployment and its possible effects. The pandemic has not acted solely as an accelerator of digitisation and of tele-work practices: it has also blurred the boundaries between home and office environments and has introduced an inherent layer of surveillance that appears more intrusive and possibly unjustifiable than ever. At the same time, the augmentation of these AI-powered surveillance

practices has unveiled significant gaps in our oversight structures, legal frameworks, regulatory models and data governance practices.

Given these concerns and issues, this volume proposes a comprehensive policy framework that could tackle the challenges associated with ‘wiring the labour market’ including issues of control, autonomy and voice in the workplace. The options outlined here provide a wide range of legal, regulatory and institutional suggestions that could enable legislators to set limits to protect workers’ fundamental rights. The suggestions made are based on an extensive analysis of the existing legal and policy framework at the international level by taking into account the current and ongoing policy initiatives.

The volume will propose some first steps for addressing these concerns that were originally drawn from reflections within the context of the European Union (EU). Modelling an approach within the known limits and opportunities should allow other nations and federations to consider approaches suited to their own unique geopolitical situation. The specific ideas within the EU perspective have grown from an Act on Workplace Monitoring to a mandatory Data Protection Impact Assessment and from establishing the right to disconnect at the EU level to setting up an international Ethical Code for Digital Monitoring in the workplace. All the proposed options aim at safeguarding employees while ensuring the responsible deployment of AI-powered monitoring tools in the workplace.

This volume should set the ground for a new approach to workplace monitoring and provide the basis for a discussion among the main actors in the employment world including policymakers and legislators. This approach acknowledges the need to address all the relevant challenges in a holistic and dynamic manner given the need to define a ‘new normal’ and reconceptualise workplaces and the situation of the employee in a post-COVID-19 world. Such extended applications of AI might have been thought of as inevitable. The suggested options may even allow legislators and decision-makers to question the necessity and proportionality of some of the current surveillance practices, prevent today’s workplace from becoming a new digital panopticon and envisage the necessary legal modalities that can strengthen the notion and the legal position of the worker as a digital nomad in this ever-changing work environment.

Although these are labelled ‘options’, there is little that is ‘optional’ about them – in some respects they follow on from each other and some require connective legislation to become operationalisable. It is easy to see how many of these could be implemented at the EU level but harder to see how a commitment to a more global approach could be developed. Given the nature of the globalised distribution of the workplace under the dominance of global corporations, this poses a real challenge to the potential for effective regulation.

In many respects, this volume follows naturally from the preceding volume in the series: *Ethical Issues in Covert, Security and Surveillance Research*. The chapters in that volume were concerned with ‘research’ per se, while this volume focusses on other forms of ‘data gathering’ via surveillance means. In the last volume, we were at pains to avoid ruling out surveillance (and covert work) as necessarily unethical but we did produce a set of guidance notes, elements of which should be applied here. These include: do not treat surveillance ‘approaches’ as a

set of homogeneous practices, consider the vital role of ‘context’, be aware of the range of methods available to engage in surveillance, consider in detail how principles related to anonymity, confidentiality and consent are to be managed, ensure you are as informed as possible by previous work and never neglect the wider public interest. The current volume addresses such concerns – and many more.

The volume is structured such that the author presents the monograph in full and is followed by a series of commentaries from a range of experts who have read and commented on the monograph but may also suggest issues beyond those covered. It is a form of transparent peer review such that commentators may also critique the work and point to its limitations. We have left the judgement open to the commentators and both any praise and criticism will be published to enable ongoing dialogue with the author. We then invite the author to supply a final postscript which acknowledges the contributions from the commentators and may add to or adjust the monograph’s proposals.

We would welcome any observations about the effectiveness of this approach and, indeed, any suggestions for similar monographs on relevant topics in the future.

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INTRODUCTION: SURVEILLANCE AND THE MODERN WORKPLACE

Mihalis Kritikos

Surveillance is permanent in its effects, even if it is discontinuous in its action.

–Michel Foucault, *Discipline and Punish: The Birth of the Prison*

Surveillance capitalism unilaterally claims human experience as free raw material for translation into behavioral data.

–Shoshana Zuboff, *The Age of Surveillance Capitalism*

ABSTRACT

As employment law has been designed around the traditional management structures, the emergence of new forms of exercising employment control, through a combination of real-time data collection and machine-learning analysis, leads to management decisions based on accountability paradox. The recent COVID-19 pandemic has expanded the use of AI-empowered real-time workplace monitoring systems and workforce analytics software. As a result, digital workplace monitoring starts becoming stress-inducing leading to the blurring of the boundaries between public and private spheres. Such technological practices threaten to alter workplaces in fundamental ways and to undermine trust between employers and employees in today's digital workplace.

INTRODUCTION

As the deployment of AI applications in the workplace is mushrooming and surveillance at work has also been expanded to employees working from home due to the pandemic, concerns have been raised about the terms of this deployment

and its possible effects. Consequently, digital workplace monitoring and digital activity tracking may have become stress-inducing leading to the blurring of the boundaries between public and private spheres and to the deterioration of the quality of work. Technological practices such as the recording of computer activity and location/social media-tracking applications threaten to alter workplaces in fundamental ways and to undermine trust between employers and employees.

While technological surveillance at the workplace can bring benefits to the employing organisation, such as exposing dishonest workers, its impact on honest employees seems less positive. The rapid adoption of new information technologies in the workplace, when monitoring of the physical behaviour and rate of task completion of workers, in terms of infrastructure, applications and smart devices (including CCTV surveillance, monitoring of e-mails and telephone calls, biometric-based time attendance systems through a palm reader, and monitoring and restriction of internet browsing) allows for new types of systematic and potentially invasive data processing at work.

At a time of expanding state and private sector surveillance, the modern workplace has become a key site of surveillance technologies, with ever cheaper monitoring tools used pervasively, including audio and video surveillance, interception of calls, e-mails and web traffic, and more recently ‘smart’ tagging of workers’ desks, cars, lapel badges, door passes and phones to measure location, activity and productivity. Employers are gradually introducing various productivity apps, telematics software and wristbands that collect interpersonal communications content, time management data, location data and data on the performance of workers including data regarding workers’ time spent on specific tasks, movement throughout their workspace and the number of breaks from work being taken.

The in-depth analysis offered here is a follow-up to a previous study on *Data Subjects, Digital Surveillance, AI and the Future of Work* (Moore, 2020) which looked at four main areas of concern: the involvement of workers at all stages of any data collection, storage, processing and decision-making strategies including the work of Data Protection Officers and the performance of Data Protection Impact Assessment, the introduction and enforcement of co-determination into labour law, the compilation of certification schemes and the prioritisation of collective governance.

The current analysis, moves on from the Moore study by listing a set of detailed requirements that could operationalise suggestions within these four areas. In fact, the current analysis proposes a framework of comprehensive and well-defined policy options that supplement the study’s proposals from a governance and legal perspective. The options aim at informing further the current debate about how AI could be regulated in various domains as well as how the effects associated with the introduction of new forms of remote digital working could be assessed and controlled.

More concretely, the options are divided into legal, governance and ethical ones. The governance and legal focus of the proposed options point to the increase of workers’ input, control or ability to contest the implementation of these devices, to prevent a detrimental effect on workers and the employee–management relationship and perpetuation of the existing inequalities in the

workplace, and in effect strengthen the protection of workers' rights and ensure that personal autonomy is guaranteed.

The legal ones suggest the review and update of the current legal framework but more importantly the introduction of legislation on workplace monitoring as well as an Act for the protection of whistleblowers and the development of effective communication corridors in the workplace. The legal options also ask for the introduction of a penalty system attached with strict conditionalities, the tackling of psychosocial risks as an essential part of the occupational health and safety (OHS) legal requirements and the development of a framework for the audit of workplace algorithmic systems.

Among others, the options propose the consideration of the particular risks related to keylogging and to Bring Your Own Device (BYOD) practices and the introduction of provisions on delegated/implementing acts in existing labour legislation and in future AI legislative proposals. Particular attention is paid to the need for recognising and establishing the right to obtain an explanation of the decision and challenge it, the duty of transparency in workplace monitoring and the right to disconnect as a fundamental right but also reinforces the right to safeguard health and safety at work in the digital space.

At the governance level, the analysis puts forward a series of options that aim at putting the employee in the driving seat through the establishment of oversight structures. Among them, one can find the setting-up of workplace-specific risk governance structures and methodologies and the establishment of an Ombudsman for employment affairs and workplace monitoring. From a data protection perspective, besides the options proposed by the study that focus on co-determination, collective data governance and on worker representation on all discussions, design and execution of any data collection, storage and processing, the author suggests the development of a Data Governance Strategy that could strengthen the rights to privacy and data protection in the digital workplace, the introduction of a mandatory Data Protection Impact Assessment for workplace monitoring and the redefinition of the concept of consent.

Given that algorithmic management is a socio-technical process, new questions arise about how to ensure the right balance between the respect of workers' fundamental rights and the employers' rights to exert control over the workforce. Balancing power relationships in the workplace and addressing information asymmetries between employers and employees in the context of algorithmic management. From an ethical governance perspective, the development of a code of ethical workplace monitoring, the introduction of certification mechanisms for ethical monitoring and the setting up of ethics bodies for workplace monitoring and the establishment of a High Level Expert Group on Ethical Workplace Monitoring could facilitate a more coherent and employee-centric oversight structure.

The options fit well with the efforts of all major policy-makers worldwide to ensure that the use of AI technologies complies with the evolving legal requirements that can vary based on several factors, and in Europe the upcoming European Commission's legislative proposal on AI. The proposed options take into account the potential, ethical, social and regulatory impacts of workplace

monitoring technologies. They were developed on the basis of a thorough assessment of the relevant literature and policy framework and have been designed to mitigate against the worst impacts of digitalised tracking, monitoring and surveillance at the workplace.

The 40 options proposed here aim at enriching the current debate on the regulatory control of the digital workplace and the empowerment of employees in an ever-changing employment environment. They are grouped in different sections that bring forward recommendations and ideas about the establishment of new legal frameworks and of rights and the setting up of governance structures that are tailored to the needs and the challenges raised by monitoring workplace arrangements. Each option contains lines of action that support the main ideas and provide the backbone for the development of more detailed and workplace-specific modalities and norms that can tackle the effects of the datafication of modern employment. The time is ripe to accelerate a paradigm shift to more employee-centric legal solutions to the upcoming AI-driven challenges and create a robust auditing and certification ecosystem and a sustainable human-centric employment ecosystem.

SECTION I

LEGAL OPTIONS

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1.

PUTTING THE EMPLOYEE IN THE DRIVING SEAT VIA REINFORCED COLLECTIVE AGREEMENTS

This option contains proposals on how the employee could become an active part of the decision-making procedures that concern the embedding and implementation of workplace monitoring systems. These include the revival of the concept, the practice and the institution of collective agreements and collective bargaining, the widening of the scope of the concept of ‘employee’ and the strengthening of the relevant consultation and participation rights. Individual right to access to data and to contest the outcomes of automated decision-making, while essential, could not be sufficient in a context in which technology becomes so pervasive and complex. Individual workers (and employers) should not be left alone to cope with the intricacies of this technology when they want to comprehend and contest the consequences of its applications on them.

- Introduce binding legal requirements for employers to consult with employees’ representatives/trade unions before introducing new forms of monitoring about the methods, objectives and duration of the monitoring.
- Introduce information, consultation and participation rights that aim at involving, in different degrees of intensity, workers’ representatives in decision-making processes based on data collected by AI monitoring tools.
- The embedding of technological workplace monitoring should be designed in an employee-centric and employee-friendly manner.
- Introduce a mechanism to make employers continuously accountable for choices and decisions around technology, work organisation and workplace (physical and virtual) design.
- Effective worker participation in the development of an effective OHS management system can be performed through information and consultation.

- Strengthen the input of trade unions in the collective decision-making processes around technology and facilitate direct worker involvement into the organisational, technical and procedural discussions about the way digital monitoring is organised and implemented.
- Trade Unions/Work councils should be consulted before/during the integration of digital monitoring systems and/or during the development of criteria for assessing job applications via the use of AI.
- Any AI implications regarding workers' performance and behaviour have to be discussed with works councils.
- Collective bargaining and dialogue between social actors, employees and employers should remain the main platforms for negotiating the necessity and the terms of embedding technological monitoring tools at the workplace.
- Strengthen the role of collective agreements at the governmental level with a view to protecting workers' rights in relation to the operation of workplace monitoring systems.
- Revise collective agreements to ensure workers' autonomy, transparency, dignity, security and privacy when digital monitoring systems introduced by new and emerging technologies are in place.
- Enable the development of new technology-focussed agreements that should be part of collective bargaining arrangements that could strengthen and improve bargaining power related to technology and data issues.
- Collective agreements should safeguard that technological systems used at workplace are focussed on enhancing bargaining on an equal footing.
- Widen the definition of 'employee' for the purposes of workplace monitoring rules, so as to include self-employed, subcontractors, temporary/part-time workers and workers in the online platform economy and any other atypical work forms.
- Transnational collective bargaining can play a primary role both at the sectoral and at the workplace level.
- Collective agreements should address the use of digital technology, data collection and algorithms that direct and discipline the workforce, ensuring transparency, social sustainability and compliance with these practices with regulation.
- Collective bargaining would also prove pivotal in implementing the 'human-in-command' approach at the workplace.
- Collective bargaining could also involve issues such as the ownership of the data collected from workers and the terms and conditions of workplace monitoring.