

ETUI-ETUC Conference, 27-29 June 2016, Brussels

Shaping the new world of work – The impacts of digitalisation and robotisation

Panel 13: Data protection for employees

Participants:

- Jan Philip Albrecht, member European Parliament, Group of the Greens/European Free Alliance
- Clara Fritsch, GPA-djp, Austria.
- Eva Souhrada-Kirchmayer, Council of Europe

Moderator: Kathleen Walker-Shaw, GMB-UK

Reporter: Andrea Husen-Bradley, ETUI

Context:

The collection and use of personal data at the workplace presents particular challenges for employees. Employers' rights to collect personal data for legitimate purposes must be balanced with effective workers' protection from clandestine use (e.g. the monitoring of performance and behavior leading to disciplinary actions)

In 2016, a new EU Regulation on data protection rules was adopted by the Council and the European Parliament after several years of consultation, negotiation and amendment discussions. With the passing of the 'General Data Protection Regulation' there is now a single set of data protection rules across the EU.

Panel 13 looked at the challenges of data protection for employees and the impact of the new Regulation on employee's data protection at the workplace.

Jan Philippe Albrecht (MEP, rapporteur for the Regulation) underlined that protection levels have significantly increased and that the new Regulation is a huge step forward for employees. There is now a unified standard in the EU across all sectors, applying to anyone processing personal data. The rights of individuals have been strengthened (e.g. the right to access data and the right to data erasure). Compliance should be helped by the appointment of data protection officers in companies and there is a catalogue of sanctions to stop data controllers violating the rules (up to 4% of global annual turnover). Importantly, Member States can go beyond the EU Regulation and this gives a potential role to Collective Bargaining. The biggest **challenge** now is to enforce the Regulation. **Recommended actions** are to make the best use of the Regulation at national level, involve workers' representatives in monitoring compliance, and involving national data protection authorities to enforce employees' rights.

Clara Fritsch (GPA-djp) held that 'individual rights' are not suited for the work context due to power imbalances. Trade unions would have therefore wished to see a stronger role and a legal basis for the involvement of works councils, including the need for consultation when new technologies and systems for data collection are introduced at the workplace. Unions had supported the work of the EP's employment committee that proposed specific standards for employee protection (e.g. ruling out hidden surveillance and the profiling of employees). They were disappointed when these were not taken up. Clara Fritsch insisted however that the new

Regulation represents an improvement and that the Trade Unions were not against it but would have wanted more protection for employees. **Recommended actions** are to make the best use of the Regulation, to keep raising awareness of the topic, to insist that worker representatives must be involved whenever the use of personal data at the workplace is concerned.

Eva Souhrada-Kirchmayer (Council of Europe's Data Protection Commissioner) presented Recommendation 2015(5) of the Council of Europe. This Recommendation updates an earlier Recommendation of 1989. Unlike the EU's General Data Protection Regulation, the Recommendation deals explicitly with the processing of personal data in the context of employment. Whilst it is not a binding instrument, its principles can be a source of inspiration for EU Member States that want to go further than the provisions of the EU Regulation. Importantly, the Recommendation is directed at Member States but also at the Social Partners. **Recommended action:** Member States and Social Partners should use the Council of Europe Recommendation as an additional instrument and enhance the EU Regulation.

A final discussion dealt with the challenge of crowd work and the data protection rights of workers on online platforms. Which jurisdiction should apply? It was suggested that the EU Regulation applies as long as the seat of the organization or individual using crowd work is in the EU. This discussion showed that the needs of employees in a digitalized work are rapidly evolving.