Labour rights & the digital transition
Panel: the EU digital transition: what place for workers rights?
October 28, 2021, ETUI

The AI Act, entering a regulatory winter?
The need to expand perspectives
Starting point, putting AI in the broader context:

The **AI act** is not the only legislative building block of the EC’s Digital Agenda.
The EC’s Digital Agenda is much larger:

The digital debate is not about technology, it is a **political** debate that revolves around competitiveness, EU sovereignty, global leadership and creating a market.
The AI Act
The AI Act:

• Horizontal regulatory framework based on “Ethics guidelines for Trustworthy AI”

• Legal basis: establishment and functioning of the internal market (Art 114 TFEU).

• Extraterritorial dimension: it applies to any provider or distributor of AI systems whose services/products are placed on the EU market.
The risk-based approach:

- **Unacceptable and prohibited in principle**
  - Social scoring
  - Facial recognition
  - Subliminal manipulation
  - Exploitation of children

- **High-risk AI systems**
  - Safety components of regulated products
  - Annex II and III
  - Ex-ante conformity assessment

- **Limited risks**
  - Chat bots, deep fakes
  - Transparency obligations

- **Minimal risks**
  - Spam filters, video games
  - Codes of conduct
  - Allowed
The AI Act:
The AI Act enables providers/users to put products/services on the EU market without excessive “regulatory constraints”.

For high-risk AI systems (Chapter II, Annex III), it establishes certain requirements:

- Risk management system; high quality data, technical documentation and traceability, transparency, human oversight, accuracy, robustness and cybersecurity.
- Conformity assessment (carried out internally, equivalent to self-assessment?).
- Harmonized standards.

Enforcement: powers of notifying authority and ‘market surveillance Authority need clarification.

Governance: EC and EU AI Board [MS, EC, external experts], National CA.
ETUC’s reaction to the AI Act:

EUROPEAN TRADE UNION @etuc_ces - Sep 16

"The @EU_Commission AI Act, based on self-assessment, fails to address these workplace threats and puts workers private rights at risk!" says ETUC’s @IsaSchoesmarin.

EUROPEAN TRADE UNION @etuc_ces - May 28

The ETUC has written to MEPs calling on them to correct the imbalance between the interests of companies and workers in the @EU_Commission draft AI legislation.

"The Commission has failed to address the workplace dimension" etuc.org/site/default/...

EUROPEAN TRADE UNION @etuc_ces - Jun 23

"Orwellian surveillance of workers, without their knowledge and consent, breaches EU privacy law and basic democratic EU values and principles."

Thomson Reuters Foundation News @TRF_Stories - Jul 24

Firms say surveillance tech protects them and boosts the bottom line, but unions warn it is too easy for employers to collect intimate, personal data and use it against their workers.

EUROPEAN TRADE UNION @etuc_ces - Jun 23

AI is watching: What to know about workplace surveillance
Firms say surveillance tech protects them and boosts the bottom line, but unions warn it is too easy for employers to collect intimate, personal data and use it against their workers.

EUROPEAN TRADE UNION @etuc_ces - Jun 23

Thomson Reuters Foundation reports on @ETUI_org & ETUC concerns about AI in the workplace. Weak EU draft regulation news.trust.org/item/202106231...

See ETUI report launched today etui.org/publications/a...

Aida Ponce Del Castillo © etui (2021)
What is missing in the AI Act:

1) Clear ban of the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for the purpose of law enforcement.
2) Redress mechanisms for citizens and the right to file a complaint.
3) Human rights impact assessment and precautionary approach.
4) Employment dimension, including employees’ data protection.
5) Role of social partners.
6) Enforcement and role of the EDPB.
Next steps in the legislative process:

• What committee will take the lead at the EP?

• Will the Slovenian Presidency conclude with a one full reading of the text?

• Amendments will be tabled; will they turn the AI Act into a “more social” piece of legislation?

• Will the possible provisions on employment -and algorithmic management- make the EC’s digital agenda more protective of people?
Proposal: we need an ad hoc instrument on AI in employment

The proposal does not provide adequate protection to workers. We need an ad hoc legislative instrument that addresses the specific situation of the workplace environment, the employment relationship, and that establishes enforceable provisions and thresholds of risk categories. (example: ban on the use of certain algorithms that collect intimate personal data of workers).
Ad hoc instrument on AI on employment: 7 essential dimensions

1. Total ban of algorithmic worker surveillance.
2. Employers’ responsibility in the deployment/use of AI systems that interact with the workforce.
3. Risk prevention.
4. Exercising GDPR rights.
5. Algorithmic explainability.
7. Address algorithmic management.
Also, we need to move away from self-assessments, good intentions, transparency measures and overreliance on trust.
Microsoft AI principles

We put our responsible AI principles into practice through the Office of Responsible AI (ORA), the AI Ethics, and Effects in Engineering and Research (Aether) Committee, and Responsible AI Strategy in Engineering (RAISE). The Aether Committee advises our leadership on the challenges and opportunities presented by AI innovations. ORA sets our rules and governance processes, working closely with teams across the company to enable the effort. RAISE is a team that enables the implementation of Microsoft responsible AI rules across engineering groups.

Learn more about our approach →

Artificial Intelligence at Google: Our Principles

Google aspires to create technologies that solve important problems and help people in their daily lives. We are optimistic about the incredible potential for AI and other advanced technologies to empower people, widely benefit current and future generations, and work for the common good.
AI is more than data and algorithms. It’s a *megamachine* that depends on material resources and human labour. A registry of power.

Key is to have regulations that guarantee rights and freedoms to people driving this complex and ever changing non-pure technical system. Hence my proposal.

Mumord L. “The Myth of the Machine”
Crawford K “Atlas of AI”
The AI Act is not the only legislative proposal addressing AI. There are provisions on AI across the EC’s Digital Agenda legislative package.
If amendments to the AI Act are not satisfactory, and knowing that other AI provision across the different legislative proposal do not address people’s rights, what is plan B?

The digital environment is disruptive, highly volatile and “evolutionary”. It is urgent to build an anticipatory and inclusive governance framework.
Thank you

Aida Ponce Del Castillo