

**Comments on the Commission proposal for a regulation laying down harmonized rules on  
Artificial Intelligence (AI Act) – June 2021**

**1. Key concerns for UNI Europa regarding the draft AI regulation**

**a) Employees’ participation, social dialogue and collective bargaining**

- The regulation fails to address the crucial role that social partners and collective bargaining play in the deployment of new technologies at the workplace. Participation of workers’ representatives in the development, implementation and governance of AI systems at the workplace is key to ensure the best protection of workers’ rights.
- Collective bargaining is an essential tool to address technological change. It is flexible as it is possible at different levels (company, sector, national) and effective to provide safeguards against the negative impacts of new technologies (like algorithmic management) that occur when the rules for their implementation have not been agreed between employers and employees beforehand. Collective bargaining agreements can establish limits to AI-enabled surveillance of workers and lay down criteria to improve the transparency of decision-making process of an AI system. *(A good example is the Spanish social partner agreement on platforms that stipulates that algorithms impacting on working conditions must be made available to trade unions and meet transparency requirements.)*
- Workers are not mentioned in the proposal. Only “users” are defined as “any natural or legal person using an AI system under its authority”. In a work context the user is rather the employer / HR Manager/ line manager / principal / payer (in the gig-economy concept), not the (possible) employee who is the possible subject of the system. The draft Regulation does not provide for any information, consultation or protection for workers. (Cf. rec. 47, 48 and art. 13).
- The regulation states that stakeholders’ participation in the design and development of AI and diverse teams should be “encouraged” (art. 69). Though this might apply for trade unions, such a voluntary approach is not enough. We want a structural/systematic involvement of unions and workers’ representatives in all stages of the design, development and implementation of AI systems.
- Governance (art. 56-59): The regulation lacks focus on general governance of AI systems, as it only covers the governance for implementing the regulation. Trade unions should be part of the governance of the EU AI Board to ensure a democratic process and the protection of workers’ rights. The regulation only mentions “external experts and observers” (art. 57.4).
- Not only users or companies should be monitored. Also, system developers should be obliged to stick to local regulations. Providing a system to customers, knowing that it is illegal, with the excuse that the customer is not obliged to use it but has a choice should not be possible. Instead, there should be a clear liability throughout the supply chain. If someone produces or uses a system with illegal parameters, the whole chain should be collectively liable.

**b) AI systems used in employment (recitals 27, 36, articles 6-8, Annex III) and fundamental and workers' rights (recital 28)**

- The Commission focuses in its approach to the use of AI above all on the innovative aspects of new technologies. Though we welcome the beneficial potential of AI systems, we think that the general debate on AI and labour neglects the fact that AI also creates low quality employment. AI systems fuel the growth of “ghost workers”, workers that carry out repetitive tasks such as labelling, editing and moderating data needed in AI systems. Ghost work is often characterized by low pay, stress and is uncredited. When regulating AI in the area of employment, it is important to pay sufficient attention to the negative impact that the use of AI driven technology has on working conditions.
- Though the draft regulation mentions high-risk AI-systems in the field of employment, workers management and access to self-employment (Article 6.2 and Annex III.4), the list of applications covered is limited. The regulation only mentions systems used for algorithmic management especially in HR (recruitment, selection of candidates, advertising of vacancies, screening applications, interviews) and decision- making (promotion and termination of employees, performance /behaviour evaluation and monitoring) and for task allocation.
- However, other AI applications with possible consequences for employees do not fall under this scope. We believe that the list in Annex III is not complete as future AI systems that allow for an extended algorithmic management might not be covered by the list in Annex III.
- Given the huge impact of high-risk applications (especially for surveillance) in the employment area regarding health & safety and fundamental rights, we think that such a limitation of the scope of high-risk applications is not sufficient. We are especially concerned about high-risk applications to
  - o Infringe privacy/data protection rights as employer can access workers' data,
  - o Allow surveillance to take place outside of company premises and outside of working hours as it invades workers' homes,
  - o Cause bias, incorrect and discriminating AI decisions due to limited data.
- New systems currently tested and researched often combine image-based and voice analysis regarding emotion recognition software, personality analysis software and lie detection software. All of these are currently highly unreliable, especially in an ethnically and/or culturally diverse environment. This software is not prohibited so it might end up in the high-risk category, but it is unclear under which category exactly. (*E.g., a Belgian Bank considers the further training and development of an algorithm to 'digitally assist' the bank employees to work more efficiently.*)
- Though it will be possible to add certain AI systems to the scope of Annex III (art. 7), this can only be updated within the areas already covered. The Commission lays down criteria for this assessment explicitly mentioning harm to health, impact on fundamental rights and a position of imbalance of power and social economic circumstances. This is certainly the case for any AI system impacting on workers given the structural power imbalances between employer and employees, and also the risk to health and safety involved. Adding a high-risk AI system ex post after because it has already caused harm, is too late. Instead, the precautionary principle should be applied and any AI system that is intended for implementation at work should be classified as high-risk.

- Regulatory sandboxes (art. 53): should not be allowed for AI systems that are implemented at the workplace. Sandboxes should provide a possibility for a deeper understanding of the socio-technical nature of the development process. AI research and innovation requires a more interdisciplinary approach to cover social issues and potential hazards that could occur when systems are applied. The focus of innovation should be on developing tools that gain transparency into the AI systems and understand their behaviour in novel situations ahead of time.

**c) Conformity assessment & third-party supervision of high-risk AI (rec. 78, art. 19, art. 43, Annex III, art. 4 & Annex VI):**

- The regulation provides for conformity assessments for high-risk AI that should be done via self-assessment of the provider (Annex III, art 4).
- The process of internal control combined with a post-market monitoring system for high-risk applications and reporting systems to be established by providers is inadequate given the risks for health & safety and the fundamental rights of people. There is too much reliance on industry that it can self-assess the risks. Instead, conformity assessments for all high-risk applications should be done via an independent notified body/third party.
- *(Example from Norway: Government has put AI monitoring not to the Data Inspectorate but to the auditor general, meaning that it will only be addressing public services and leaving a gap for supervision of services run by private enterprises whether it is for private enterprises or the public sector. That gap should not exist.)*
- Third-party supervisors should not be private companies but an independent public body addressing all implementations of AI – not only high-risk.
- There is the question of a user organisation downgrading their AI implementation from high-risk to a lower level, there should be mechanisms and a trustworthy body to address that
- Discrimination and associated bias to the outcomes of the high-risk AI systems that are not assessed by an independent body and left to self-evaluation. There should be financial support for SMEs to enable this kind of assessment for these companies, too.

**d) Transparency and human oversight**

- Transparency: More transparency is needed for AI systems impacting on workers. So far, the regulation only mentions transparency requirements to support “users” of AI (rec. 47, art. 13) and it only refers to a “certain degree” of transparency for high-risk applications. This is insufficient and the regulation should oblige employers to ensure that workers are aware of the AI systems at the workplace, including their impact on data, digital footprint and work organisation (“AI literacy”). This is where social dialogue between trade unions and employers plays an essential role.
- Human oversight (rec. 48, art. 14): The responsibility for false decisions made by an AI system cannot be shouldered alone by an individual engineer or AI system developer. Especially when systems are subject to a self-assessment procedure, the individual developer might be blamed for the deployment of the system, rather than the organisational setting within which the developer operates. Responsibility should be distributed across the process and its stakeholders. This requires a no-blame culture, where taking responsibility includes providing space for empowering and training the

workforce to ensure human oversight, especially when “the output of the high-risk AI system” is a part of the responsibility. Nothing mentioned in the regulation about special training for those operating these systems or to counteract if necessary.

- No specification of any right to contest an algorithmic decision and obtain human oversight or provision for remedies when something goes wrong. There should be an effective appeal procedure and remedies enabling individuals to address the AI behaviour and decisions citizens find potentially harmful and illegal.
- Ethics: The regulation addresses and limits certain uses of AI, which is positive. However, ethics should have a stronger visibility in the regulation.

## **2. Our demands concerning the draft AI regulation:**

### **a) Employees' participation, social dialogue and collective bargaining**

- Trade unions and workers' representatives must be key actors in developing and implementing AI systems. The regulation should acknowledge the importance of social dialogue and collective bargaining for AI systems used in the field of employment, but also in general as regards the implementation of new technologies in the workplace. *(Example from Norway: Agreement with Negotia regulating employees' involvement with important wording regarding AI.)*
- When AI systems are implemented in the workplace, trade union/workers' representatives need to be involved in the process. Employees' rights to information, consultation and participation (according to existing legal frameworks) must be respected and should be part of the mandatory compliance obligations. This is the only way to anticipate the impact on the quality of work, working conditions or dismissals due to automation.
- The regulation needs to ensure the right to workers' involvement, protection of collective bargaining and national legislation providing for better safeguards and collective bargaining should not be undermined or overruled by EU regulation. National legislation regarding tech-enabled surveillance is often subject to trade union involvement/social dialogue. It is not the case for this EU regulation. Could be used to introduce only minimum standards for workers' protection. EU regulation must not override national laws that provide more protection and safeguards for workers as this could lead to deregulation of labour and industrial relations (e.g. the new Spanish law on algorithmic transparency or the German co-decision model).
- Trade unions should be part of the governance of the EU AI Board.
- Third-party supervisors should not be private companies but an independent public body addressing all implementations of AI – not only high-risk.
- Responsibility for decision made by AI systems should be distributed across the process and its stakeholders (do not blame the developer alone).
- There should be a revision of the different EU legislations, including EU labour law, as regards human oversight (providing labour tax incentives for investment in human capital -lifelong learning and new skills), health and safety both in terms of working with the machines and being exposed to stress due to tracking and surveillance, working conditions and social protection, etc.

## **b) Worker Data and Surveillance & monitoring of workers**

- The exemption for the use of “real-time” remote biometric identification systems in public spaces by public authorities (art.5.3.) is controversial. How are public spaces defined as this could lead to mass surveillance when the provision allows deploying such systems without an authorisation “in a duly justified situation of urgency”. This is a threat to fundamental and universal rights and freedoms, including one’s right to privacy, as such systems process biometric data in mass, generally without consent, and therefore should be forbidden.
- Any AI system (and the data selected to feed the system) in the field of employment and that impacts on workers or working conditions, needs to be categorised as high-risk. They should be subject to a third-party impact assessment by competent authorities with the involvement of trade unions.
- It is vital for workers’ rights that biometric identification and monitoring of workers should not be allowed. Employers should not use biometric identification like face recognition for tracking and controlling employees, whether the workplace is publicly accessible or not. The data analysed by these tools does not say anything about how motivated or productive a person will be at work. Especially in the context of HR, AI systems are not used to identify a person but to make presumptions and for categorizing employees. A Ban of harmful surveillance practices (neuro-surveillance) is necessary.
- With regard to surveillance, we have the following demands:
  - o No monitoring of workers in the home environment through cameras.
  - o No permanent monitoring through cameras or other means, except when contributing to increased occupational safety and health in physically dangerous work
  - o Strong regulation on software spies reporting constantly on the employees’ activities (like Nexthink)
  - o All technical information of AI tools used to be given to trade union representatives.
  - o Workers to be clearly told how AI is measuring and assessing them.
  - o Raw data should be given to trade union representatives. This means assessment outcomes and measures divided by gender, age, ethnicity, regional accents etc, to check for bias in a transparent way.
  - o Negotiation with trade union representatives of the rate of output to hours worked matrix. For example, “average handling time” in contact centres, Amazon warehouse workers etc.
- Workers’ Data: The regulation should improve workers’ data rights, e.g. access to data, redress possibility. GDPR art. 88 mentions the role of collective agreements regarding data processing for recruitment & management to safeguard workers’ & fundamental rights. The implementation of the GDPR provisions at the workplace requires the involvement of social partners.
- Issues like the right to privacy, information, transparency of and access to data should be covered by comprehensive legislation and, in addition, dealt with by collective bargaining.
- Regulation must ensure that the limitation on where data can be stored as set forth in the GDPR regulations is enforced even when data is to be transported to or processed by AI engines.
- Collective bargaining is crucial to negotiate about the use of monitoring or surveillance technologies at work. It is important to address the collective data rights for workers, not

only individual rights and access to data. The regulation must be respecting labour rights and data rights at national level and should be an addition, not a substitution, of co-governance models respecting social relations and dialogue.

- Regulatory sandboxes should not be allowed for AI systems that are implemented at the workplace.
- We need an effective appeal procedure and remedies enabling individuals to address harmful or incorrect decisions made by AI.

**c) Skills and training/employability of workers**

- Training and upskilling regarding AI based systems is essential to provide employees with the necessary skills when AI systems are implemented and to ensure that employees have a basic understanding of how an AI system works or decides. Besides digital literacy, employees also need to understand how an AI system could possibly impact on their working conditions, health and safety and other relevant areas.
- Collective bargaining is the best way to identifying the training needs in the specific company context.
- To raise awareness about the ethical aspects of AI and to promote ethical and trustworthy AI, it is important to integrate ethics in training for engineers and to promote a more interdisciplinary approach for R & D. There should be a special training for those operating AI systems or to counteract if necessary.
- We need diversity of skills and competences, not reduced to STEM related upskilling. With an increase of the use of AI systems, typical “human” skills like empathy or creativity become even more important and should be promoted. Investment in training should not be exclusive but address the career paths of workers across job categories.