**Digitalisation 2.0. – Assessing the impact of COVID-19 on the digital transformation in the European industry**
**January 19, 2021**

# BRINGING AI & SURVEILLANCE TO THE TABLE OF NEGOTIATIONS:
## PRACTICAL INSIGHTS

Aida Ponce Del Castillo
ETUI, Foresight Unit

etui.

# CONTENT
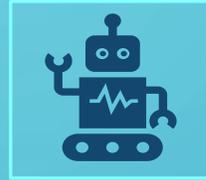
**ONE:** "AI and guaranteeing the human in control principle"

**TWO:** "Respect of human dignity and Surveillance"

**THREE:** How to tackle workplace surveillance?

**FOUR:** What action plan for negotiations?

etui.

EUROPEAN SOCIAL PARTNERS
FRAMEWORK AGREEMENT

ON DIGITAL ISATION

Aida Ponce Del Castillo © etui (2021)
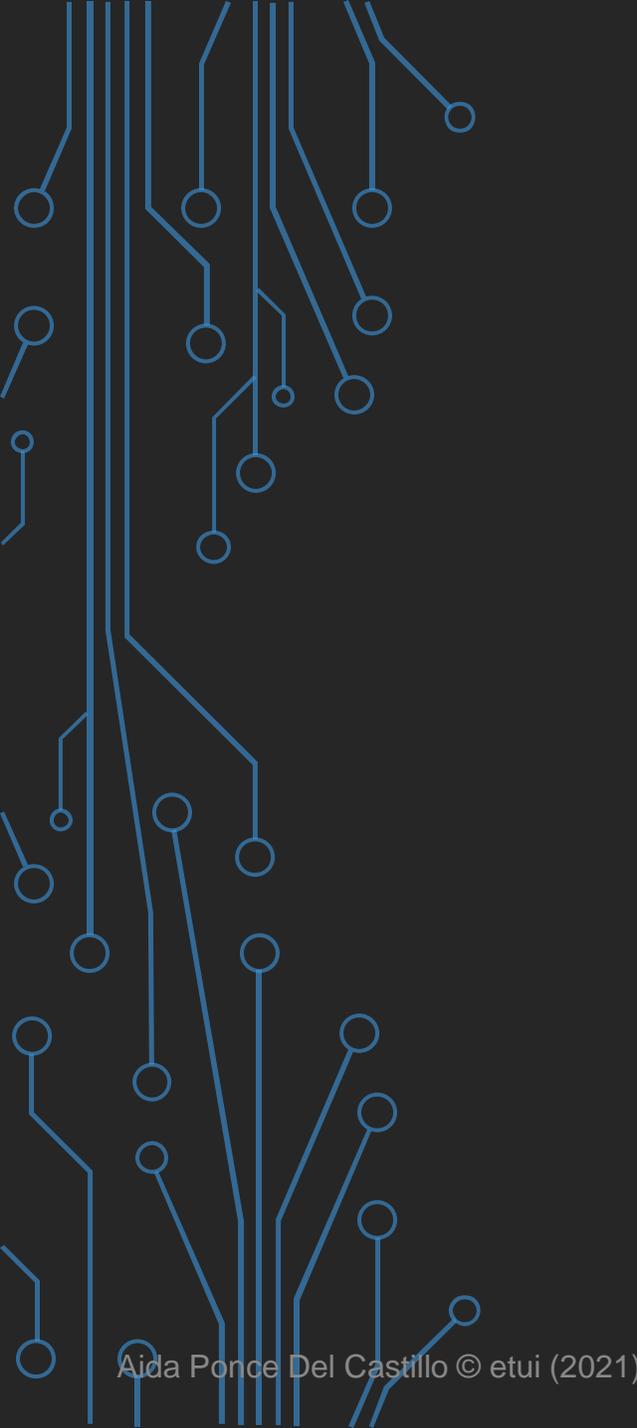
**1** FRAMEWORK AGREMENET SECTION 3: AI AND GUARANTEEING THE HUMAN IN CONTROL PRINCIPLE

etui.

Section 3 starts with introductory statements:

"… It is essential to explore the design options of using AI or machine learning systems for economic success and good working conditions."

"… It is also important to make sure that AI systems and solutions do not jeopardise but augment human involvement and capacities at work."

"The <mark>control of humans</mark> over machines and artificial intelligence should be guaranteed in the workplace…"

Algorithms are controlled by humans

etui.

**Who** are the humans that control the algorithms?

- The computer scientist who wrote it.
- The person who decided the <u>variables</u> and their <u>meaning.</u>
- The person making decision with the data analysed by the algorithm.

etui.

- **Amazon algorithm in warehouses:** https://www.theverge.com/2019/4/25/18516004/amazon-warehouse-fulfillment-centers-productivity-firing-terminations

- **Amazon Flex algorithm**: https://www.inputmag.com/tech/amazon-plugged-a-hole-that-led-its-drivers-to-hang-phones-in-trees

- **Barclays case:** https://www.theguardian.com/business/2020/feb/20/barlays-using-dytopian-big-brother-tactics-to-spy-on-staff-says-tuc

- **Uber algorithm:** https://www.wired.co.uk/article/uber-fired-algorithm

- **H&M 35 million euros fine by DPA**

| OBJECTIVE | IMPACT ON WORK & EMPLOYMENT | CASE |
|---|---|---|
| To allocate jobs | by *restricting* **access** *to jobs* and/or **giving** tasks to certain workers (eg: the driver receives less offer because he is not that popular) | Amazon Mechanical Turk |
| To evaluate workers | by **rating** workers | Amazon Flex Uber |
| To discipline workers | by **replacing** *(dismissal)* and **rewarding** | Uber Amazon Warehouses: "Anytime Feedback Tool" |
| To monitor/ surveil workers | by **gathering** and **analysing** personal data (biometrics) and make **profiles** and take **other decisions** | Finance sector: Barclays 2020 UBER: Real-time ID verification H&M service centre |
| In recruitment | | |
| In personalised learning, health and safety, etc | | |

etui.

# LET'S MAKE AN EXPERIMENT

etui.
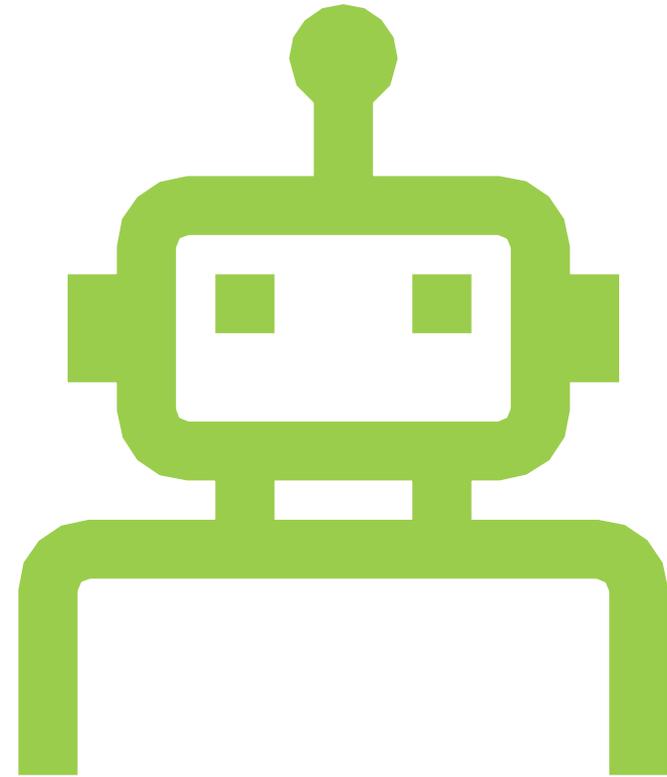
# Algorithm on working conditions on supply chain

**Procedure:** QualityWorkingConditions = {WorkingTime + SafetyMeasures + AgeRange + DecentWage}
**Print:** "Pay the worker"

**ELSE**

**Print:** "unreasonable working conditions"
and
**Print:** "Recalculate"

# WorkingTime
# SafetyMeasures
#AgeRange
# DecentWage: HourlyPay, GrossPay,  HoursPerWeek, MaxOvertime

etui.
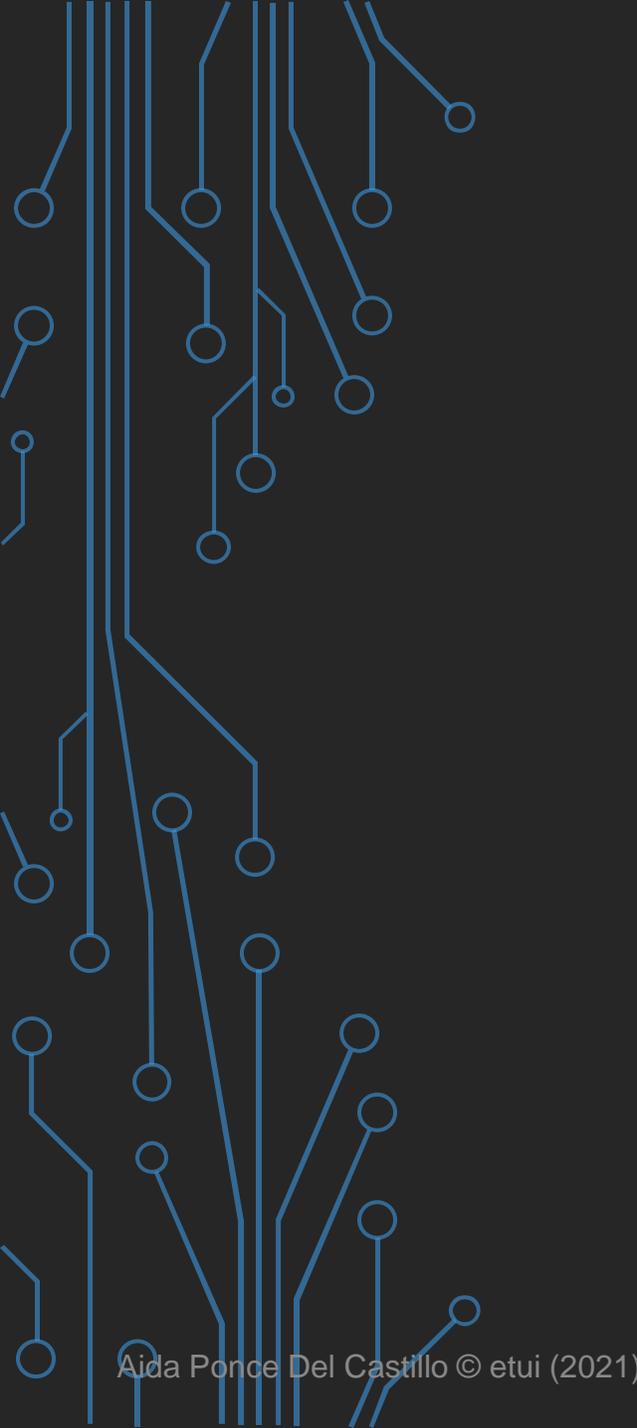
# How to deal with algorithms or AI systems?

etui.

"Trustworthy AI has three components, which should be met throughout the system`s entire life cycle and must be respected in the deployment in the world of work:

it should be lawful, fair, transparent, safe, and secure, complying with all applicable laws and regulations as well as fundamental rights and non-discrimination rules,

it should follow agreed ethical standards, ensuring adherence to EU Fundamental/human rights, equality and other ethical principles and,

it should be robust and sustainable, both from a technical and social perspective since, even with good intentions, AI systems can cause unintentional harm."

The employer must comply with this as it is legally required by GDPR Art 5

Which ethical standards?

ISO

IEEE

HLG-EC

+80

How is 'sustainability' assessed?
What criteria?
Can unions insert their own criteria?

etui.

"Measures to consider: Deployment of AI systems:

should follow the human in control principle;

should be safe, i.e. it should prevent harm. A risk assessment, including opportunities to improve safety and prevent harm such as for human physical integrity, psychological safety, confirmation bias or cognitive fatigue should be undertaken;

should follow the principles of fairness, i.e. ensuring that workers and groups are free from unfair bias and discrimination;

needs to be transparent and explicable with effective oversight. The degree to which explicability is needed is dependent on the context, severity and consequences. Checks will need to be made to prevent erroneous AI output."

Unions can use the framework agreement + GDPR:

Risk assessmentmust be done before the tech is introduce. It must include TU involvement

How to assess the bias?

What is "fairness"?

The employer needs to have a model that can explain how a AI decision was made (GDPR Art. 22), and make it avaiable

Aida Ponce Del Castillo © etui (2021)

etui.

# **2** FRAMEWORK AGREEMENT SECTION 4: RESPECT OF HUMAN DIGNITY AND SURVEILLANCE

etui.

# WHAT IS HUMAN DIGNITY?

## Who defines that?

BTW: It is not a fundamental right in the EU Charter of Fundamental Rights, but it constitutes the basis for them.

etui.

# State of the art of workplace surveillance in the EU and UK

## EUROFOUND EUROPEAN COMPANY SURVEY ONLINE SURVEY 2020

etui.

Figure 1: Use of data analytics for process improvement and/or monitoring employee performance, EU27 UK (%)
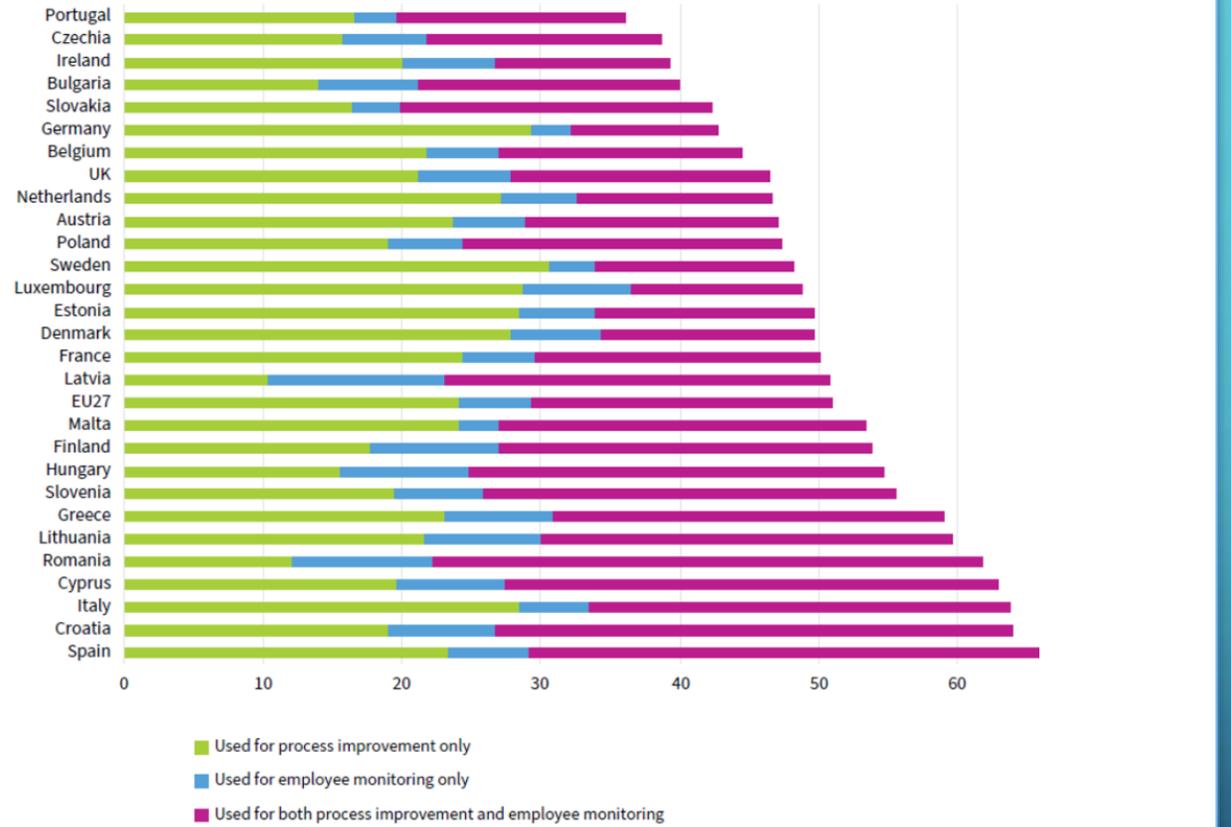
Source: ECS 2019 management questionnaire (Eurofound, 2020a)

Figure 2: Use of data analytics to monitor employee performance by broad sector, EU27 and the UK (%)
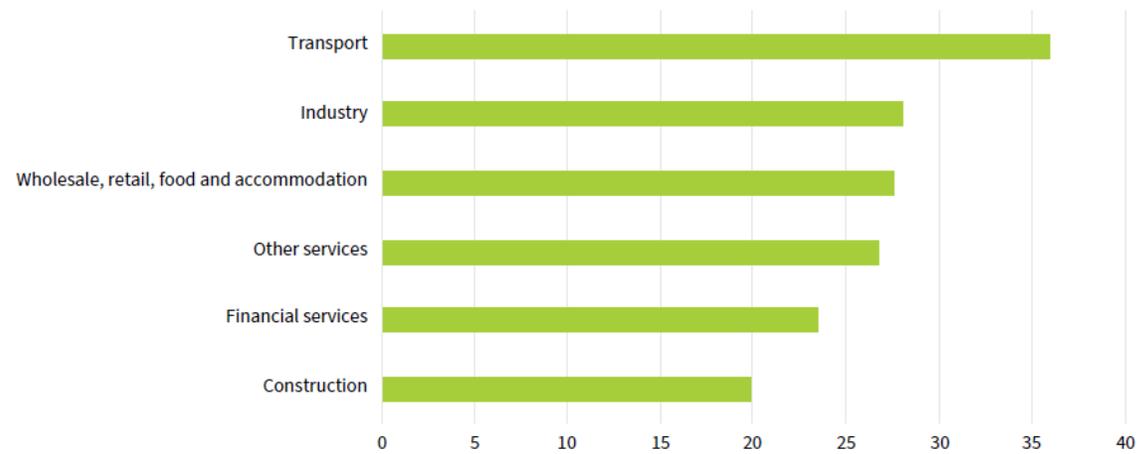
**Source:** *ECS 2019 management questionnaire (Eurofound, 2020a)*

etui.
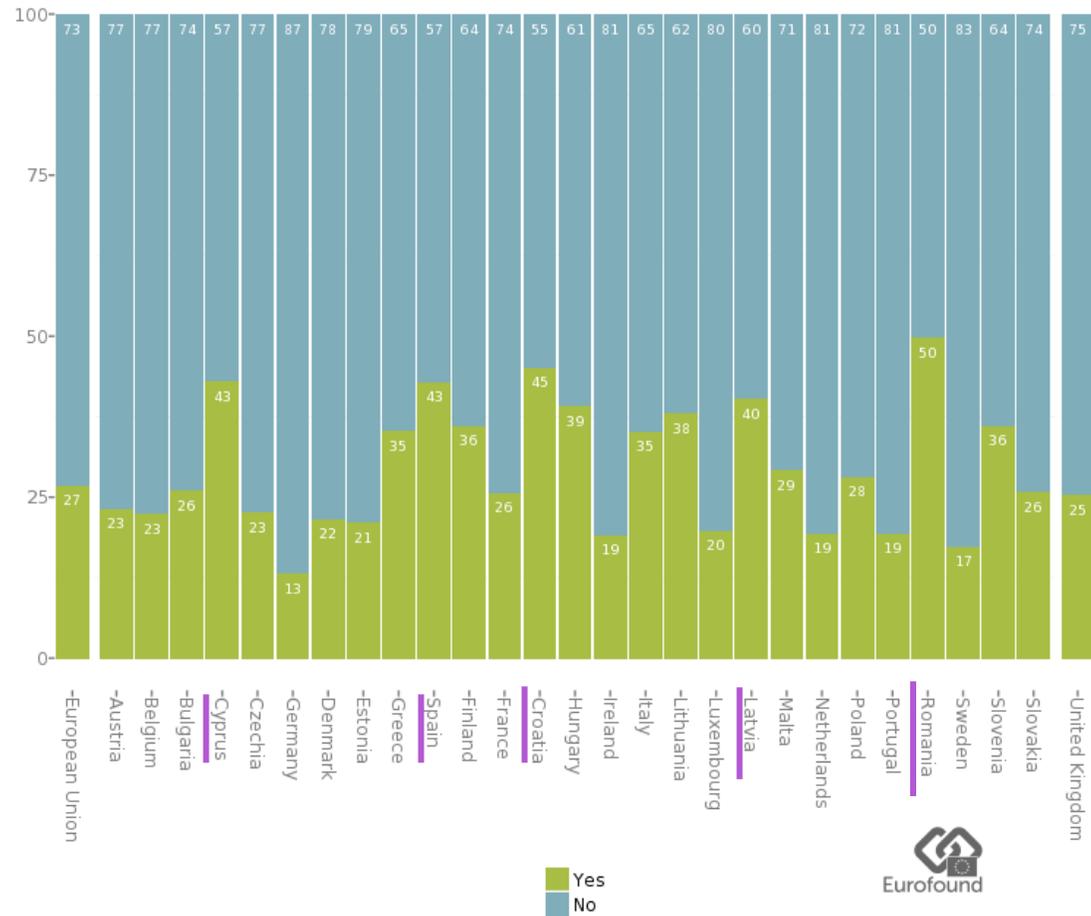
Q: does this establishment uses data analytics to monitor worker performance? yes/no
**All countries**
**All sectors**

etui.
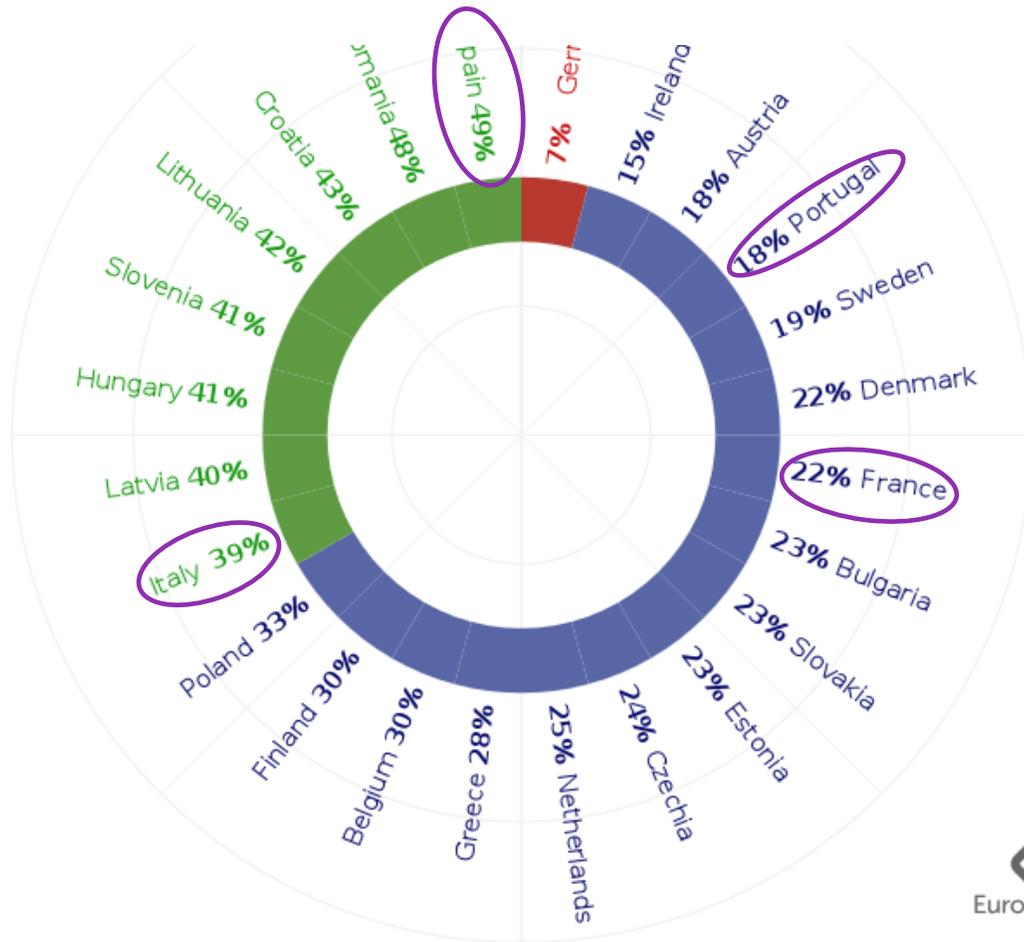
Q: does this establishment uses data analytics to monitor worker performance? yes/no **Industry sector**

| OBJECTIVE | IMPACT ON WORK OR EMPLOYMENT | IMPACT ON WORKERS | CASE |
|---|---|---|---|
| To allocate jobs | by *restricting* **access** *to jobs* and/or **giving** tasks to certain workers (eg: the driver receives less offer because he is not that popular) | Increase work intensity Make workers feel that they are constantly in competition with one another Anxiety and stress Restricting human autonomy | Amazon Mechanical Turk |
| To evaluate workers | by **rating** workers | Diminished level of trust towards management Increasing the sense of self-insecurity The disadvantaged are likely to be seen even more | Amazon Flex Uber |
| To discipline workers | by **replacing**(*dismissal*) and **rewarding** | Demotivate (instead of motivating) Anxiety and stress | Uber Amazon Warehouses: "Anytime Feedback Tool" |
| To monitor/ surveil workers | by **gathering** and **analysing** personal data (biometrics) and make **profiles** and take **other decisions** | Violation to privacy and data protection Increase in anxiety and stress Interference in personal emotions and behavior: Re-shape behaviour | Finance sector: Barclays 2020 UBER: Real-time ID verification H&M service centre |

etui.

# **3** HOW TO TACKLE WORKPLACE SURVEILLANCE?
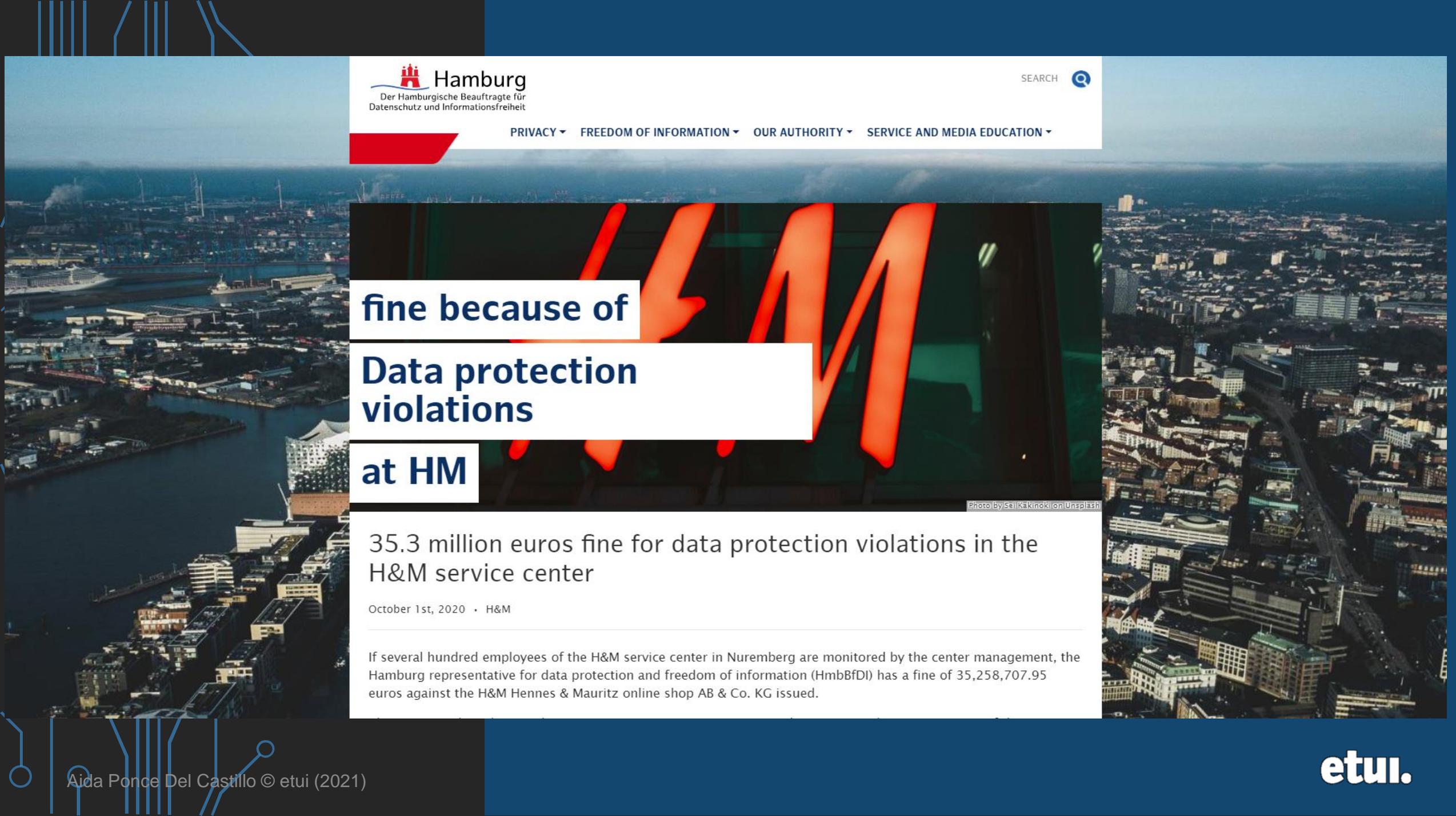
etui.

Who?

"In situations where AI systems are used in human-resource procedures, such as recruitment, evaluation, promotion and dismissal, performance analysis, transparency needs to be safeguarded through the provision of information. In addition, an affected worker can make a request for human intervention and/or contest the decision along with testing of the AI outcomes.

AI systems should be designed and operated to comply with existing law, including the General Data Protection Regulation (GDPR), guarantee privacy and dignity of the worker"

This is about automated decisions and GDPR Art 22:
Questions to the employer:
-> What software is used?
-> Does it analyse worker's sensitive data?
-> How can workers/ applicants exercise the right to contest the decision? ART. 13-15

The GDPR Art. 35 GDPR "Data protection Impact Assessment – DPIA"
Question to the employer:
Where is the DPIA?
The DPIA is a legal obligation. The employer must carry it out. Trade unions must be involved in doing it.

etui.

Measures to be considered include:

Enabling <u>workers` representatives</u> to address issues related to data, consent, privacy protection and surveillance.

Always linking the <u>collection of data</u> to a concrete and transparent purpose. Data should not be collected or stored simply because it is possible or for an eventual future undefined purpose.

Providing <u>workers representatives</u> with facilities and (digital) tools, e.g. digital notice boards, to fulfil their duties in a digital era.

Train your workers reps on GDPR

This has legal basis on GDPR Art. 5: All companie smust comply with the principles relating to processing of personal data

The Data Protection Officer must a union ally

Cross-fertilisation: DPOs can learn from the union reps. and vice versa

etui.
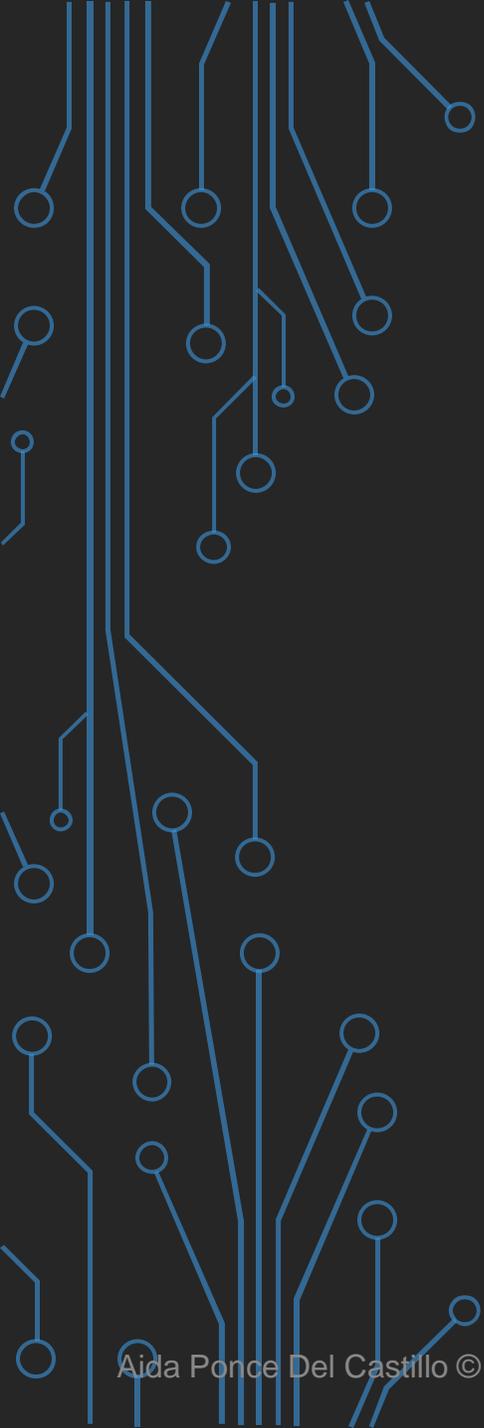
# 4 TRADE UNION ACTION PLAN

etui.

**investigate**

1. **Investigate where AI is <u>really</u> used in your company**
    make an alliance with the Data Protection Officer
    work with the DPO (objective role)
    TU can launch an investigation upon the national
    Data Protection Authority (DPA)

2. **Collect <u>real</u> <u>cases</u> and <u>facts</u> about workplace surveillance**
    what software is used?
    what tasks does it track?
    what personal data it collects?
    who has access to that personal data?
    who analyses the data?

3. **Get <u>involved in </u>the Data Protection Impact Assessment**
    every company has to do it (GDPR)
    how can that analysis impact workers?

etui.

| On personal data | On the technology | Keep and eye on the European policy 2021 |
| --- | --- | --- |
| Get trained on GDPR | The TU must be involved in the selection of the technology | Expect a very busy and active EU Commission |
| The DPO must be ally of trade unions | Safety and technology risk assessments have to be carried out before implementation | • EC AI strategy<br>• EC Data strategy<br>• EC Cybersecurity strategy<br>• DSA/DMA<br>• e-Privacy |
| Investigate what personal data of workers is collected | Ask how does the software work? | |
| Check that there are DPIAs in your company | Ask how is bias managed? | |
| Check how to exercise "*right to explanation*" in your company | How to integrate workers views into the technology itself? | Anticipate, be ready before the rules are implemented! |
| Check how to exercise "*right to contest an algorithmic decision*" in your company | | |
| Collect real cases of surveillance and contact ETUI | | |
| Look at cases resolved by your National Data Protection Authorities: H&M 35 million euros fine | Aida Ponce Del Castillo © etui (2021) | |

etui.

Labour in the age of **AI**
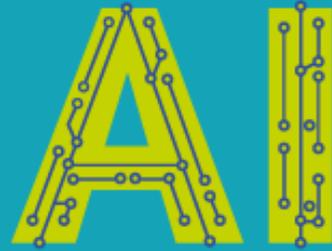
**7 dimensions that regulation can protect workers**

Find out more!

#AI4workers

etui.

1. Safeguarding worker privacy and data protection
2. Addressing surveillance, tracking and monitoring
3. Making the purpose of AI algorithms transparent
4. Ensuring the exercise of the "right to explanation" for decisions made by algorithms or machine learning models
5. Preserving the security and safety of workers in human-machine interactions
6. Boosting workers' autonomy in human-machine interactions
7. Enabling workers to become "AI literate"

THANK YOU
aponce@etui.org

etui.