



The role of trade unions in the processing of workers' data: insights from a European Union co-funded project

by Diletta Porcheddu

Tag: #dataprocessing #privacy #industrialrelations

The **processing of workers' personal data** is one of the topics that has, and will have in the near future, an **extremely significant impact on the balance of power between workers and employers**.

New technologies, powered by artificial intelligence, algorithms and “Big Data”, allow an **easier and cheaper collection and processing of a significantly higher number of workers' data** than it was previously possible, **undoubtedly beyond human capacity**.

This, together with the ability of these tools to develop probabilistic patterns on workers' future behaviours and to autonomously make decisions based on the processed data, might potentially have **disruptive effects on traditional managerial prerogatives connected to the working relationship, i.e., recruitment, organisation, monitoring, discipline** (see J. Prassl, What if your boss was an algorithm? Economic Incentives, Legal Challenges, and the Rise of Artificial Intelligence at Work, Comparative Labor Law & Policy Journal, 2019, Vol. 41, Issue 1).

It has to be noted that “**People analytics**”, described in scientific literature as “**a new data-driven approach to human resources management**” (M. Bodie et al., The Law and Policy of People Analytics, University of Colorado Law Review, 2017, Vol. 88) can **significantly affect not only individual working relationships, but also workers as a group**: partly because of the technical characteristics of this kind of algorithmic tools, but especially in light of the **intrinsic collective and organisational dimension of the abovementioned employers' prerogatives** (V. De Stefano, “Negotiating the algorithm”: automation, artificial intelligence and labour protection, Comparative Labor Law & Policy Journal, 2019, Vol. 41, No. 1).

Considering this, a “**collective**” **approach to the regulation of the processing of workers' data is also needed on the workers' side**; a strong involvement of their union representatives on the topic would also be perfectly coherent with the “**human in command approach**” to new technologies advocated by the [2017 European Economic and Social Committee's Opinion on Artificial Intelligence](#) and by the [2020 European Social Partners' Framework Agreement on Digitalisation](#).

The role of trade unions in workers' data processing is currently being explored by a **European Union co-funded project called GDPiR: Managing Data Processing in the Workplace through Industrial Relations (n. 101048690)**, coordinated by the Italian trade union federation, FIM-CISL.

GDPiR aims at improving collective bargaining and social dialogue initiatives in the field of data processing in the workplace and enhancing the adoption of collective solutions for the protection of workers' rights in the general context of a sustainable digital transformation: the project's main output will be the **organisation and provision of training modules directed at trade unionists and workers' representatives of the manufacturing sector** aimed at providing them with the tools to co-manage the introduction of data driven technologies in the

workplace.

At the current stage of the project, five European universities and research centres (ADAPT, University Carlos III of Madrid, CELSI, University of Amsterdam, Katholieke Universiteit Leuven) are carrying out **research activities on legislations, industrial relations systems, and social dialogue best practices on workers' data processing in 15 European countries**; to this end, they are using a **mixed qualitative methodology**, consisting in desk research on relevant scientific literature, national legislative frameworks and CLAs, but also in the submission of online surveys to territorial trade unionists and workers' representatives and the conduction of interviews involving national trade unionists. **The results of the research activities will be the starting point for the organization and provision of the training activities foreseen by the project.**

The preliminary results of ADAPT's research activities have been presented during the **ETUI event "Future of work: working with and through digital technology"**, which took place on February 14th, 2023 in Brussels, through a presentation concerning the **Italian legislative framework and industrial relation system's approach to the topic of data processing in the workplace.**

Italy was chosen as a case study given the peculiar features of its legislative framework, which is characterized by a **strong integration between labour law and data protection law**. This is mainly shown by the fact that art 113 and art 114 of the main national provision concerning data protection (Personal Data Protection Code - Legislative Decree n. 196/2003) refer directly to labour legislation - specifically, art 4 and art 8 of Law 300/1970 (Workers' statute) - **making those provisions effectively part of data protection legislation.**

As for what concerns the Italian industrial relations system, **the majority of collective agreements on data processing is stipulated under art 4 of the Workers' Statute**, which imposes a mandatory negotiation with workers' representative bodies (RSU) every time a device allowing remote work surveillance is introduced in the workplace: **therefore, they are mostly concluded on a workplace level.** However, a research on workplace-level collective agreements regarding remote surveillance stipulated between 2015 and 2018 showed first of all how there are a very low number of them (6,6% of total workplace-level agreements collected during those three years); the very same research also highlighted how **their provisions mostly aim at restricting the purposes towards which employers can use workers' data** (e.g. enshrining a ban on their use for disciplinary scopes) thus showing a rather **"defensive" approach of trade unions towards the topic** (I. Armaroli, E. Dagnino, A seat at the table: negotiating data processing in the workplace. A national case study and comparative insights, Comparative Labor Law & Policy Journal, 2019, Vol. 41, n. 1).

The first results of a questionnaire submitted to Italian territorial trade unionists and workers' representatives during the first months of 2023 were undoubtedly functional to have a general overview of their impressions and practices regarding workers' data processing.

52% of respondents in fact highlighted that **the issue of workers' data processing is mostly managed through information and consultation procedures**; 41% however stated that company management usually deals with it without involving trade unions or workers' representatives.

Less than 18% of respondents affirmed to have negotiated a collective agreement regulating workers' data processing (exclusively or among various issues). The content of those agreements was mainly directed at **limiting the use that employers could make of workers' data**, largely confirming the results of previous research.

When asked about the reasons for the lack of collective negotiation on data processing, the majority of respondents stated that the issue is usually managed unilaterally by company management: many, however, also said that **there is no perceived need to regulate workers' data processing so far**, and that **trade unions do not possess sufficient knowledge and skills to have a say on the topic.**

The main difficulty when bargaining on data processing was identified in the absence of

companies' data management professionals during collective negotiations; however, around 66% of respondents highlighted that a data processing expert (usually internal to the union) is available for the needs of trade unionists and workers' representatives.

Lastly, **almost 60% of respondents affirmed to have participated to training modules directed on how to deal with workers' data processing.** The main topics of those modules were the characteristics of EU and national data protection law: **a very low number of respondents affirmed to have participated to training modules entailing technical information on new data-driven technologies or on negotiation techniques and union prerogatives regarding workers' data processing.**

The interviews conducted involving national trade unionists of the manufacturing sector **largely confirmed the results of the questionnaire.** Interviewees underlined for example how social partners' discussions regarding the impact of digitalisation on the world of work mainly focus on its


occupational consequences: therefore, data processing is not considered as a priority in trade union agendas if compared with other topics such as wage negotiations, safeguarding of work life balance, etc., and **GDPR is considered only as a «cost» i.e., legal requirement to comply, with rather than as a bargaining subject and tool.**

The next steps of the GDPiR research activities related to the Italian case study will partly focus on the collection of more answers to the questionnaire; for the main part, however, **the expansion of the desk research on workplace-level collective agreements will acquire a central role** on the matter. This will be aimed at **finding out if trade unions still have a «defensive» approach towards the topic of workers' data processing or have adopted more «participatory» measures;** this, also in light of new legislative provisions concerning automated decision-making or monitoring systems in the workplace – such as **Legislative Decree n. 104/2022** (transposition of EU Directive 2019/1152 on transparent and predictable working conditions in the European Union), which **provides workers and their representatives with information rights regarding data-driven technologies.**

Any “best practices” of collective negotiations on workers' data processing will be shared during the training activities foreseen by the GDPiR project and directed to Italian trade unionists, **with the hope to “inspire” them to improve their approach to the topic.**

Diletta Porcheddu

ADAPT Junior Fellow

 @DPorcheddu