EUROSHNET

ARTIFICIAL INTELLIGENCE
MEETS SAFETY AND HEALTH AT WORK

Algorithmic management meets EU law

Integrating data protection, non-discrimination and collective rights to curb the powers of 'automated bosses'

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AI & algorithms in workplaces

Mapping the workers' experiences

" How are Italian and Spanish "ordinary" workforces managed by workplace tech?

Regulating algorithmic bosses

A multidimensional, anticipatory and participatory approach

" Is the existing legal framework suitable to address the augmented power of algorithmic bosses?

- A -
The workers' experiences
Boss ex machina:
the marvel and the menace

automation vs augmentation

Augmenting the full range of an **employer's traditional functions (organisation, control and disciplinary powers)**

- Still left relatively undetermined is the workplace-level penetration

- To meet this gap, we map the **concrete experiences** of a group of private-sector employees in Italy and Spain

1 CV filtering — **2** background screening — **3** job instructions — **4** day-to-day practices — **5** performance monitoring — **6** firing

Reduced agency
Micromanagement
Excessive self-reporting
Constant monitoring and assessment
(co-workers & customers)

Rudimentary organisational model
Dysfunctional technologies
Non-meaningful data
Arbitrariness of **company decisions**

PRESSURE

Job-intensification (workload, tempo and working time)

OSH effects   psychosocial risks

findings: wrap-up

New management practices (**assistive and executive**) interact with **pre-existing authority structures and features**

- organisational structures have a relatively more important weight in explaining the impact on workers' conditions

- workers' **discretionary power is constrained**

  - definition of goals, the methods, the speed

Scarce penetration of modern tools

Managers using tech to **expand and routinise their authority**

- amplification of the centres of power

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Workers are witnessing a shift **from direct observation to technocratic control**

- Not confined to workplaces and working time

Not matched by the counterweights defined by the legislature/statutes or collectively negotiated by social partners

- **Human bosses** are far from perfect

- EU legal frameworks constrain how managers must go about taking decisions

- Modern legal systems develop **practices in confronting flaws in human decision making**

- A -
Theory and regulation
Legal avenues to tame algorithmic bosses

The problem

wearables, AI & algorithms in workplaces

○ what's new?

Algorithmic management involves:

- A **slow, undetected and gradual shift** at different paces in different industries

- An **invisible** trend that is also **faceless**, leading to a **chilling effect**

  ▣ Competitive entitlements differentiated in a **tailor-made**, **evolvable** or **unintuitive** way

- A perception of being **innocuous**, presented as a **magic wand** for solving problems related to **OSH**, human subjectivity, bottlenecks, and systematic disparities in regular workplaces

The solutions

wearables, AI & algorithms in workplaces

○ **the legal context**

Labour law **moderates** the **unilateral discretionary power** of the dominant party by deploying controlling factors

- **Are existing countervailing forces limited** as they were designed upon forms of power that were significantly less sophisticated than today's technocratic authority?

- A **convergence** towards more encompassing and dissuasive methods

- **Re-engineering strategic litigation,** by deploying responsive strategies to limit abuses before they are perpetrated

leveraging uncertainty

Misplaced emphasis on **transparency** (along the lines of the "black box" metaphor)

- Such rhetoric shifts attention to inner workings, rather than **external effects**

Worker reps can rely on **evidentiary tools** that **leverage the lack of information**

The benefits of this **uncertainty principle**

- Placing the **burden** on employers to deploy processes that are reasonable and reportable

- **Instrumental** rights for **changing decisions** and laying the groundwork for a grievance

a cultural paradigm shift

~~**Retrospective** and complaint-led answers~~

- Issues mobilised in isolation + ex-post **damage-control approach**

More strategic, less litigation

multidimensional
business practices are shaped, not only ~~nged~~

collective
involvement of workers' reps as a "force

preventive
pro-actively fostering equality & accountability

data protection

Two roadblocks:

- **Inferential analytics** –detecting correlations and patterns– could escape the GDPR

- The **opacity** is as an obstacle to the legibility

  - **Code mutates** after a decision is made

This underestimates or obfuscates the **role** of the programmers, providers or users who:

- **Decide to adopt** tools to pursue goals that could be achieved by less intrusive means

- **Introduce key commands**

- **Validate the original datasets**

association (*Coleman*),
proxy (*CHEZ*, residency),
reluctance to provide data
(*Meister*   Art. 15 GDPR)

intent does not
matter + **simplified
burden of proof**
(triggering *ex ante*
compliance)

Discrimination litigation:
effects are crucial, **no need
to "open the black box"**
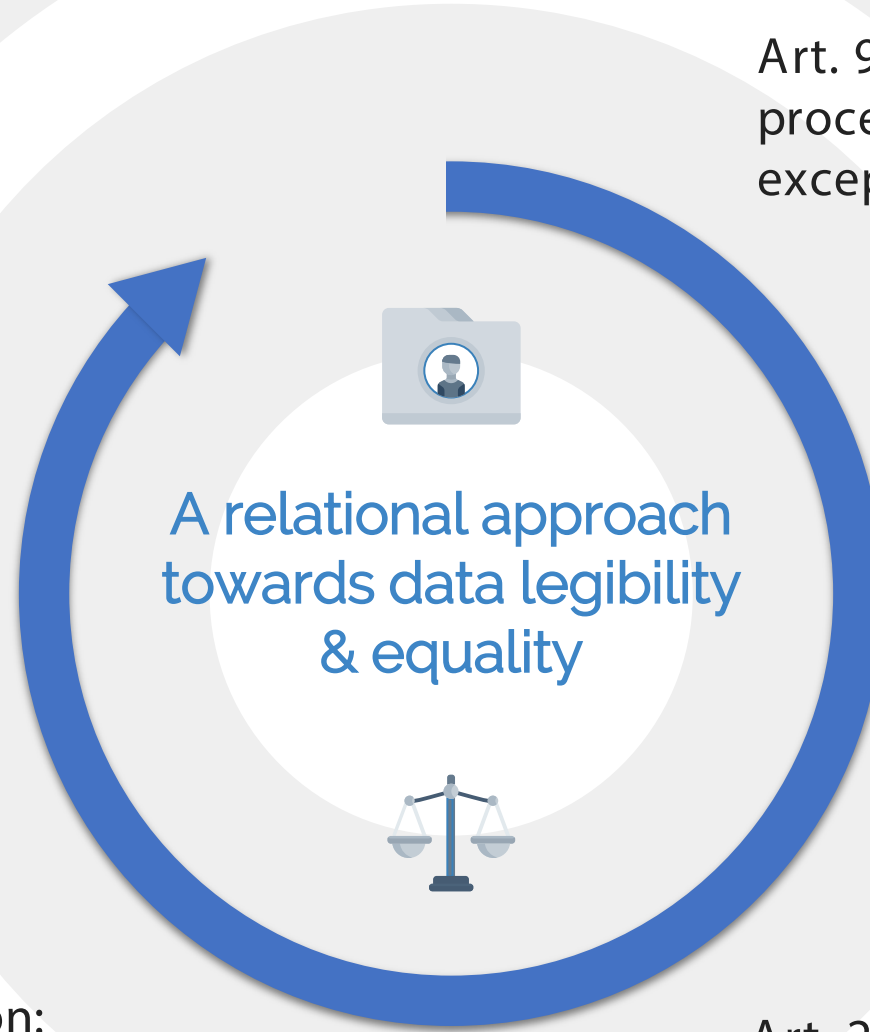
Art. 9 **health data** is not
processable, but…OSH
exception!

Art. 35 **DPIA**
(risk mitigation)

Art. 13, 14, 15
**information &
access** rights

Art. 22 **ban on ADMS** & profiling
(work-related exceptions +
objection & human intervention)

Recital 71 (**explanation**)

A relational approach
towards data legibility
& equality

overcoming the current limitations

Algorithmic management's "**harms** typically arise from how systems classify and stigmatise **groups**"

This intrinsic "**data network effect**" requires **responses** at the **collective level**

- Data protection law is rather **individualistic and defensive in nature**

- Non-discrimination struggles to capture the **disparate effects stemming from ADMS** affecting persons with characteristics outside the circle of protected grounds

  - **comparisons** not easy at the individual level

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workers are not defenceless

3. co-design & training

Workers are in the best position to **draw up internal rules due to their knowledge of operational practices** and hurdles

Workers' reps can foster **digital literacy + rely on experts**

1. consultation & co-determination

From the earliest phases when companies are considering the installation or **revision** of electronic devices

Lawfulness for data collecting and processing
(Art. 5 + 88 GDPR)

2. multistakeholder risk-assessment and ex-post litigation

- Trade union representatives: (i) participating in the **DPIA** + (ii) filing c**laims** before a court and exercising data protection rights before the employer or the **DPA** "independently of a data subject's mandate" (Art. 80 GDPR).
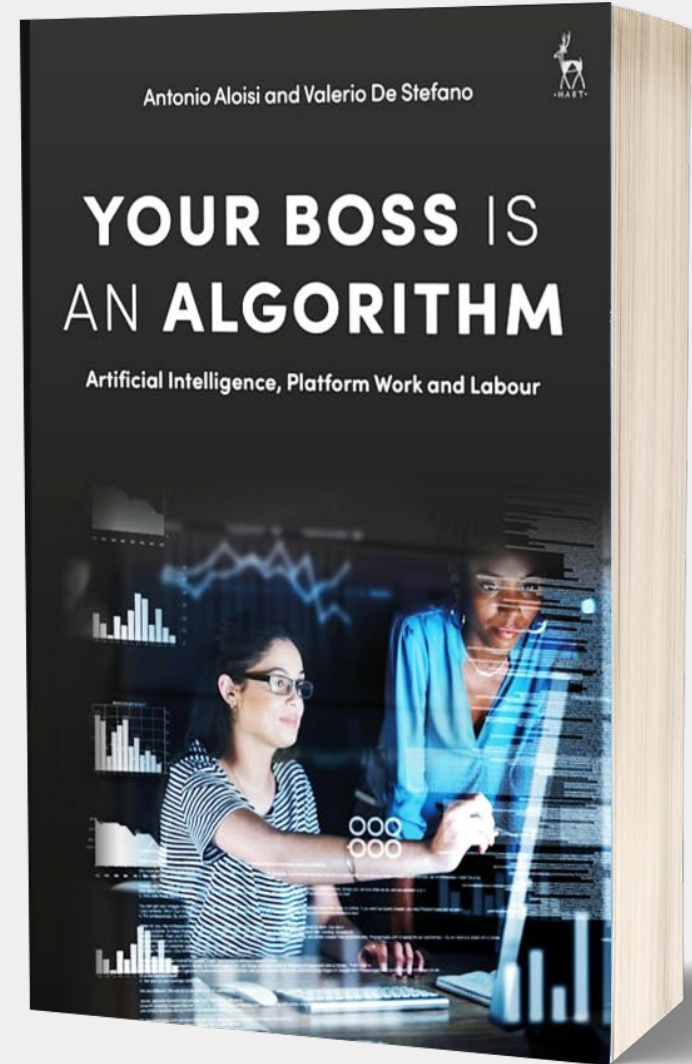- The same rights are laid down in the proposed **EU Dir. on Platform Work** (Art. 14)

thank you!

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YOUR BOSS IS AN ALGORITHM

Artificial Intelligence, Platform Work and Labour