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**Digital Workplace Management: The EU  
Regulatory Framework Between Personal  
Data Protection and Competitiveness**

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# Digital Workplace Management: The EU Regulatory Framework Between Personal Data Protection and Competitiveness<sup>1</sup>

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## Abstract

Technologies that collect and exploit personal data in the workplace as a tool for managing employment relationships, in all their phases, are becoming increasingly pervasive; consequently, the protection of workers necessarily hinges on adequate safeguards for personal data. However, the EU regulatory framework is fragmented, as the flagship regulation, the GDPR, leaves it to member state laws (or collective bargaining) to specify and enhance protections in the employment context. This contribution reflects on the effects of such fragmentation and provides a framework within the EU economic system, where competition among member states occurs in the realm of wage containment.

**JEL:** J81, K20, K31, L51.

**Keywords:** GDPR, fragmentation, artificial intelligence, workplace data protection.

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## 1. Introduction

The following investigation reflects on the protection of workers in relation to the use of technologies based on the collection and exploitation of data for the management of various aspects of the employment relationship. The perspective taken is that of personal data protection, and therefore the regulations, institutions, and legal mechanisms for the protection of personal data, as these institutions interfere with, operate, and are employed to provide protection for the worker.

The analytical approach is directed towards the overall framework of protections established by the legal system (and here we refer specifically to the European regulatory framework, that is the integration of national law within the legal framework of the Union); thus, an analysis of the European regulatory and institutional framework is proposed to elucidate some characteristics and consequent effects on labor protection.

The author of the analysis is not a labor law expert (in terms of scientific-disciplinary specialization), and therefore some elements of the analysis or certain observations may appear—particularly to specialists in the field—as pedantic or redundant, since certain points may not be taken for granted. At the same time, it is believed that a lateral perspective can be useful precisely to the extent that it can observe or capture aspects that—by their obviousness—could be underestimated.

## 2. Two Structural Elements: Asymmetry in the Employment Relationship and the Pivotal Role of Personal Data

We begin with two elements that provide structure to the reasoning we intend to present.

The first relates to the asymmetry that ontologically characterizes the employment relationship. We do not refer here to the factual dimension of the relationship between employer and employee (whether more or less subordinated), which is not necessarily a constant and which—under certain circumstances—may even be absent (or appear to be reversed<sup>1</sup>). Rather, we specifically refer to the fact that the employer possesses organizational legal power ('employer authority' or 'managerial prerogative') for the efficient and continuous combination of productive factors, placing them in an asymmetrical position relative to the employee. The employer is in a position to direct, monitor, and discipline the employee, while the employee is in a position of subjection to this directive power.

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1 However, it is clear that the employer class historically prefers conditions where the legal power to direct the employment relationship is reinforced by a situation of de facto power, directly linked to high unemployment rates. Such a condition weakens the worker's ability to counteract abuses of employer power (or its escalation, including through contractual or legal means). In this regard, one can refer to the classic observations of Michail Kalecki (Kalecki, 1943).

As is well known and widely experienced, technological innovations that have been deployed over time to manage the employment relationship, in its various phases and aspects, have conspired to intensify this asymmetry by enabling greater capacities for verification, control, arbitration, and pressure on the part of the employer. The ability to collect and utilize personal data for this purpose, through various devices and solutions, constitutes a significant milestone in this process, particularly as the application of automated (or semi-automated) management tools—manifested in various forms over recent years—has widened the asymmetry (Romanosky & Acquisti, 2009; Mantelero, 2016), opening up new and unprecedented spaces and modes of exercising employer powers, while also reinforcing (both qualitatively and quantitatively) the spaces already occupied previously (Aloisi & De Stefano, 2022). Digital technologies, based on the collection and processing of varying amounts of data (and personal data in particular), thus present themselves (also; perhaps especially?) as a factor that enhances and consolidates the asymmetry characterizing employment relationships.

The second element is the centrality of personal data as a knowledge element that serves as the raw material for feeding these technological solutions put to use in the management of the employment relationship. This has correspondingly led to the centrality of regulations and institutions for the protection of personal data, which serve as tools for worker protection (and more generally, for service providers). The protection of personal data has become the vehicle through which, on one hand, employment relationships within the platform economy have been redefined for their qualification (maximally) as subordinate labor relations. Similarly, the ongoing spillover of management techniques borrowed from the so-called 'gig economy' into more traditional forms of work organization (Potocka-Sionek & Aloisi, 2025) has recently led to an increasingly frequent call to the institutions of personal data protection as a means for safeguarding workers against management practices deemed invasive, discriminatory, disciplinary, or detrimental to dignity and freedom (Dencik, Brand & Murphy, 2024; Ogriseg, 2017).

### **3. Labour Protection and the Individualist Approach to Personal Data Protection**

Given these premises, the starting point of the reasoning to be developed is connected to the fact that the regulatory framework for personal data protection, namely the GDPR, is constructed—as is well known—around institutions, rights, and powers that hinge primarily (though not exclusively) on the self-determination of the individual (the data subject), more generally on the individual's capacity to activate the mechanisms and institutions of protection (Van der Sloot, 2014). In other words, the protection of personal data largely depends on the initiative and capability of the individual (in this case, the individual worker confronting the use of personal data by the company) to assert their rights: the so-called 'informational self-determination' (Thouvenin, 2021; Strycharz, Ausloos & Helberger, 2020).

This regulatory approach (the genesis of which will be revisited specifically in the context of employment relations) is of fundamental importance, as it is embedded in a multilayered regulatory context and shapes its dynamics.

What makes this very fact (i.e., the protection of personal data as established by the GDPR based on the role of the individual data subject/worker) so significant? What makes it so critical is the circumstance that the historical, traditional, established, and effective strategy to mitigate the asymmetry (of power) characterizing the employment relationship lies in the organized, collective, and supra-individual dimension of representing and acting upon the interests of the weaker party in the relationship (the worker). The dimension, initiative, and capacity of the individual are rightly considered inadequate as the core to which the protection of the rights and interests of the worker can be assigned, because the individual worker's condition is too weak to confront the 'capacity for resistance and resilience' or even the aggressiveness of the employer; hence, the role of the organized and collective dimension to compensate for and mitigate this weakness, to 'reduce' the asymmetry.

Herein lies the starting point of the reasoning, namely the oxymoron that has characterized (from the outset) the approach to protection established by the GDPR when applied to the labor environment. On one hand, technologies that exploit the processing of personal data (surveillance, profiling, classification, predictive analytics, etc.) significantly contribute to widening the power gap, the asymmetry in the employment relationship. On the other hand, the model of personal data protection—and therefore (by its very nature) the primary mechanism for the protection of workers (within this technological paradigm)—is constructed to rely on the role, initiative, and activation capacity of the individual. That is, not only of the weaker party in the relationship but also of the subject who, within this paradigm, is further weakened (Öhman, 2023).

This is the theme (and the problem) that provides the backdrop for the reasoning to be developed, as well as the guiding thread of the argumentative path that follows.

#### **4. GDPR and Workers' Rights**

One key element to highlight is the reasons why the GDPR has these characteristics, not only in general (which would take considerable time to explain: it is enough to note that in the European and particularly EU context, the counterpoint to the North American consumer-oriented perspective on privacy protection has solidified in terms of protecting individual freedom and dignity, in an individualistic dimension that centers on—precisely—the individual and their self-determination: Birch, Chiappetta & Artyushina, 2020; Rouvroy & Pouillet, 2009), but specifically in relation to the sector of individual protection as it pertains to workers; a substantive area where the reliance on a collective dimension (rather than the singular/individual dimension) as a prerequisite for effective protection constitutes (we can confidently say) a common factor in the European context (Pizzoferrato & Turrin, 2024; Giubboni, 2019).

In fact, attempts to explore the possibility of outlining a common (detailed) framework at the EU level for the protection of workers' personal data go back to the early part of this century and extend to the preliminary stages leading to the drafting of the GDPR regulation. However, such attempts have been thwarted by significant divergences both between employer organizations and trade unions and among the various European political families, as well as among the member states themselves. As is widely known, the compromise solution (which helped to break the impasse created by the European Parliament's proposal to introduce a set of minimum rules specific to the workplace and the opposition from member states) that emerged from the lengthy process of developing the GDPR is the opening clause contained in Article 88, which allows member states to provide 'by law or by collective agreements, for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context' (Abraha, 2022; Keane, 2018). The opening clause can be interpreted in two ways.

On one hand, it represents the recognition of a legal context that is too diverse internally to tolerate a form of 'strong' harmonization deriving from the introduction of minimum standards through regulation; a context in which the data protection rules related to the employment relationship inevitably intersect with multiple other disciplines, which pertain to areas outside the competencies assigned to the EU and touch upon identifying and characteristic elements of social models, economic organization, and the political and cultural identities of the various countries that make up the Union. In this sense, the clause serves to ensure the necessary flexibility to adapt personal data protection measures to the specific national contexts, taking into account the characteristics and traditions of the member countries. On the other hand, the clause opens up spaces for differentiation that can also be seen as opportunities for experimentation and learning, to test regulatory (and co-regulatory) models that may then serve as a model for the legislation of other countries (Abraha, 2022).

In any case, the opening clause leads to a fragmented structure of personal data protections in the employment context, in stark contrast to the declared objectives of the GDPR (Mantovani, 2019; Abraha, 2022). Furthermore, this underlying approach appears to be confirmed by the recent approval of the Platform Work Directive<sup>2</sup>, which, due to the regulatory instrument used (the Directive), inherently includes (one must say, is intentionally characterized by) the differentiation of national implementation regulations (Di Cataldo, 2024).

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2 See Directive 2024/2831 of the European Parliament and Council, dated October 24, 2024, which was published in the Official Journal of the European Union on November 11st, 2024. The aim of the directive is to improve working conditions and personal data protection for those engaged in activities through so-called digital platforms by introducing greater human oversight of algorithms. This category, while dynamic and growing, has so far operated in an environment of uncertainty and limited protection. The measure introduces provisions aimed at facilitating the correct classification of employment relationships through digital platforms (including the introduction of a presumption of subordinate employment), and promotes transparency and human oversight in the algorithmic management of work, even in relation to cross-border situations.

## 5. Implications of the Fragmented Regulatory Framework for Protections

So, why should we be concerned about such a fragmented, flexible, experimental framework? In fact, each member state has legislative leverage, adaptable to its specific context, useful for bridging the protection gap characteristic of the GDPR.

Below, we briefly highlight how this fragmentation manifests itself and why such fragmentation is not neutral in terms of systemic effects on labor protection.

A first element of (potential) fragmentation concerns the very core of the GDPR's personal data protection framework. Since the guardians of the GDPR are administrative authorities established in each member state (and each state can further articulate this organizational detail: consider Germany, which, due to its federal structure, has as many data protection authorities as there are Länder in the federation), the enforcement of EU regulations is necessarily subject to dynamics of fragmentation. A recent case involved the application of GDPR principles to the management and surveillance practices employed by Amazon in its logistics centers across Europe. Specifically, two distinct data protection authorities (the Lower Saxony Authority in Germany in 2022 and the French CNIL in December 2023<sup>3</sup>) both determined that the continuous surveillance mechanism (minute by minute), implemented through the real-time collection and processing of data obtained via manual scanners used by logistics staff, was disproportionate due to its excessive nature and lacking a legal basis (as the rights of the data subjects outweighed the legitimate interests of the company). However, the decision of the German authority was overturned by the Hannover Administrative Court (February 2023<sup>4</sup>), which determined that continuous monitoring addressed the specific needs declared and pursued by the company, and therefore was necessary (for these purposes) and not disproportionate, thus providing a legitimate basis for processing (that referred to in Article 6, paragraph 1, letter f) of the GDPR, which the aforementioned authorities had deemed non-existent: Abraha, 2023). An appeal is currently pending before the Federal Administrative Court (and Amazon has announced its appeal against the CNIL's decision).

A second element of fragmentation to be noted is related to both the protection model introduced by the Artificial Intelligence Act and the specific provisions regarding AI systems applied in the workplace. Regarding the model, it is shaped along the lines of product safety protection systems: as such, it relies predominantly on self-assessment mechanisms, with limited if any capability for external checks or verifications (i.e., in our case, from individual workers or trade unions). In the specific workplace context, the only rights of workers explicitly provided by the regulation are those that impose a duty of transparency and information regarding the use of high-risk management systems. Additionally, specifically regarding high-risk AI systems applied in the workplace, providers

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3 See at <https://www.cnil.fr/en/employee-monitoring-cnil-fined-amazon-france-logistique-eu32-million>, last accessed January 19th, 2025.

4 See Regional Administrative Court of Hannover, Case 10 A 6199/20 February 8th, 2023.

are subject to a conformity assessment procedure that does not require the involvement of a certified third-party organization. In this way, the asymmetry characterizing the relationship between the deployer (employer) and the worker is compounded by the asymmetry characterizing the relationship between the provider (the producer/supplier of AI solutions) and the deployer/employer (Wörsdörfer, 2024).

As for the role recognized to the collective dimension of representation of workers' interests, this appears rather limited. While the European Parliament's proposal aimed to require companies not only to inform trade unions before introducing a high-risk AI system but also to initiate a consultation procedure, the final agreement retained only the duty of information (transparency) and not of consultation (co-decision) (Cristofolini, 2024).

It should also be noted that the introduction of AI systems in the workplace is not classified, as such, as a 'high-risk' situation: for relative treatment, the AI system must pose a significant risk of harm to the health, safety, or fundamental rights of individuals. This last observation is particularly relevant for at least two reasons:

1. the application of the regime dictated for high-risk systems will depend on how the requirement of 'significant risk of harm' is interpreted.
2. It must be understood how the mitigation/attenuation of risk will interact with the model of personal data protection based on the balancing of the legitimate interest of the employer and the interests, rights, and fundamental freedoms of the worker (Article 6, letter f) of the GDPR). There is a not insignificant risk (already pointed out in doctrine) that compliance on the AI front (which occurs upstream, at the moment of 'production' of the AI system) could also be (rightly or wrongly) viewed as a compliance factor with respect to the regulation protecting personal data (which, conversely, occurs downstream, when the system is actually operational), resulting in the second being absorbed by the first (Falletta & Marsano, 2024; Pollicino, 2025).

Finally, it is important to focus on the main factor of (potential) fragmentation, namely the previously mentioned opening clause in Article 88 of the GDPR. Particular attention should be drawn to the effects that a recent ruling by the Court of Justice of the European Union (March 2023, Case C-34/2, *Hauptpersonalrat der Lehrerinnen*) may have on the 'direction' this fragmentation must take to be considered compatible with Article 88 of the GDPR (Abraha, 2024). The Court has indeed stated that 'more specific rules' cannot be merely repetitive of those in the GDPR (which was the concrete case in question), but must have distinct and additional normative content, while remaining consistent with the principles and norms of the regulation. Furthermore, the Court added that the purpose of this 'more specific' regulation is to provide protection for the rights and freedoms of employees regarding the processing of their personal data in the workplace. Consequently, the opening clause, as interpreted by the CJEU, is suitable for enabling only national regulations (or collective agreements) that enhance (either

procedurally or substantively) the level of protection afforded to workers in the context of personal data processing for managing the employment relationship, compared to the level of protection already guaranteed by the GDPR.

This is a non-obvious outcome, as it serves to reduce the margin for differentiation, directing it towards greater protection. Fragmentation, in this sense, if it were to materialize, could only take the shape of a ‘competition’ among member states’ legal systems to ‘strengthen’ worker protections.

And this is precisely the point that deserves attention to conclude this discussion.

## **6. ‘Competitive’ Development Model and Personal Data Protection in the Workplace**

To succinctly highlight one of the distinctive features of the development model that has characterized (and continues to characterize) the European economic space over the past 20 to 25 years, we will borrow the words of a prominent figure in this context: Mario Draghi. In a speech delivered in La Hülpe, Belgium, in April 2024—during a discussion on the role that, according to Krugman, productivity must play as a driver of development—Draghi noted that ‘the approach we took to competitiveness in Europe after the sovereign debt crisis seemed to prove his point (i.e., Krugman’s thesis, editor’s note). We pursued a deliberate strategy of trying to lower wage costs relative to each other—and combined this together with a procyclical fiscal policy—the net effect was only to weaken our own domestic demand and undermine our social model’<sup>5</sup>. This same concept was reiterated later that year<sup>6</sup>.

Draghi emphasises that the Union’s development model has translated into a race (among member states) to regain competitiveness by acting on labor costs, within an export-led growth perspective. It is important to note that this involves not only the relationship, comparison, and competition between the economies of the Union and those of the rest of the world, but primarily intra-European competition (Nocella, 2015; Stockhammer & Onaran, 2014; Mastromatteo, 2015).

Now, one of the objectives pursued by firms in applying mechanisms for managing employment relationships based on semi-automated or automated processing, or through the use of AI solutions, etc., is to recover productivity. In other words, digital workplace management can also (perhaps primarily?) be seen as a system to increase productivity while maintaining wage levels, that is,

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5 See M. Draghi, speech delivered during the high-level conference on the ‘European Pillar of Social Rights’ organized by the Belgian presidency of the EU Council, April 16th, 2024. [https://i2.res.24o.it/pdf2010/Editrice/ILSOLE24ORE/ILSOLE24ORE/Online/\\_Oggetti\\_Embedded/Documenti/2024/04/16/20240416%20Speech%20Mario%20Draghi%20La%20Hulpe%2016%20April%202024.pdf](https://i2.res.24o.it/pdf2010/Editrice/ILSOLE24ORE/ILSOLE24ORE/Online/_Oggetti_Embedded/Documenti/2024/04/16/20240416%20Speech%20Mario%20Draghi%20La%20Hulpe%2016%20April%202024.pdf), last accessed January 19th, 2025.

6 ‘(...) Moreover, European policies tolerated low wage growth as a means to increase external competitiveness, compounding the weak income-consumption cycle. Since 2008, annual average real wage growth has been almost four times higher in the US than the euro area’ (Draghi, 2024).

to contain wage dynamics while achieving the same performance in terms of productivity (Marassi, 2024; Aloisi & De Stefano, 2022; Attaran, Attaran & Kirland, 2019; Schrage, Kiron, Hancock & Raffaele, 2019). Thus (hypothetically), the greater the leeway for implementing such mechanisms, the greater the potential productivity recovery via wage cost containment. Conversely, to the extent that protection demands translate into reduced and more regulated spaces for the collection and processing of personal data, this results in a more limited capacity for productivity recovery, or—more precisely—a smaller containment of wage dynamics.

In light of the economic mechanism described above, a system of incentives emerges that moves in a well-defined direction, which is not toward a (virtuous) competition to strengthen worker protections, but rather, in the opposite direction, encouraging competition to potentially weaken them, as the level of such guarantees contributes to determining labor costs.

Within this scenario, the fragmented model of personal data protection in digital workplace management does not appear to be a prerequisite for the experimentation of more advanced models (which could then be disseminated as best practices); rather, the fragmented and flexible model contributes to delineating the field of economic competition among economic country systems, thus rendering personal data protection in the workplace a cost component to be reduced wherever possible (accordingly: Albin, 2025). This effect, moreover, adds to the competitive dynamics triggered more generally by the GDPR (which seems to favor larger and more diversified companies internally, reducing the number of suppliers in the data market, and discouraging personal data exchanges; see Gal & Aviv, 2020).

In other words, given an economic model that, in order to gain or recover competitiveness, essentially focuses on controlling labor cost dynamics, the flexibility of rules regarding worker protection, including those concerning personal data protection, is inevitably interpreted and exploited as a lever to compress/control the cost of that productive factor, which is labor.

If this is true, we must be aware that labor protection (which can keep pace with, and ultimately anticipate and guide technological innovations, including those based on the processing of workers' personal data) also requires a radical change in the underlying economic model. Specifically, it is necessary to move beyond the view that economic competition primarily takes place among the countries that make up the Union and that such competition is focused on labor costs. This is a transition that is neither easy nor obvious, especially considering that 'a highly competitive social market economy' constitutes the identity of this system, as stipulated by Article 3 of the Treaty on European Union.

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