

To the Members  
of the European Parliament

Vienna, 04.04.2022

Dear Sir or Madam,

The law on artificial intelligence should not jeopardise national labour law and the co-determination rights of the works council!

We, the Austrian Trade Union Federation and the Austrian Federal Chamber of Labour, therefore turn to you as key decision-makers in the negotiations on the Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain legal acts of the Union.

The EU is currently working on a uniform law on artificial intelligence that will apply throughout Europe. A draft regulation has been submitted by the Commission and is now the subject of intensive examination and debate in the Council and the European Parliament.

It is important that artificial intelligence as a technology is regulated at European level. In this respect, the present proposal pursues, among other things, the goals of ensuring that AI systems are secure and uphold existing fundamental rights and the values of the Union, ensuring legal certainty to facilitate investment and innovation, strengthening governance and effective enforcement of existing fundamental rights and security requirements for AI systems, and developing a single market for legally compliant, secure and trustworthy AI applications.

To this end, the Commission already recognised in the 2020 White Paper that the use of AI can affect the values on which the EU is founded and can lead to, for example, violations of fundamental rights, opacity of decision-making, mass surveillance, data protection breaches, bias and discrimination. If AI is used in an employment context, the impact can be particularly drastic for workers and their working conditions - if only because of the power imbalance in the employment relationship and the resulting inferiority of the individual worker in negotiations with the employer.

The use of AI in the employment context was already identified as a high-risk scenario in the White Paper 2020 and this is reflected in the legislative proposal: Employment was included in the scope of Title III, which regulates the high-risk AI systems listed in Annex III, among others, those in the area of employment.

If artificial intelligence is used in the context of employment, in addition to fulfilling and ensuring the (technical) requirements for AI systems as provided for in the draft regulation, national labour law protection mechanisms for employees and co-determination by their (supra-)company interest representation are still required.

According to the current status of the draft regulation, its entry into force could endanger national labour (constitutional) law regulations throughout Europe! Why? The scope of application of the law is very broad (essentially most computer technologies fall under the scope) and it is not only the placing on the market and putting into service of AI systems, but also their use that is regulated. The draft regulation aims at a far-reaching harmonisation in the internal market with regard to AI products. Thus, a regulation is directly applicable in the member states and is therefore relevant - in the worst case, the ECJ could rule that the internal market principle takes precedence over national labour law provisions in disputes.

However, the law on artificial intelligence must allow member states to retain existing labour (constitutional) law provisions and to experiment with national provisions (collective agreements) on artificial intelligence in the workplace. A clarification before a decision is taken in the law is absolutely necessary.

Last but not least, this would also massively advance the momentum for the creation of an urgently needed separate EU directive on the topic of artificial intelligence/technical systems at the workplace.

We therefore ask for your support in introducing this point into the negotiations.

In order to maintain this important safeguard for European workers' rights and opportunities for co-determination to the full extent, you will also find enclosed concrete proposals for amendments which we have worked out and agreed on together with our colleagues from the ETUC.

Thank you very much for your help in expanding and preserving fundamental European values, in particular the right to worker participation,

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Wolfgang Katzian Renate Anderl  
President of the ÖGB President of the AK

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