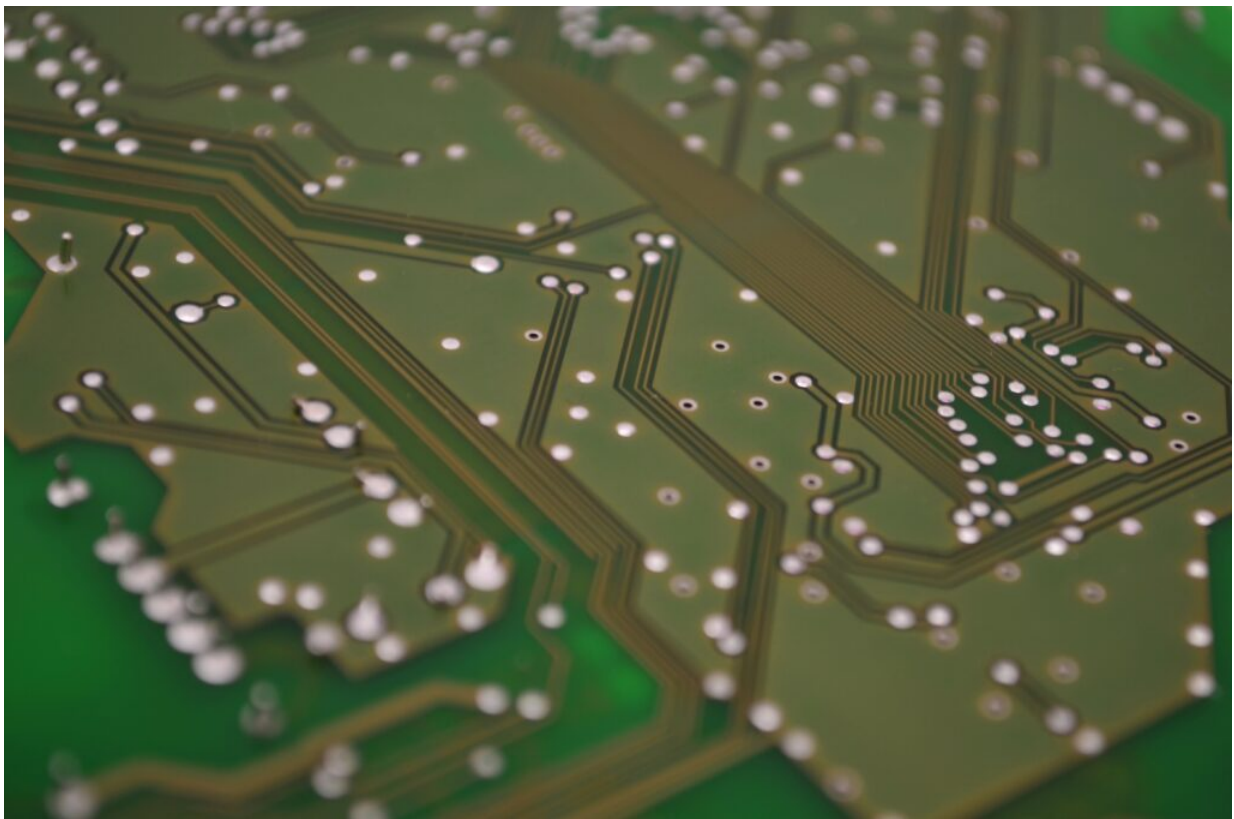


Global Workplace Law & Policy

Digital transformation of work: can we imagine post-pandemic ways forward?

Frank Hendrickx (Institute for Labour Law – KU Leuven (Belgium)) · Monday, May 30th, 2022



On 26-27 May 2022, the Nineteenth International Conference in Commemoration of Professor Marco Biagi took place in Modena, Italy, at the Marco Biagi Foundation, University of Modena and Reggio Emilia. The title of this conference was: “*Work Beyond the Pandemic. Towards a Human-Centered Recovery.*”[1]

I had the pleasure of chairing a panel on “Digital Transformation in the Workplace”. The topic of digitalization and the impact on the world of work, has obviously become increasingly prominent in labour law. One of the questions is whether we can reconstruct how we have been approaching this debate in the past, and whether the pandemic (Covid-19) has brought new pathways of the problem definitions or the ways of thinking.

The first paper in the panel session, presented by **Beryl ter Haar** (University of Warsaw) and

Marta Otto (University of Lodz), focused on “AI for a more human-friendly workplace recovery”. The title suggests a normative direction. What the authors wish to undertake is to explore paradigm shifts drawing on a wide variety of literature, research and empirical information from different social science disciplines. It is, indeed, relevant to acquire a ‘helicopter view’ of all changes happening in the complex world we live and work in. Labour law is, after all, a reflexive (as the two panelists argue) or a responsive (as I would argue) legal discipline. The authors point out that, in re-imagining work and re-thinking labour law, new generations of workers may rather prefer attention to self-development and personal enrichment rather than careers, money and prestige. This may be connected with new views on broader economic theories implying more attention to welfare, wellbeing and less materialistic output. The question is, can we have a human friendly workplace, based on artificial intelligence, as the authors wonder. Looking at the human-in-command approaches that are found back in recent policy documents as well as in scholarship, there is some room for optimism. But it remains certainly a requirement that AI at work will be subject to a responsive regulatory environment, including principles and approaches of labour law.

Why labour law input remains relevant in more complex law and technology discussions, is shown in the second paper in this panel on ‘digital transformation’. In his paper, **Michele Molè** (University of Groningen) talked about “The Quest for Effective Fundamental Labour Rights in the European post-Pandemic Scenario: Introducing Principles of Explainability and Understanding of Surveillance through AI Algorithms and IoT Devices” (IoT referring to the ‘Internet of Things’). His starting point is that the Covid-19 pandemic has accelerated the use of all kinds of AI applications, with new forms of surveillance as a consequence. Overexposure, information (power) imbalances and legal uncertainties are part of this development. In the author’s view, transparency and explainability are key elements. Explainability (for data subjects in relation to AI or similar technology used and affecting them) would give individual and collective actors the right ‘to receive specific and relevant information’ about actual surveillance systems. In a work context, it would imply that any business using AI as monitoring or evaluation devices would need to be able to explain not only how the technology works, but also explain the impact on work, and refer to grounds of legitimacy for the use of it. It is clear that the EU’s General Data Protection Regulation (GDPR) is addressing some of these issues, such as through article 22 GDPR. AI and algorithmic processing of workers’ personal data from the workplace setting will fall under the scope of article 22 GDPR. Workers, as data subjects, would in principle have a right to avoid a decision based solely on automated processing that carries a ‘legal’ or ‘similarly significant’ effect, but there are exceptions for the performance of the employment contract. Avoiding may thus not always be the strategy. In this context, explainability and transparency may become more important. It brings us back to the regulatory environment with its human-in-command perspective, which may be more important if the road of actively regulating technology is followed, rather than neglecting its realities or rather than prohibiting technology ‘*by definition*’.

Ilaria Purificato (Marco Biagi Foundation, University of Modena) presented her paper on ‘Equality in digital citizenship’. The equality and citizenship concepts, here, are clearly referring to ‘inclusion’ and to the opportunity – perhaps also the responsibility – to engage in training and lifelong learning. Her research is undertaken with her co-author from the same institution, **Chiara Gaglione**. Digital literacy and lifelong learning, in this paper, are key-fields for the global workplace. They are also still challenging for labour law. One of the points of this paper is that two relevant directions are forwarded: an infrastructural and a programmatic one. As for infrastructure, it would be necessary to equip institutions and organisations with electronic or digital instruments, with access to tools and equipment necessary to effectively realise learning opportunities for everyone. The programmatic dimension refers to the need for well-designed educational

programmes that offer digital language training, as well as computer science and knowhow on digital networks. What is clear, from the examples given in this paper, is that collective bargaining agreements have the capacity to deliver promising results.

We had the pleasure to have a reflection from panel discussant **Attila Kun** (Karoli Gaspar University). He pointed at the potential problems and dangers associated with new technologies, including AI, and remained critical for a too optimistic approach on how AI can bring more wellbeing at work. He also pointed at the European draft recommendation on the ‘Individual Learning Account’ [2] requiring for access to training, or a right to training, for workers and other labour market participants.

It should be welcomed how strongly training is put into our field of attention. Imagining training rights for workers remains key for the future digital workplace. It seems obvious that training for workers should be seen broadly, and thus also accompanied by training for management and supervisors, including those who are responsible for teams and share part of the employer’s authority. The pandemic caused a great shift to telework. It has shown that it not only brought questions for workers, their capacity to cope with homework including work-life balance. It also brought challenges for employers and managers on how to design and organise the work, how to deal with communication, work flows and supervision of homework. Training for the ‘big shift’ of digitalization and new ways of working will certainly require training of all actors involved.

The panel session clearly brought to the forefront that some of the longer standing discussions on labour law and technology are evolving further. The discussions were there already at the start of the pandemic. However, the pandemic seems to have accelerated certain discussions, and invited our scholarship to think along new lines and pathways. Obviously, the pandemic is not yet over. So in an uncertain context, we need to be cautious with final conclusions. But some first lessons for post-pandemic recovery can already be drawn. What seems to come back in the panel and the papers, referred to above, is the need for guidance and regulatory frameworks for (‘intelligent’) technology, not only adapted to the fast pace of technological development, but also relying on values and fundamental rights with both relevance for the world of work and broader society. Regulating technology and regulating rights of workers is a double strategy that has a place in a broader societal and complex context. This general finding certainly makes a good fit with the whole concept of the conference and with Marco Biagi’s legacy in labour law and industrial relations.

[1]

<https://www.fmb.unimore.it/en/19th-international-conference-in-commemoration-of-professor-marco-biagi/>

[2] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021DC0773>

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