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How to Get Away with High-Risk AI

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LABOUR RIGHTS AND THE EU ARTIFICIAL INTELLIGENCE ACT: HOW TO GET AWAY WITH HIGH-RISK AI

Zahra Yusifli*

ABSTRACT

The European Union's Artificial Intelligence Act (AI Act) establishes a regulatory framework that primarily approaches worker protection through the lens of employer obligations in the AI supply chain. This chapter critically examines this approach by analysing employers' legal responsibilities when deploying high-risk AI systems for workforce management, particularly their role as providers and deployers of these systems.

A central focus is the examination of article 6(3) derogations and their implication for classifying high-risk AI systems in workplace contexts. Drawing on interdisciplinary research on workplaces utilising AI automation tools, the chapter identifies potential regulatory gaps in the AI Act's effectiveness. An examination of article 6's legislative history reveals that the final text of article 6(3) includes safeguards that mitigate the large-scale classification of high-risk AI, though several challenges remain.

The analysis shows the fundamental limitations in the AI Act's approach to workplace AI regulation. Although the AI Act establishes employer obligations, its heavy reliance on preconditions and product safety-oriented framework fails to adequately address the power asymmetries inherent in employment relationships. The chapter concludes by advocating for supplementary sector-specific policies to better regulate AI-driven workplace management and protect workers' interests.

Keywords: EU AI Act, high-risk AI systems, labour rights, legal derogation.

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1 INTRODUCTION: AI SYSTEMS FOR WORKPLACE MANAGEMENT

The wide scholarly discussion on emerging new technologies has focused on regulatory interventions in employment relations and the resilience of labour law institutions.[1] The use of artificial intelligence (AI) systems is inextricably linked to expanding employer prerogatives. Regional and domestic authorities have enacted and proposed regulations to address certain aspects of AI deployment.[2] The European Union Artificial Intelligence Act (AI Act) is one of the most comprehensive regulations on AI matters to date.[3] With several provisions aimed at protecting workers, the AI Act introduces a novel dimension of responsibility for employers utilising AI systems for work management.

The employer's responsibilities under the AI Act ultimately depend on two factors: (1) the role the employer plays in the supply chain of the AI product and (2) the type of AI the employer deploys. Since most work-related AI is classified as high-risk, this chapter examines and evaluates the legal obligations that the AI Act places on employers concerning the use of high-risk AI systems (HRAIS) to manage their workforce. The central research question is whether the derogation of the HRAIS classification in article 6 can compromise the effectiveness of the AI Act. This chapter answers this question by first identifying the parties in work relations within the AI supply chain created by the AI Act. Second, it analyses the responsibilities assigned to employers regarding HRAIS and distinguishes between their roles as deployers and providers. Third, it scrutinises the derogation in article 6. Finally, this chapter concludes with a synthesis of findings and implications of this regulatory framework for protecting workers.

2 THE EU AI ACT: EXAMINING LABOUR LAW MATTERS UNDER THE OMNIBUS LAW

The AI Act, which entered into force in August 2024, is scheduled for phased implementation over the period leading up to 2030. Despite the limited attention given to employment-related matters since the introduction of the first draft in 2021 and throughout the

[1] See, *inter alia*, Jeremias Adams-Prassl, 'What If Your Boss Was an Algorithm? The Rise of Artificial Intelligence at Work' (2019) 41 Comparative Labor Law & Policy Journal 30 <https://papers.ssrn.com/abstract=3661151> accessed 1 January 2025; Cynthia Estlund, *Automation Anxiety: Why and How to Save Work* (OUP 2021); Valerio De Stefano and Antonio Aloisi, *Your Boss Is an Algorithm: Artificial Intelligence, Platform Work and Labour* (Bloomsbury Publishing 2022) <www.bloomsbury.com/ca/your-boss-is-an-algorithm-9781509953172/> accessed 1 January 2025.

[2] See, eg, OECD.AI, 'National AI Policies & Strategies' (*OECD.AI: Policy Observatory*, July 2022) <https://oecd.ai/en/dashboards> accessed 1 January 2025.

[3] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance).

legislative process,[4] the AI Act governs certain aspects of AI tools used in workplace management. Since the omnibus law stems from product safety rather than labour law legal tradition, the AI Act regulates AI systems through the supply chain. This means the AI Act oversees the life cycle of AI products, including their development, market introduction and deployment. Although the legislation references parties to the work relation, such as workers, employers and workers' representatives, it does not explicitly rely on these terms. Instead, the AI Act delineates responsibilities for various actors within the AI supply chain, including deployers, providers, authorised representatives, importers, distributors, operators, downstream providers and product manufacturers.

While these stakeholders have been integral to the EU's regulatory tradition since the inception of the common market, the AI Act introduces multiple actors that may not be immediately recognisable in labour law scholarship. Labour scholars have focused on institutes that regulate work relations and, in the age of advanced automation, assess the impact of AI systems on labour protections. Considering the focus of the AI Act towards product responsibility, scholars have voiced their concern that the Act may have limited implications for employment relations and, in particular, for workers' labour rights.[5] Others contend that existing national and European data protection regulations might prove more valuable for protecting workers' rights.[6] To explore general rights and obligations established by the AI Act in the employment context, this chapter proceeds by examining prohibited HRAIS and their implications for labour rights.

2.1 PROHIBITED PRACTICES UNDER THE AI ACT

The AI Act establishes obligations based on the risks posed by AI systems.[7] One of the categories concerns *general prohibitions* of AI practices deemed to pose unacceptable risks

[4] For example, in 2021, the European Parliament established the Specialised Committee on Artificial Intelligence in a Digital Age (AIDA), tasked with evaluating the prospective impacts of AI across various sectors, including the labour market See Special Committee on Artificial Intelligence in a Digital Age, 'AIDA Working Paper on "AI and the Labour Market" Following the AIDA/EMPL Public Hearing on 25 May 2021' (2021) <www.europarl.europa.eu/cmsdata/237745/Working%20Paper%20on%20AI%20and%20the%20Labour%20Market.pdf> accessed 1 January 2025.

[5] For the limitations of the AI Act in the workplace, see Aída Ponce Del Castillo (ed), *Artificial Intelligence, Labour and Society* (ETUI 2024) <https://www.etui.org/sites/default/files/2024-03/Artificial%20intelligence,%20labour%20and%20society_2024.pdf > accessed 1 January 2025; Aislinn Kelly-Lyth, 'Dispatch No. 39 - The AI Act and Algorithmic Management' [2021] Comparative Labor Law and Policy Journal 9 < https://cllpj.law.illinois.edu/content/dispatches/2021/Dispatch-No.-39.pdf> accessed 1 January 2025.

[6] See Zahra Yusifli and Luca Ratti, 'Labour Law and Automated Systems in the EU' in Massimo Durante & Ugo Pagallo (eds), *Handbook on Law and Digital Technologies* (De Gruyter forthcoming).

[7] The EU AI Act was presented as a regulatory setting based on a risk-based four-tier pyramid: prohibited, high-risk, limited and minimal. See information disseminated at the European Commission website on AI Act <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai> accessed 1 January 2025. However, some argue that this is not representative of the categories created by the content of the regulation. For example, Almada and Petit argue that the AI Act has unacceptable risks, high risks and minimal risks. See Marco Almada and Nicholas Petit, 'The EU AI Act: Between the Rock of Product Safety and the Hard Place of Fundamental

which must be avoided at work. Article 5 considers several categories of AI systems unfit for use due to their potential infringement upon fundamental rights, including systems allowing social credit scoring, emotion recognition, exploitative practices, biometric categorisation and predictive policing.

The prohibition regime restricts AI systems within the EU internal market. The AI Act identifies four primary areas of prohibition: subliminal techniques, exploitations of vulnerabilities, social scoring and real-time remote biometric identification.[8] Some parts of this provision are directly relevant to employment. Article 5(1)(f) explicitly forbids 'the placing on the market, the putting into service for this specific purpose, or the use of AI systems to infer emotions of a natural person in the areas of workplace'. It represents a significant stride in protecting individuals' privacy in professional environments. The second part, however, significantly diminishes this provision's overall importance due to a major limitation. It states that AI systems 'intended to be put in place or into the market for medical or safety reasons' in the workplace are acceptable. This part leaves a big loophole in the prohibition as employers may use a broad set of AI systems that would collect data related to the emotional state of workers for medical purposes.

The assessment of data that is used can be intimately related to the gathering of personal data, including biometric data, and its collection in the workplace. These data are broadly regulated by the General Data Protection Regulation (GDPR), which allows employers to collect and process workers' data.[9] Biometric data are held to a higher standard when employers can use biometric consent upon workers' explicit consent or when such biometric data is required for workers' verification or safety purposes.[10] The key principle is that biometric data should be used upon absolute necessity. The AI Act relies on the biometric data definition of the GDPR.[11] If the AI Act permits the collection of facial images, voice recognition data and movement data to protect workers, it must include safeguards that the current Act does not adequately provide.

While article 5(1)(f) allows for safety reasons as it can prevent workplace accidents, there is also another side of the coin. The global biometric technology market is rapidly expanding,

Rights' (2024) 62 Common Market Law Review 1. Most workplace tools are prohibited and classified as high-risk AI, with few exceptions that do not fall under the high-risk category by derogation of article 6(3) discussed in this chapter.

[8] Rostam J Neuwirth, 'Prohibited Artificial Intelligence Practices in the Proposed EU Artificial Intelligence Act (AIA)' (2023) 48 Computer Law & Security Review 105798 <https://linkinghub.elsevier.com/retrieve/pii/S0267364923000092> accessed 1 January 2025.

[9] See for discussion Frank Hendrickx, 'Privacy 4.0 at Work: Regulating Employment, Technology and Automation, Artificial Intelligence, & Labor Law' (2019) 41 Comparative Labor Law & Policy Journal 147 <https://heinonline.org/HOL/P?h=hein.journals/cllpj41&i=159> accessed 1 January 2025; Frank Hendrickx, 'Article 8 – Protection of Personal Data' in Filip Dorssemont and others (eds), *The Charter of Fundamental Rights of the European Union and the Employment Relation* (Hart Publishing 2019) <www.bloomsburycollections.com/book/the-charter-of-fundamental-rights-of-the-european-union-and-the-employment-relation> accessed 1 January 2025.

[10] Dutch Data Protection Authority, 'Boete Voor Bedrijf Voor Verwerken Vingerafdrukken Werknemers (Fine for Processing Employees' Fingerprints)' (30 April 2020) <www.autoriteitpersoonsgegevens.nl/actueel/boete-voor-bedrijf-voor-verwerken-vingerafdrukken-werknemers> accessed 1 January 2025.

[11] See recital 14 of the AI Act.

and adoption rates of those technologies are significant across EU countries. While safety applications show promise in benefiting both workers and employers—such as preventing accidents and health issues—data indicates that increased automation and technology adoption have not necessarily resulted in a corresponding decrease in workplace injuries.[12] Meanwhile, there is a growing concern regarding workers' privacy. The conundrum with the AI Act lies in allowing employers to use AI systems for safety reasons, which opens a window to access workers' sensitive data. There is also a significant risk of collecting and using data beyond its original purpose.

With regards to biometric data, article 5(1)(g) of the AI Act refutes the use of biometric categorisation systems 'to deduce or infer […] race, political opinions, trade union membership, religious or philosophical beliefs, sex life or sexual orientation'.[13] AI systems' inference of trade union affiliation is prohibited, as such information is classified as sensitive personal data. However, this provision also allows for an exception for the labelling or filtering of lawfully acquired biometric datasets. Therefore, the prohibition set by article 5(1)(g) is also somewhat limited within the labour context.

There are other prohibited AI practices that might be broadly translated to be relevant in the workplace.[14] However, unacceptable AI practices in the regulation come with either caveats or significant legal uncertainties. While article 5 appears to establish general prohibitions for AI systems in employment contexts, both preventing employer usage and protecting workers, these prohibitions are drafted to extend beyond workplace environments. Their applicability in employment law, which is often governed by private law, remains subject to interpretation.

2.2 EMPLOYERS AS DEPLOYERS AND PROVIDERS OF HRAIS

The second category is 'high-risk' AI, which includes permitted systems subject to stringent regulations. The AI Act requires employers to use HRAIS to implement safeguards and oversight mechanisms. The obligations of employers with regard to HRAIS are based on their roles in the AI supply chain. In the context of AI regulation, employers can assume multiple roles. In fact, within the AI Act, employers are most likely to be deployers. More so, providers of HRAIS owe transparency obligations pertaining to reporting the AI system's infrastructure to the deployers (employers). Along with the general responsibility of deployers of article 9 to oversee the AI system 'throughout the entire lifecycle of a high-risk AI system',[15] article 26 lists steps the employers should take within the enterprise to ensure AI compliance.

[12] Mia Hoffmann and Mario Mariniello, 'Biometric Technologies at Work: A Proposed Use-Based Taxonomy' (Bruegel Policy Contribution 2021) Research Report 23/2021 <www.econstor.eu/handle/10419/270503> accessed 1 January 2025.

[13] Some of this sensitive data is protected in the EU under GDPR.

[14] For example, article 5(1)(a) could be interpreted to prohibit employers from using AI to influence workers' behaviour subconsciously through subtle psychological manipulation. Article 5(1)(b) could ban employers from using AI systems that take advantage of workers' vulnerabilities to influence their behaviour. This might apply, for instance, to AI systems that target financially vulnerable employees with certain workplace policies or decisions. Furthermore, article 5(1)(c), in a workplace context, could prevent employers from using AI to create comprehensive behavioural profiles of workers, which could lead to unfair treatment.

[15] Art 9(2) of the AI Act.

Under article 26, the employer must assign competent individuals to oversee AI systems in the workplace; ensure that input data for the AI system is relevant and representative of its intended purpose; monitor the AI system's operation; inform providers of risks or incidents and suspend use if necessary; keep AI system logs for at least six months or longer; conduct data protection impact assessments; and cooperate with relevant authorities in implementing actions related to the HRAIS.

Article 26 stands out as it explicitly addresses labour matters by imposing obligations to inform workers about HRAIS. Specifically, article 26(7) states that 'deployers who are employers shall inform workers' representatives and the affected workers that they will be subject to the use of the high-risk AI system.' A similar obligation can be inferred from article 26(11), which requires informing 'the natural persons that they are subject to the use of the high-risk AI system.' The requirement aligns with broader information dissemination obligations included throughout the AI Act, particularly article 4's provisions on AI literacy. Article 4 exemplifies this approach by mandating that providers and deployers of AI systems take measures 'to their best extent' to ensure that actors who handle or are in the AI system's ecosystem have all the necessary information. Under article 4 alone, the workers are owed the comprehensive and general responsibility to be AI literate as they are the actors 'on whom the AI systems are to be used'. The addition of these provisions marks a considerable improvement, especially compared with the 2021 draft of the AI Act that did not include article 26(7)'s HRAIS notification requirements.[16]

While the AI Act establishes a certain degree of transparency in the workplace, the above-discussed provisions have noteworthy limitations. Firstly, their effectiveness ultimately depends heavily on labour laws and collective labour presence, which vary significantly across the EU Member States, industries and individual enterprises. Oftentimes, workers lack the mechanisms to be meaningful participants in implementing AI systems in their workplace environment. Instead, they are presented with the deployment of AI systems as a *fait accompli* under the EU framework with few options to contest automated decisions. Secondly, the AI Act does not foresee any enforcement of measures if the literacy principles are not upheld. Article 99, in particular, does not mention penalties for lack of literacy obligations or any more grounds for fines. While it does mention fines for the breach of transparency obligations in article 4(g), those are only relevant for transparency obligations for providers and deployers, who are employers in the AI supply chain.

Finally, the obligations outlined in this part are also extended to non-EU-based employers who intend to use AI on their EU employees.[17] In its attempt to create a level playing field, the cross-border application of the AI Act extends primarily to multinational enterprises.[18] As

[16] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts - General approach 2021' COM (2021) 206 final.

[17] Art 2 of the AI Act.

[18] See recitals 21 and 22 of the AI Act. Recital 22 further elaborates that 'To prevent the circumvention of this Regulation and to ensure an effective protection of natural persons located in the Union, this Regulation should also apply to providers and deployers of AI systems that are established in a third country, to the extent the output produced by those systems is intended to be used in the Union.'

outlined in the AI Act, the EU should promote mutual recognition of conformity assessments from qualified bodies, regardless of their geographic location, as long as they adhere to regulatory standards in line with those of the World Trade Organization.[19]

If employers purchase HRAIS applications in business-to-business transactions, their responsibilities are somewhat limited compared to those of the providers. In certain circumstances, employers, particularly large tech enterprises, may occupy dual roles as both providers–who develop and place AI systems on the market–and deployers when developing and utilising AI systems internally.[20] Employers who are providers build their own AI systems for workforce management or as occupational tools.

Under the AI Act, providers bear varying obligations according to risk categories, including those falling under HRAIS. Their responsibilities are generally more significant than those of employers who are only deployers. At the heart of these obligations lies a comprehensive framework of accountability measures, which include risk management and assessment, data quality and protection, documentation and traceability, human oversight and transparency, and technical standards and security.

Requirements that fall upon providers follow through the AI system's lifecycle. At the development stage, providers must build AI systems using curated datasets for training, validation, and testing purposes. Quality assurance extends beyond development and proceeds into deployment stages. Providers must implement technical documentation practices that demonstrate compliance with EU standards, though the Commission offers some relief to small and medium enterprises through simplified documentation options under Article 11. The systems must incorporate automatic logging capabilities, creating an audit trail that facilitates ongoing monitoring.

Transparency and human agency form another essential pillar of provider obligations. Article 13 mandates 'transparency by design', which requires providers to equip users with clear instructions about system capabilities and oversight mechanisms. This obligation is connected with Articles 14 and 15, which require effective human-machine interfaces and consistent performance standards throughout the AI system's operational life.

These threads — development controls, documentation requirements, transparency measures, and human oversight provisions — are included in Section 3 of Chapter III. Here, the regulation crystallises providers' core responsibilities. They are completed with specific requirements for maintaining documentation, automated logs, and channels for reporting non-compliance.[21]

2.3 WORKERS AND THE HRAIS

The AI Act presents a web of procedural requirements to ensure AI product safety. In this HRAIS scheme, limited obligations are directly owed to workers who are the subjects of AI system. The territorial scope of the AI Act suggests that provisions mainly apply to AI

[19] See recital 127 and art 39 on 'Conformity assessment bodies of third countries' of the AI Act.

[20] Art 3(3) of the AI Act.

[21] See arts 16–21.

systems managing workers within EU territories, though the AI Act's overall protections for workers remain limited. A notable gap in the legislation is the absence of explicit conferral of rights to workers and workers' representatives. Instead, workers' protections can mainly be understood by examining employers' obligations within the supply chain. In effect, employers' obligations become the gateway to understanding if and how the AI Act protects workers.

The AI Act does not address the underlying dynamic between employers and workers. The privileges workers might enjoy in AI-powered workplaces are largely indirect, dependent on proper implementation by employers, and tied to the obligations related to the HRAIS. This article further discusses the derogations of article 6(3) of the classification of HRAIS and assesses whether it may further weaken these already narrow obligations towards workers.

3 ANALYSES OF DEROGATIONS UNDER HRAIS

Annex III provides the list of HRAIS referred to in article 6(2) of the AI Act. Article 7 further grants the EU Commission the right to modify the list to keep pace with the AI developments if necessary. At first glance, a broad array of AI systems created to manage workers would fall under Annex III and classify as high-risk. Annex III(4) includes:

> (a) AI systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyse and filter job applications, and to evaluate candidates;
> (b) AI systems intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behaviour or personal traits or characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships.

Article 6, however, also contains an additional nuance. Even for systems whose purpose ostensibly falls under the HRAIS category, article 6(3) delineates several derogations from the general high-risk classification rule. The purpose of AI systems that may not qualify as HRAIS includes the following:

1. Performing a specific, narrow procedural task;
2. To improve the results of a previously completed human activity;
3. To detect decision-making patterns or deviations from prior decision-making patterns;
4. To perform a preparatory task to an assessment relevant for the purposes of the use cases listed in Annex III.

Even if the purpose of the AI system falls under the derogation, there are three more preconditions that the AI system must meet so as not to be classified as high-risk. The AI system must:

(1) not pose a significant risk of harm to the health, safety or fundamental rights of natural persons;
(2) not materially influencing the outcome of decision-making, and
(3) not profile natural persons.

Paragraph 3 of article 6 was absent from the original draft of the AI Act presented in 2021.[22] Initially, article 6 outlined HRAIS as safety components within bigger products and standalone products that require a third-party conformity assessment under EU harmonisation legislation. The amendments on derogations have also been absent from most of the legislative process.

On 17 June 2022, the Czech Presidency of the Council of the EU shared a working paper outlining the priorities of the AI Act.[23] One of the priorities included 'Classification rules for standalone high-risk AI systems', in which some EU Member States expressed concerns about overly broad high-risk AI classifications in Annex III and the need to maintain effective regulatory flexibility while taking into account the AI risks. The working paper laid out several ways in which HRAIS would be classified.

Interestingly, one option proposed to link the risk classification to whether the AI system leads to a fully automated decision. Since automated decisions pose greater risks, the proposal suggested, they should always be classified as high-risk. When an AI system only provides information to help humans make decisions rather than autonomously, the proposal is considered high-risk only if its output can cause serious harm: health risks, safety concerns, violations of fundamental rights, and impact on important decisions. The essential point is that these 'advisory' AI systems are subject to less stringent classification unless their recommendations could result in serious consequences.

This debate defined the drafting of article 6 and made the classification of HRAIS a subject of amendments during the Parliamentary readings. On 14 June 2023, the European Parliament adopted further amendments to propose a new paragraph 2 for article 6 suggesting that providers who believe that their systems do not pose risks shall submit a notification to the national authorities and, if relevant, to the AI Office, alleviating them from the obligations. [24]

Article 6 caught the attention of human rights groups, which criticised the direction of the amendment.[36] Some argued this approach would effectively allow AI developers to self-determine whether the systems qualify as HRAIS, undermining the original European Commission's more objective classification system. This self-assessment would create legal uncertainty, potential market fragmentation across the EU Member States, enforcement challenges and unfair competitive advantages for those willing to bypass safety requirements.

[22] See European Commission (n 14).

[23] 'Working Party on Telecommunications and Information Society on Options Paper for the Policy Orientation Debate on the Artificial Intelligence Act, Prepared by the Incoming CZ Presidency in View of the Discussion in WP Telecom on 5 July 2022.' (Council of the European Union 2022) WK 8862/2022 INIT <https://artificialintelligenceact.eu/wp-content/uploads/2022/07/AIA-CZ-Options-Paper-17-June-2022.pdf>.

[24] See 'Amendments Adopted by the European Parliament on 14 June 2023 on the Proposal for a Regulation of the European Parliament and of the Council on Laying down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD))1 (Ordinary Legislative Procedure: First Reading)' (European Parliament 2023) P9_TA(2023)0236.

The Draft version of paragraphs 3 and 4 on derogations reflected in the final version of the AI Act was included only on 26 January 2024.[25] The final text appears to be a compromise that moves beyond pure self-classification while preserving an arguably rather broad path for HRAIS exemption from classification requirements. The legislative development showed that the text was decided as a middle ground – not to put categorical classification and to leave room for interpretation.

As a result, the version of article 6(3) of the AI Act that entered into force presents several layers of legal consideration. This section further examines these three preconditions and argues why article 6(3) creates a loophole in the AI Act for high-risk systems.

3.1 Assessment of health, safety and fundamental rights

Labour rights are an integral part of the Charter of Fundamental Rights of the European Union.[26] The opus of labour rights is broad, ranging from the freedom of assembly and of association, workers' right to information and consultation within the undertaking, and the right to collective bargaining and action to the freedom to choose an occupation and right to engage in work, non-discrimination, protection in the event of unjustified dismissal, and fair and just working conditions.

The AI system should not qualify for derogation if it presents potential adverse implications for individuals' physical health and safety or the fundamental rights of natural persons. Article 27 of the AI Act outlines the necessary procedures for the fundamental rights impact assessment (FRIA). Evaluating the harms AI systems may cause to fundamental labour rights raises questions. Firstly, article 27(1) does not mandate the assessment of employers' fundamental rights. FRIA is mandated only for public entities, private entities providing public services, and credit and insurance evaluations. While it cannot be inferred from article 6(3) that it imposes mandatory FRIA either, it can be concluded that deployers who believe their AI system falls under the derogation are responsible for ensuring that their systems do not negatively impact fundamental rights.[27] For that purpose, the requirements outlined in article 27 can serve as benchmarks.

These requirements lead us to the second point: what the FRIA entails and whether it can provide a meaningful assessment. Specifically, article 27 mandates that FRIA should include:

> (a) a description of the deployer's processes in which the high-risk AI system will be used in line with its intended purpose;

[25] 'Proposal for a Regulation of the European Parliament and of the Council Laying down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts - Analysis of the Final Compromise Text with a View to Agreement' (2024) 2021/0106(COD) <https://artificialintelligenceact.eu/wp-content/uploads/2024/02/AIA-Trilogue-Coreper.pdf>.

[26] See Brian Bercusson and European Trade Union Institute (eds), *European Labour Law and the EU Charter of Fundamental Rights: Summary Version* (European Trade Union Institute 2002); Charter of Fundamental Rights of the European Union 2012 (OJ C).

[27] Article 95 encourages the AI Office and EU Member States' authorities to develop voluntary codes of conduct that encourage non-high-risk AI systems to adopt Chapter III requirements for high-risk systems in accordance with technical capabilities and industry standards.

(b) a description of the period of time within which, and the frequency with which, each high-risk AI system is intended to be used;
(c) the categories of natural persons and groups likely to be affected by its use in the specific context;
(d) the specific risks of harm likely to have an impact on the categories of natural persons or groups of persons identified pursuant to point (c) of this paragraph, taking into account the information given by the provider pursuant to article 13;
(e) a description of the implementation of human oversight measures, according to the instructions for use;
(f) the measures to be taken in the case of the materialisation of those risks, including the arrangements for internal governance and complaint mechanisms.

The AI Act's application of product safety risk assessment methodologies to fundamental rights protection presents critical limitations. The requirements for the AI system's safety look like a box-ticking exercise of the documentation of possible harms.[28] The process is more procedural than fundamental rights-oriented. There is a significant discussion on the value of this exercise in assessing risks related to fundamental rights. As Isabel Kusche points out, fundamental rights are used as a 'blanket term' associated with all the harm related to HRAIS. The AI Act imposes the binary exercise, which determines the existence or absence of the harm. While there is little on proportionality, Kusche argues that the AI Act fails to provide clear methods for quantifying risks or comparing risk levels between different AI systems.[29]

Furthermore, Marco Almada and Nicolas Petit identify a fundamental tension in the AI Act's regulatory approach: the challenging integration of product safety regulation with fundamental rights protection.[30] The AI Act's reliance on product safety methodologies creates several critical issues. Firstly, fundamental rights impact often resists quantification, making traditional risk assessment methods inadequate. Secondly, probabilistic estimations, while suitable for mechanical failures, struggle to capture complex human-AI interactions. Thirdly, the discrete risk approach fails to address the cumulative nature of fundamental rights violations. The tension is further exacerbated by conflicting regulatory philosophies. Product safety regulation operates on a 'satisficing' principle, where meeting minimum requirements suffices. In contrast, fundamental rights protection demands optimisation that maximises protection to the fullest extent possible. This methodological inconsistency creates significant implementation challenges and reveals the AI Act's core dilemma. While aiming to protect both product safety and fundamental rights, its reliance on product safety frameworks may ultimately compromise its effectiveness in safeguarding fundamental rights. The

[28] Alessandro Mantelero, 'The Fundamental Rights Impact Assessment (FRIA) in the AI Act: Roots, Legal Obligations and Key Elements for a Model Template' (2024) 54 Computer Law & Security Review 106020 <https://linkinghub.elsevier.com/retrieve/pii/S0267364924000864> accessed 1 January 2025.

[29] Isabel Kusche, 'Possible Harms of Artificial Intelligence and the EU AI Act: Fundamental Rights and Risk' [2024] Journal of Risk Research 1 <www.tandfonline.com/doi/full/10.1080/13669877.2024.2350720> 1 January 2025.

[30] Almada and Petit (n 7) 20.

unidimensional assessment approach proves particularly problematic when evaluating competing, incommensurable fundamental rights values.

In employment matters, the issues with the FRAI also become evident. Studies make it clear that AI systems can make executive decisions traditionally reserved for managers, a phenomenon known as 'algorithmic management'.[31] These decisions can include determining workers' remuneration, adjusting working hours, and establishing conditions of employment which affect both standard and non-standard forms of employment.[32] As discussed above, they would all fall under HRAIS due to their function as per Annex III.

The extent of possible harm caused by AI systems on labour rights is not always apparent. In employment, the FRAI, even when mandated, might not capture the risk of AI systems. Taking the example of working time, AI systems are created with the goal of optimising the work schedule. That optimisation might lead to neglecting working hours, breaks and downtime, all of which are essential for workers' well-being.[33] Even if the maximum working hours are protected by domestic labour laws, it has been noted that AI intensified the amount of work presented to workers.[34] As a result, the rapid execution of work under algorithmic management questions the established labour standards on the hours of work and perception of time. This framework on fundamental rights indicates that even if an AI system presents a potential risk to fundamental rights, systems may fall outside the protective obligation of article 6.

Another example of an AI Act-mandated assessment that might be missed is occupational safety and health and physical and psychosocial health risks. Those risks might not be apparent at first, but they might be secondary to AI's impact on other working conditions. The nexus between the working conditions cannot be captured by the proposed assessment of article 27. While AI has the potential to make workplaces safer, especially in dangerous industries, there are significant concerns that its benefits might not be distributed equally. For example, AI systems work less well for people with darker skin tones or from minority groups, and job displacement from AI could disproportionately affect communities that already face disadvantages.[35] Similar observations can be made about the health and safety of mistakes made by AI systems and allocating work shifts, bonuses, and discrimination due to trade union activities or family responsibilities. Given all of that, article 27 may easily miss the purpose of the evaluations bestowed upon it.

[31] Adams-Prassl (n 2); De Stefano and Aloisi (n 2).

[32] Alex J Wood, 'Algorithmic Management: Consequences for Work Organisation and Working Conditions' (Joint Research Centre (Seville site) 2021) 2021–07 <https://ideas.repec.org/p/ipt/laedte/202107.html> accessed 1 January 2025.

[33] Agnieszka Piasna, 'Algorithms of Time: How Algorithmic Management Changes the Temporalities of Work and Prospects for Working Time Reduction' (2023) <https://papers.ssrn.com/abstract=4361557> accessed 1 January 2025.

[34] ibid.

[35] Elizabeth Fisher and others, 'Occupational Safety and Health Equity Impacts of Artificial Intelligence: A Scoping Review' (2023) 20 International Journal of Environmental Research and Public Health 6221 <www.ncbi.nlm.nih.gov/pmc/articles/PMC10340692/> accessed 1 January 2025.

3.2 MATERIAL INFLUENCE ON THE OUTCOME OF AN EMPLOYMENT DECISION

The next precondition for derogation concerns the material influence of the AI system on the decision. In the legislative process, this precondition was included to provide flexibility and allow the industry to assess whether AI systems are high-risk. The reasoning is substantiated in recital 53 of the AI Act, which provides that the purpose of AI systems that do not 'materially influence the outcome of decision-making could include' performing a narrow procedural task, enhancing the results of a previously completed human activity, identifying decision-making patterns or deviations from previous patterns, and carrying out preparatory tasks related to assessments relevant to the use cases of HRAIS. Those are the categories of the AI systems also mentioned in article 6(3). The AI Act ties 'materiality' with the purpose of the AI systems and uses the significance of the AI system in the said decision as a legal threshold to determine whether the AI system might fall under the derogation or not.

This approach is a slight departure from the current data-protection EU legal acquis on automation. The significance of the decision is an essential factor under article 22 of the GDPR, which prohibits solely automated decision-making. However, according to the GDPR, the significance of the outcome depends not on how much the automated system determines the outcome of the decision (article 22 only concerns *fully* automated decisions) but on the type of legal decision that is made.[36] The Data Protection Working Party report gives examples of contract termination and dismissal of applications in e-recruitment processes as examples falling within the scope of this provision.[37] This means that to qualify for the prohibition under article 22 of the GDPR, the decision should be legally consequential or otherwise significant for workers.

Despite different approaches, the criteria for what defines 'significant' impact can remain ambiguous in both article 22 of the GDPR and article 6 of the AI Act in the employment context. The matter of what materially influences the decision is the one that legal scholars have been grappling with for a long time. In the labour context, this consideration is particularly relevant due to the power imbalance inherent in the employment relationship, as employers have the right to make decisions about the direction of work.[38] From the perspective of EU bureaucracy, tying the significance of an AI system to an ex-ante evaluation of its intended purpose can be beneficial. However, this approach may lead to legal complications, as benchmarks are open to interpretation. This vulnerability can be attributed to two main factors:

[36] It must be noted that in the SCHUFA case (case C-634/21), the Court of Justice of the European Union broadens the scope of article 22 applicability to third parties. The Court provided that when parties heavily rely on decisions based on probability values such as scoring, these decisions fall within the purview of article 22 of the GDPR. This can potentially extend the responsibility to the third parties that provide automated decisions but do not necessarily make the final decision. While this case does not challenge the automated nature of the decision that SCHUFA made as a credit score agency, it illustrates that machine suggestions can play a considerable role in important final decisions.

[37] Data Protection Working Party, 'Guidelines on Automated Individual Decision-Making and Profiling for the Purposes of Regulation 2016/679' 21 <https://ec.europa.eu/newsroom/article29/items/612053> accessed 1 January 2025.

[38] On the prerogatives of employers, see Gali Racabi, 'Abolish The Employer Prerogative, Unleash Work Law' (2021) 43 Berkeley Journal of Employment & Labor Law 79.

(1) the fragmentation of AI systems and (2) the law's inability to reflect that fragmentation. These two points are considered below.

3.2.1 Fragmentation of decision-making by AI Systems

AI tools are increasingly complementing human labour across a wide range of sectors. Rather than simply replacing human labour – as much of the discourse has focused on – AI systems, in many instances, augment workers' capabilities by automating repetitive or data-intensive tasks.[39] Some AI systems can make executive decisions traditionally reserved for managers, a phenomenon known in academic literature as 'algorithmic management.'[40] These decisions can include determining workers' remuneration, adjusting working hours, and establishing conditions of employment which affect both standard and non-standard forms of employment.[41]

AI-enhanced management extends across industries such as commerce, education, healthcare, finance and retail services, with some sectors more susceptible to automation than others.[42] The coupling of hardware and software gadgets enables the totality of digital workplace management. Digital surveillance infrastructure includes wearable tracking devices (rings and bracelets), Global Positioning System trackers, video footage and standard software suites like Microsoft 365 that now incorporate worker activity monitoring features. AI tools offer to collect vast amounts of workers' data, process it at unprecedented speeds, and produce more diverse and complex outputs.[43]

As fully automated and AI-driven workplaces do not yet exist, managerial input remains a constant factor.[44] AI systems in the workplace could be implemented as modular components rather than as a single comprehensive system, further complicating the assessment of their impact on decision-making. When employers or managers use AI-assisted tools, part of their decision-making is partially taken over by machines.

[39] For an assessment of the impact of generative AI on jobs, see Paweł Gmyrek, Janine Berg and David Bescond, 'Generative AI and Jobs: A Global Analysis of Potential Effects on Job Quantity and Quality' (International Labour Office 2023) 96 <https://doi.org/10.54394/FHEM8239> accessed 1 January 2025.

[40] Adams-Prassl (n 2); De Stefano and Aloisi (n 2).

[41] Wood (n 35).

[42] Annette Bernhardt, Lisa Kresge and Reem Suleiman, 'Data and Algorithms at Work: The Case for Worker Technology Rights' (*UC Berkeley Labor Center*, 3 November 2021) <https://laborcenter.berkeley.edu/data-algorithms-at-work/> accessed 1 January 2025; Wood (n 35); Alexandra Mateescu and Aiha Nguyen, 'Algorithmic Management in the Workplace' (Data and Society 2019).

[43] For a discussion on the increasing interest in AI applications in academic studies, see Emilia Filippi, Mariasole Bannò and Sandro Trento, 'Automation Technologies and Their Impact on Employment: A Review, Synthesis and Future Research Agenda' (2023) 191 Technological Forecasting and Social Change 122448 <www.sciencedirect.com/science/article/pii/S0040162523001336> accessed 1 January 2025; Araz Zirar, Syed Imran Ali and Nazrul Islam, 'Worker and Workplace Artificial Intelligence (AI) Coexistence: Emerging Themes and Research Agenda' (2023) 124 Technovation 102747 <www.sciencedirect.com/science/article/pii/S0166497223000585> accessed 1 January 2025.

[44] Ekkehardt Ernst, Rossana Merola and Daniel Samaan, 'Economics of Artificial Intelligence: Implications for the Future of Work' (2019) 9 IZA Journal of Labor Policy <https://sciendo.com/article/10.2478/izajolp-2019-0004> accessed 1 January 2025.

This takeover becomes evident when examining the well-studied field of recruitment. Hybrid recruitment, which integrates AI-driven assessment tools with human judgement, appears to be the most effective approach.[45] AI-facilitated recruitment aims to streamline and innovate the process of identifying the right candidate,[46] which typically involves multiple steps: candidate search, screening, selection and onboarding. Organisations may integrate AI into some or all of these stages, depending on their specific practices and policies.[47]

The integration of AI tools across the recruitment process demonstrates how seemingly simple automated tasks can fragment and influence employment decisions. The process begins with job creation, where AI systems generate ideal candidate profiles and optimise job descriptions based on data from previous workers and market analysis. These initial AI interventions, while appearing procedural, already shape the candidate pool by defining success parameters. In the candidate search phase, AI sourcing tools scan various platforms to identify potential candidates. This occurs against the targeted advertising algorithms that can define job posting visibility to specific demographics. This automated pre-selection process, though technically performing basic pattern matching, significantly influences those who learn about existing opportunities.[48]

The screening stage employs AI for resume scanning and candidate ranking through keyword analysis. These systems can compare applications against the previously generated ideal profile and existing successful employees' data. Once again, while this appears to be simple document classification, the AI makes crucial filtering decisions determining which candidates advance. During selection, AI-powered assessments, including gamified tests and chatbot interviews, evaluate candidates' skills and initial responses.[49] Though these tools perform narrow procedural tasks in isolation, their combined assessments contribute substantively to candidate evaluation.

The distinction between 'simple procedural tasks' and significant employment decisions becomes particularly demanding when examining the structure of the modern recruitment

[45] Kiran Kumar Reddy Yanamala, 'Integration of AI with Traditional Recruitment Methods' (2021) 1 Journal of Advanced Computing Systems 1 <https://scipublication.com/index.php/JACS/article/view/23> accessed 1 January 2025.

[46] Mariana Jatoba and others, 'Artificial Intelligence in the Recruitment & Selection: Innovation and Impacts for the Human Resources Management', *Economic and Social Development: Book of Proceedings* (Varazdin Development and Entrepreneurship Agency 2019) <www.proquest.com/docview/2269012279/abstract/7C6C042055DC4BF8PQ/1> accessed 1 January 2025.

[47] Manuel F Gonzalez and others, 'Allying with AI? Reactions toward Human-Based, AI/ML-Based, and Augmented Hiring Processes' (2022) 130 Computers in Human Behavior 107179 <https://linkinghub.elsevier.com/retrieve/pii/S0747563222000012> accessed 13 January 2025.

[48] Edward Tristram Albert, 'AI in Talent Acquisition: A Review of AI-Applications Used in Recruitment and Selection' (2019) 18 Strategic HR Review 215 <https://www.emerald.com/insight/content/doi/10.1108/SHR-04-2019-0024/full/html> accessed 1 January 2025.

[49] Luis Hernan Contreras Pinochet and others, 'Exploring the Impact of AI on Candidate Selection: A Two-Phase Methodological Approach with CRITIC-WASPAS' (2024) 242 Procedia Computer Science 920 <https://linkinghub.elsevier.com/retrieve/pii/S1877050924019938> accessed 1 January 2025; Byoung-Chol Lee and Bo-Young Kim, 'A Decision-Making Model For Adopting an AI-Generated Recruitment Interview System' (2021) 12 International Journal of Management 548 <https://iaeme.com/Home/article_id/IJM_12_04_046> accessed 13 January 2025 accessed 1 January 2025.

processes. Rather than deploying a single comprehensive AI system, employers typically implement multiple specialised tools that handle discrete aspects of the recruitment process. While potentially qualifying for derogation under article 6(3) of the AI Act due to its limited scope, each recruitment component collectively forms part of a more complex decision-making apparatus that materially influences outcomes related to workers' access to labour markets.

This fragmentation highlights a critical gap in current regulatory approaches: they fail to account for how multiple 'simple' AI systems can aggregate to significantly impact labour rights and employment decisions significantly. It is therefore that the future regulatory frameworks must consider not just the individual categorisation of AI systems but their collective influence on employment-related decision-making processes.

3.2.2 Limitations of the Regulatory Framework

The current regulatory framework does not capture the complexities of AI integration in various workplace contexts or grasp this fragmented deployment approach. While AI systems might provide infer data with narrow applications, the rest is left at the discretion of managers and employers. Indeed, the current EU regulation of decision-making systems is narrowly focusing on those decisions that are fully automated from start to finish but indeed provide inputs to employers on certain job issues. Studies in public law indicate that most real-world systems are rarely fully automated. Instead, AI systems assist and augment human decision-making along the multi-step process.[50] Similar limitations are observed in the workplace. Halefom Abraha discusses that multiple legal domains regulate algorithmic management, including labour law, non-discrimination law and data protection law, though none comprehensively address algorithmic harms.[51]

Reuben Binns and Michael Veale highlight that automated decision-making systems typically manifest in three ways: (1) supporting systems that aid human decision-makers, (2) triaging systems that sort cases in various ways and (3) summarising systems that consolidate human-made assessments. However, these structures present significant complications under article 22 of the GDPR. The key challenges include selective automation, where specific subgroups might effectively receive automated decisions despite nominal human oversight; ambiguity in decision location within multi-stage systems; uncertainty regarding significance thresholds and whether they apply to potential or realised effects; upstream effects where early automated steps can constrain subsequent human decisions; and final step issues where the concluding phase of a process may not be decisive in determining its automated nature. These

[50] Marco Almada, 'Automated Uncertainty: A Research Agenda for Artificial Intelligence in Administrative Decisions' (2023) 16 Review of European Administrative Law 137 <www.ingentaconnect.com/content/10.7590/187479823X16970258030172> accessed 1 January 2025; Francesca Palmiotto, 'When Is a Decision Automated? A Taxonomy for a Fundamental Rights Analysis' (2024) 25 German Law Journal 210 <www.cambridge.org/core/journals/german-law-journal/article/when-is-a-decision-automated-a-taxonomy-for-a-fundamental-rights-analysis/362AF985585D28E5E762F4FEEF4719B7> accessed 1 January 2025. Palmiotto gives examples of the UK's EU Settlement Scheme to point out the 'automated triage' when the systems determine workflows and assign cases to appropriate human caseworkers.

[51] Halefom Abraha, 'Regulating Algorithmic Employment Decisions through Data Protection Law' (2023) 14 European Labour Law Journal 172 <https://doi.org/10.1177/20319525231167317> accessed 1 January 2025.

challenges create practical implications where courts and regulators struggle to develop consistent interpretations as mere addition of human oversight proves insufficient as a solution. In settings where AI systems assist employers with decisions, the lack of clarity of where the automation ends and human decision-making begins highlights the need for regulatory frameworks that are responsive to current realities.

Ultimately, the classification of AI systems depends on the 'purpose' of HRAIS. As indicated by the examples above, the 'simplicity' of a task does not determine its significance. If an AI tool has the capability to predict, it already differs in its functionality from a simple automated tool. Even seemingly basic tasks such as filing, ranking or classifying documents can contribute to workers' management, where the manager makes decisions based on these apparently simple procedural tasks. In other words, while a decision may seem inconsequential on the surface, measuring its impact and understanding how it contributes to the potential realisation of protected labour rights can be challenging. Therefore, even if the AI systems that fall under the derogation – individually or in accumulation with other systems – could have a significant impact.

3.3 PROFILING OF NATURAL PERSONS

Finally, article 6(3) provides that to qualify for derogation, the AI systems should not profile a natural person. The AI Act adopts a strict approach to profiling as it generally prohibits or classifies as high-risk AI systems that profile individuals. This approach is in line with the EU practice and was taken with the view of reducing the risk of discrimination and bias. Recital 67 emphasises that data used for profiling can result in discrimination, particularly against vulnerable groups.

Article 5(1)(d) prohibits profiling AI systems that evaluate or predict the risk of individuals committing criminal offences based solely on personality traits or characteristics. However, once again, this prohibition does not apply to AI systems which are intended to support human assessment. This assessment should be based on objective and verifiable facts that are linked to criminal activity. AI systems that profile natural persons are categorised as high-risk, as per article 6(3), since the act of profiling cannot be considered to have a limited impact on decision-making, as per recital 53.

The AI Act relies on the definitions of article 4(4) of the GDPR, which provides that profiling encompasses three elements: automated data processing, the use of personal data, and the intent to evaluate personal aspects. In employment contexts, article 22 of the GDPR restricts collecting and analysing individual or group data to categorise and predict behaviours or capabilities.[52] While prohibition is significant, recruitment AI tools might be designed to appear to perform simple data organisation rather than profiling. AI systems might be engineered to perform analysis that achieves profiling-like outcomes without technically meeting the legal definition of profiling under GDPR article 4(4).

While these systems effectively evaluate and categorise candidates, they are engineered to appear as simple data processing tools. For example, rather than explicitly profiling

[52] Data Protection Working Party (n 41).

personality traits, they analyse proxy variables and break assessments into discrete tasks that individually appear as basic pattern matching. A system might claim to perform objective keyword matching between resumes and job requirements while building comprehensive candidate profiles through a pattern of predictive analysis.

The technical implementation further obscures the profiling nature of these tools. Instead of direct personality assessment, they may analyse writing style to infer communication abilities or use correlation analysis to predict candidate success. By fragmenting the evaluation process into micro-tasks like skills assessment, experience verification, and qualification matching, each component avoids classification as profiling. This technical and definitional circumvention could allow recruitment AI to maintain its practical profiling function while potentially avoiding regulatory scrutiny under current regulatory frameworks.

4 Discussion and Conclusion

This chapter centres around the question of whether article 6(3) of the AI Act can compromise the oversight of the AI Act. For workplace management, large-scale rule-bending misclassification of HRAIS appears improbable. There are two main contributing factors to this. Firstly, as the analysis of this chapter indicates, there are preconditions. Individually, as argued in the chapter, they might present vulnerabilities. Cumulative requirements of conducting a FRIA, not materially influencing the outcome of the decision, and the prohibition of natural persons make it difficult to misclassify HRAIS.

Secondly, HRAIS should remain within the AI Act's purview even in cases of regulatory deviation. When an employer does not classify an AI system as high-risk, the AI system still remains subject to regulation under the AI Act. Article 6(4) stipulates that for AI systems not categorised as high-risk, employers must adhere to the obligations outlined in article 49(2) regarding registration. It thereby maintains oversight and accountability in AI deployment within various organisational contexts. Article 49(2) states that if 'the provider has concluded that [AI system] is not high-risk according to [a]rticle 6(3), that provider [. . .] shall register themselves and that system in the EU database referred to in Article 71.' Meanwhile, article 71(4) refers to the database that 'shall be accessible and publicly available in a user-friendly manner.' It continues that 'the information should be easily navigable and machine-readable.' Therefore, the applications that do not qualify as high-risk fall within the 'limited risk' category.

While it is unlikely to circumvent high-risk AI obligations entirely, and though the drafters appear to have negotiated for the most robust version of Article 6(3) possible, the impact of overall workers' rights remains limited. This paper demonstrates that workers' rights are falling through the cracks of the supply chain and derive from the obligations of the employers. The critical issue is that HRAIS requirements, while procedurally sound, lack substantive impact – prompting a necessary reconsideration of both employer decision-making roles and AI systems' actual influence. The regulation fails to address the fundamental power imbalance in employment relationships. While the AI Act is not branded as the citadel of labour rights protection, it is evident from this chapter that the advocacy for a new generation of digital

rights, more targeted sectoral regulation and strengthened unionisation is needed to address these challenges. These methods must be considered to create a just transition during this wave of enhanced automation driven by AI. The AI Act's failure to address core labour protection demands underscores the necessity for multiple regulatory approaches to ensure a just transition in this era of AI-driven automation. As it stands, the EU AI Act resembles a sieve: while catching some regulatory concerns, it lets many critical issues pass through unresolved. These complexities and potential loopholes demand continued legal vigilance in a system where worker protections remain contingent on employer status rather than being universally guaranteed.

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