



MANAGING DATA PROCESSING
IN THE WORKPLACE THROUGH
INDUSTRIAL RELATIONS

Guidelines⁰ for Workers' Representatives Concerning Data Processing in the Workplace

D4.2



Co-funded by the
European Union

Document Information

Project Acronym	GDPIR
Grant Agreement	n. 101048690
Deliverable number and title	D4.2
Dissemination level	Public
Organisation Name	FIM-CISL
Submission date	15/7/2024

Table of contents

Introduction.....	4
Equipping workers' representatives with the necessary skills and expertise	6
1. Skills and knowledge development	7
Lessons learnt.....	7
Best practices	7
Recommendations	7
2. Internal structure renovation.....	8
Lessons learnt.....	8
Best practices	9
Recommendations	9
Promoting individual and collective voices on data processing.....	10
1. Information and consultation	11
Lessons learnt.....	11
Best practices	11
Recommendations	12
2. Social dialogue and collective bargaining	12
Lessons learnt.....	12
Best practices	13
Recommendations	13
3. Enforcement and (strategic) litigation.....	14
Lessons learnt.....	14
Best practices	14
Recommendations	15

Fostering and strengthening knowledge and skills by circulating good and best practices and information16

Lessons learnt17

Best practices17

Recommendations17

Introduction

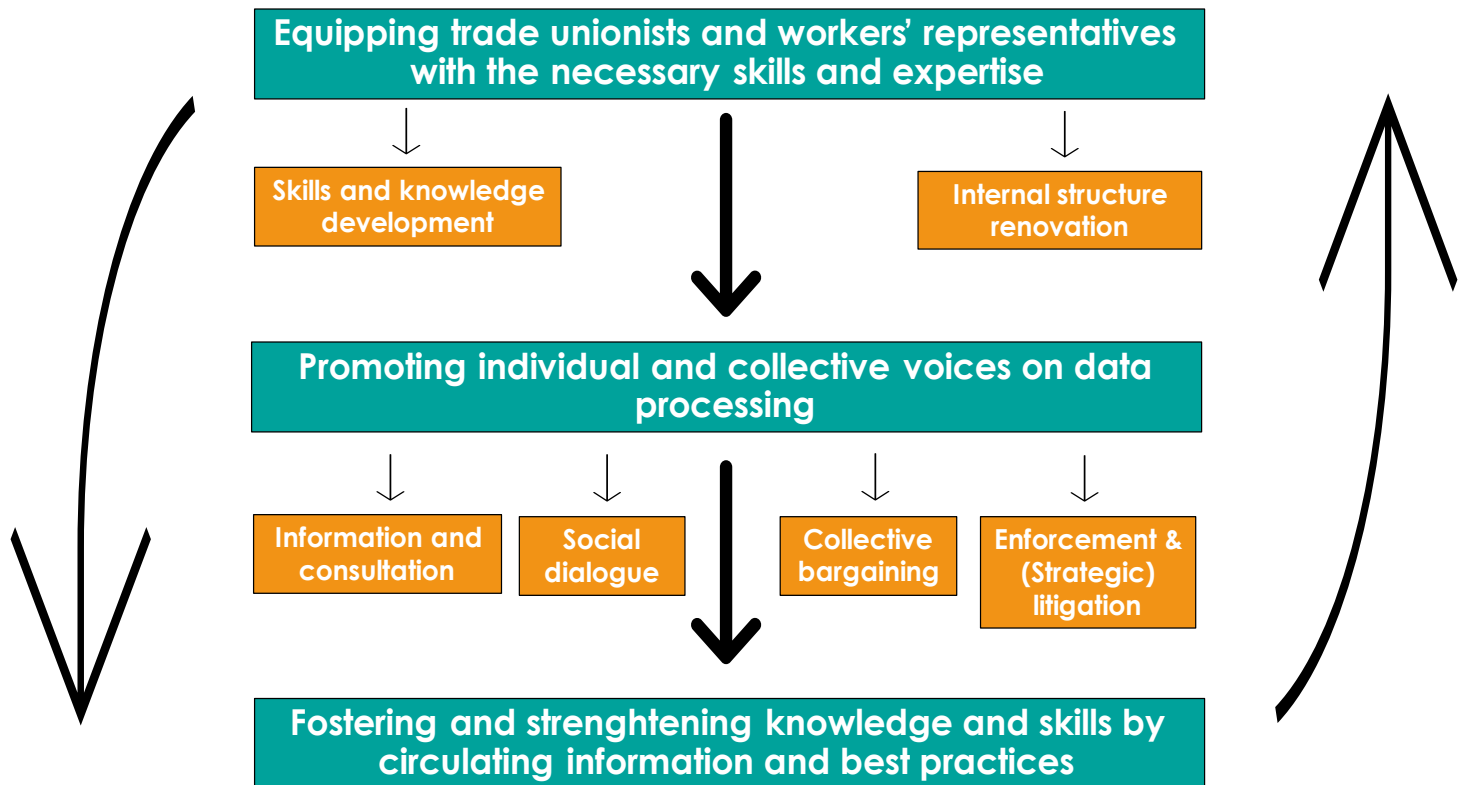
The present document is the final output of the **GDPIR (Managing Data Processing in the Workplace through Industrial Relations)** project, carried out between 2022-2024 under the SOCL-INFO-WK programme of the European Commissions' Directorate General for Employment, Social Affairs, and Inclusion.

The aim of the project is to **provide European workers' representatives in the manufacturing sector with the necessary skills and expertise to play an active role in dealing with one of the most crucial and current challenges of the world of work, i.e., 'datafication' – and its potential impacts on workers' data protection and labour rights.**

In line with this objective, during the first year of the GDPIR project, the Consortium members (belonging both to the research and trade union world) jointly carried out **extensive desk and field research on data processing**, consulting relevant literature and best practices of collective bargaining and social dialogue. The desk research covered **12 EU Member States** (Italy, Ireland, Malta, Denmark, Luxembourg, France, The Netherlands, Germany, Belgium, Czech Republic, Slovakia, Hungary) and **1 candidate country** (Turkey), while the field research covered **9 EU Member States** (Italy, Ireland, Malta, Luxembourg, Germany, Belgium, Czech Republic, Slovakia, Hungary) and **1 candidate country** (Turkey).

The findings obtained during this phase have then been used as a basis for the development of training activities directed at workers' representatives of five different European countries (Italy, Spain, Slovakia, Belgium, and Turkey), **and disseminated through thematic in-presence events and international webinars.** Both training and communication activities took place during the second year of the GDPIR project.

The inputs collected during the various phases of the GDPIR project have then been collected and reworked in the present Guidelines, which aim to **provide accessible and practical guidance on data processing at work to and workers' representatives.** The following table constitutes a graphic representation of the various aspects of the topics explored by the Guidelines – which are to be considered **different phases of a circular process aimed at ensuring that workers' representatives play a pivotal role in dealing with datafication, exercising their duties with a defensive attitude to avoid the main risks and with a proactive approach to exploit the potentialities of new technology.**



For every topic, the authors of the Guidelines identified: **the lessons learnt during the GDPIR project** – in terms, for example, of issues to be addressed with different degrees of urgency; **the social dialogue and collective bargaining best practices** collected in the countries covered by the project; **relevant recommendations to workers' representatives** to deal with the topics discussed.



MANAGING DATA PROCESSING
IN THE WORKPLACE THROUGH
INDUSTRIAL RELATIONS

**EQUIPPING
WORKERS' REPRESENTATIVES
WITH THE NECESSARY SKILLS
AND EXPERTISE**

1. Skills and knowledge development

Lessons learnt

The experience of the GDPIR project shows that the knowledge of workers' representatives in the manufacturing sector on data protection is rather low. Workers' representatives at all levels feel there are gaps in their knowledge of the General Data Protection Regulation (GDPR) and national data protection legislation – the most common experience concerning data management being the introduction of CCTV systems inside workplaces, while the new monitoring technologies (such as AI-powered tools) are still unexplored.

Some training sessions on the topic directed at workers' representatives have been conducted in most countries covered by the project, largely around the time when European and national data protection legislation was first adopted.

Best practices

TURKEY: Following the publication of Personal Data Protection Law No. 6698/2016, the Turkish Metal Union (TMS) launched training for its union members and representatives. These initiatives emphasise the critical importance of equipping employees with comprehensive knowledge about their data rights and obligations under the law.

EU: In 2022, IndustriAll Europe organised a workshop aimed at raising awareness on the potential use of the GDPR as a 'bargaining tool' – *i.e.*, how this legislation can be embedded in a collective negotiation strategy. The workshop was directed at national-level trade unionists and organised in collaboration with relevant European-level research centres. Its main output is a 'toolkit' summarising GDPR's main provisions, the ways they impact on trade union work and union strategies to defend their members' personal data.

Recommendations

- Promoting awareness-raising, training and capacity building activities directed at workers' representatives on personal data protection is crucial. Those training sessions should emphasise the importance of understanding GDPR regulations to prevent violations.

- It is recommended that regular updates and training sessions on data protection laws and relevant labour regulations are scheduled for all workers' representatives to keep pace with legal and technological changes. These sessions should be organised by the trade union federation at national/territorial level – possibly in collaboration with external entities such as research centres or consultancy firms – and also reach company-level workers' representatives.
- Training sessions on data protection issues should not only focus on legal prerogatives and relevant case law, but also on collective bargaining practices and negotiation techniques – so as to provide workers' representatives with a wide range of skills.

2. Internal structure renovation

Lessons learnt

Several trade unions across Europe underwent a significant structural renovation following the issuing of the GDPR – mostly with regard to the management of their members' data. This renovation entails, among other activities, the appointment and/or recruitment of experts on the matter (e.g., Data Protection Officers). Those experts often organise events aimed at raising awareness on the topic of data protection or provide guidelines regarding new procedures to be followed concerning their members' data management. However, in the context of everyday activities – due to the direct contact of unionists with represented workers – those guidelines are often disregarded. It is then to be noted how these guidelines are mostly focused on the management of members' data, and not on how to devise strategies aimed at handling employers' processing of workers' data.

Best practices

SPAIN: Among its members, UGT-FICA has appointed a 'coordinator of digitalisation', *i.e.*, a member who has received training in AI and personal data protection and has experience as negotiator of collective agreements in the ICT sector. The coordinator has knowledge of the use and functioning of new technology in the different sectors and companies where the union is active – also in terms of its impact with concern to workers' data – and provides guidance and recommendations to workers' representatives on these topics, also by organising specific training.

TURKEY: Since 2016 (*i.e.* when the national Personal Data Protection Law was issued) TMS can count on 'Data protection board' of the union, effectively managing issues related to data protection. The board has an advisory and oversight role on the alignment of TMS internal organisation with data protection laws, serving as a resource for addressing potential issues or inquiries. The Board sometimes collaborates with consultancy firms and works closely with TMS's legal counselling department to resolve data protection disputes, staying constantly updated with current developments and judicial rulings related to data protection. It is to be noted that an expert team within the board is dedicated to analysing precedent cases for problem-solving.

Recommendations

- Internal guidelines – aimed at describing proper handling of personal data of their members and ensuring compliance to avoid repercussions from employers – should be created and disseminated among union officers. They should be based on practical experiences and regularly updated to remain relevant with evolving standards.
- Data protection should be woven into the unions' broader compliance policies, and these principles need to be fully understood across all levels of the organisations.
- Trained experts on data protection legislation should be available to unions so as to provide advice and/or guidance on the most complicated issues on the matter. Wherever possible, these experts should operate at a national, territorial and cross-sectoral level, assisting workers' representatives in different sectors.



MANAGING DATA PROCESSING
IN THE WORKPLACE THROUGH
INDUSTRIAL RELATIONS

**PROMOTING INDIVIDUAL
AND COLLECTIVE VOICES
ON DATA PROCESSING**

1. Information and consultation

Lessons learnt

Providing transparent information concerning data processing in the workplace to workers and their representatives is crucial to ensure the full knowledge of its potential impact on the workers they represent. This is recognised by several national legislations, which thus endow workers and/or their representatives with information rights concerning data management procedures relating to workers' data.

However, mere information rights have been proven ineffective to ensure that workers' interests are properly represented and protected if workers' representatives do not possess the necessary skills and knowledge to fully understand the implications of the procedures proposed – especially since the information provided by companies or technology suppliers is often characterised by a high degree of technicality and therefore not very clear.

Consultation rights on data protection issues – *i.e.*, the right of workers' representatives to express their binding opinion on the matter – are instead not widespread in national legislation, reflecting the approach taken by the GDPR.

Best practices

ITALY: Legislative Decree No. 104/2022 imposes employers 1) to inform workers and their representatives of the use of fully automated decision-making or monitoring systems affecting the working relationship, before its establishment, together with information regarding their functioning, purposes and level of security, 2) to inform workers and their representatives of any variations in the use of those systems, at least 24 hours before the variation occurs and 3) to provide access to workers' data to workers and their representatives on their request.

SPAIN: The Riders Law (*Ley 12/2021, de 28 de septiembre*) envisages a duty of transparency of enterprises towards workers' representatives concerning the usage of algorithms and artificial intelligence which might affect employees' working conditions. If the field of application of this provision were to be extended, it could provide adequate information rights to trade unions in the manufacturing sector.

GERMANY: According to sec. 26 of the new Federal Data Protection Act (2021), when dealing with workers' data processing, the participation rights of the employee representative bodies (*Betriebsräte*) shall remain unaffected. Moreover, according to the Works Constitution Act (sec. 80), the works council may call on the advice of experts in as far as the proper discharge of its duties so requires: this provision may be applied to disputes concerning workers' data processing.

Recommendations

- It would be desirable for the trade unions to have a voice into the National Data Protection Agencies – often in charge of drafting guidelines on data protection aspects of the employment relationship. The voice of trade unions may be useful to address this issue.
- Information concerning the functioning of systems impacting workers' data protection rights should be provided to trade unions in a clear and simple way: when this information is too technical, workers' representatives should be allowed to consult an expert on the matter.
- Formalising the role of workers' representatives in consultations on data processing is recommended to ensure a balanced and practical approach to data management.
- The information received by workers' representatives should be at the basis of social dialogue activities aimed at reaching trade union goals – not only in terms of 'safeguarding' workers' data but also when devising proactive strategies on the matter.

2. Social dialogue and collective bargaining

Lessons learnt

Data protection topics are not often discussed within the framework of collective bargaining – also because the protection of workers' data protection rights is not at the top of most European trade unions' agendas. The most common provisions included in collective agreements are related to the limitation of the use of workers' data by the employer – especially for disciplinary purposes.

However, research conducted during the project shows that the inclusion of data protection clauses in collective bargaining agreements has greatly benefitted employee privacy rights.

Best practices

ITALY: According to the Italian Workers' Statute (Act No. 300/1970) the introduction of technologies enabling an indirect monitoring of workers' activities in the workplace – allowed only for organisational, productive or safety-related purposes – is conditional on the conclusion of a company-level collective agreement between individual employers and workers' representatives. Lacking this agreement, employers can only employ this type of technologies after receiving authorisation by the Labour Inspectorate.

CZECH REPUBLIC: The Czech Labour Code grants trade unions the right to take part in collective bargaining agreements that address issues like working hours, pay, and working conditions and so may contain clauses about data protection and emerging technology.

Recommendations

- The role of collective bargaining in safeguarding of workers' personal data protection should be recognised. Topics related to GDPR need to be included in negotiations, which often primarily address hard topics like wages and working conditions.
- In terms of content, collective agreements should specify which kinds of workers' monitoring are not allowed (hidden or disproportionate control) and which kind of data cannot be collected and/or managed by employers (e.g., biometric data).
- Incorporating provisions concerning data protection into sectoral collective agreements to strengthen union involvement in decision-making with regard to related topics: data protection rights and responsibilities should be tailored to sector-specific needs. In addition, sectoral collective agreements can play a coordinating role on the topic, representing a level-playing field for both workers and companies.
- Using internal work regulations in conjunction with collective agreements to enforce GDPR compliance.

- Promoting social dialogue initiatives concerning data protection, so as to raise awareness on the topic also among companies' human resources managers.
- Companies and workers' representatives could explore the possibility of using workers' data for common goals (e.g., collecting data concerning accidents and injuries at work to structure targeted training sessions on OSH matters) and regulate it through collective bargaining.
- Collective bargaining could grant information and consultation rights on data processing to workers' representatives in countries where these rights are not currently granted by data protection and/or labour legislation.

3. Enforcement and (strategic) litigation

Lessons learnt

In several European countries, Strategic litigation cases covered by the GDPIR project, where workers' representatives have successfully challenged unlawful surveillance practices in court, highlight the potential of legal action to enforce data protection laws in the workplace with reference to violations of workers' individual and collective rights (right to information, consultation, or mandatory negotiation). In other countries, workers' representatives have also successfully appealed to the National Data Protection Authorities so as to report breaches of data protection – and, in some cases, labour – legislation.

It is to be noted, however, that litigation, among other actions, should be carefully planned to obtain the desired results and to avoid unwanted consequences: to this end, legal, organisational and political skills are needed.

Best practices

DENMARK: Breaches of collective agreements on employee control and monitoring, or potential abuses of managerial prerogatives on the matter, can be the object of trade union claims to the Labour court, which can assess them as industrial disputes.

ITALY: Unions have been able to make Italian courts recognise that the employer's refusal to provide information about automated decision-making or monitoring systems to territorial trade union members is to be considered anti-union behavior (Court of Torino, Ruling No. 231/2024). Moreover, trade unions also have the possibility to report potential data protection legislation violations to the Italian Data Protection Authority.

LUXEMBOURG: The staff delegation or, lacking this, the employees concerned, can submit a request to the National Data Protection Commission for a prior opinion on the compliance of the planned processing for the purposes of surveillance of employees in the employment context.

Recommendations

- Workers' representatives should directly report serious breaches of the GDPR and national data protection legislation to National Data Protection authorities, so as to make use of all potential tools to safeguard their represented workers' rights.
- Trade unions should build partnerships with external legal experts to prepare for potential litigation involving data protection.
- Trade unions active in different companies/territories/sectors should establish common goals and coordinate their litigation strategies – so as to avoid isolated actions with limited consequences.



MANAGING DATA PROCESSING
IN THE WORKPLACE THROUGH
INDUSTRIAL RELATIONS

**FOSTERING AND STRENGTHENING
KNOWLEDGE AND SKILLS
BY CIRCULATING GOOD AND
BEST PRACTICES AND INFORMATION**

Lessons learnt

The lack of circulation of good and best practices regarding collective negotiation/social dialogue outcomes concerning data processing, but also other initiatives (e.g., awareness-raising, strategic litigation) can lead to different levels of protection within the same sector. The dissemination of information on data processing both within national contexts and in transnational terms, can instead help a progressive growth of expertise on the subject of all actors involved at national, sectoral, territorial and company level.

Best practices

EU: In 2023 and 2024, UniEuropa and IndustriAll Europe have recently made available two databases of collective agreements including provisions related to the digital transition, especially concerning AI and algorithmic management. Both databases provide easy-to-access English versions of collective agreements applicable in different Member States.

Recommendations

- Sectoral trade unions should create databases (open or limited access) dedicated to the most innovative collective agreements concerning data processing – which could also include case law, National Data Protection Authorities provisions and legal information of interest. The sources included in the database could have a national or international scope.
- Trade unions at sectoral and/or territorial level can also propose moments of confrontation on how to approach issues concerning data processing in the workplace, resulting in the creation of guidelines.