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Joint Committee on Enterprise, Trade and Employment
Report on Artificial Intelligence in the Workplace
October 2023

Table of Contents

Chair's Foreword	3
Recommendations	5
Glossary.....	6
Summary.....	8
The EU AI Act	9
Chapter 1: Engagement with the FSU.....	11
Summary	11
FSU Report	11
FSU engagement with the Committee	14
Different approaches to Monitoring.....	15
Right to Disconnect	16
Definition of surveillance	17
Co-governance and collective bargaining	18
Displacement	19
Personal data and GDPR	20
The EU AI Act	22
Proportionality	22
Chapter 2: Engagement on AI in the Workplace	23
Engagement summary of concerns	23
The EU AI Act	24
Stakeholder Engagement in development stages	26
Employee rights	27
Fake news	27
Legislative change	29
Impact on persons with a disability	29
Impact on wages	29
GDPR and personal data.....	30
Technology Surveillance	31
Collective Bargaining	31
APPENDIX 1- Membership of the Joint Committee	33

APPENDIX 2-Terms of Reference of The Joint Committee.....	34
Appendix 3- Reference Links.....	37

Chair's Foreword

The Committee was pleased to facilitate an examination of Artificial Intelligence in



the workplace. The topic of Artificial Intelligence is a matter of importance and urgency due to the potential important and far-reaching impacts, both positive and negative, that Artificial Intelligence will have on all aspects of society.

Use of AI in the workplace is expected to result in the elimination of many jobs. Though AI is also expected to create and make better jobs, education and training will have a crucial role in preventing long-term unemployment and ensure a skilled workforce. Future roles that AI will create have not yet been developed. The Committee engagements have been focused on the potential impacts AI can have, specifically in the workplace. Upskilling and digital dexterity will be of vital importance in successfully transforming the employment landscape.

In reaching out to stakeholders to gain diverse perspectives on Artificial Intelligence, the opening statements and public engagements with witnesses provided the Committee with an insight into several areas where they deemed it was most important to take into consideration when developing potential regulation and legislation that will be required in this area following the transposition of the European Union Artificial Intelligence Act still being negotiated at an EU level.

When engaging with witnesses to identify challenges and barriers to adopting these approaches on a wider scale beyond the workplace and the Committee examined priorities that Government should focus on when it comes to regulating emerging workplace technologies, especially those related to AI and wider society.

The Committee has made several recommendations for these areas and a copy of this report and recommendations will be sent to the Minister for Enterprise, Trade and Employment. The Committee looks forward to working proactively and productively with the Minister to address the issues identified in order to transpose the Directive.

The Committee recommends the establishment of a Joint Oireachtas Committee on Artificial Intelligence. As the topic is far reaching, a Special Committee should be established to examine the broader scope of AI beyond an employment perspective. The Committee scope should be broad to examine the potential of AI from all aspects of society and to further investigate the level of transparency and regulation that may be required.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearing to give evidence. The Committee appreciated the opportunity to discuss this important topic.

I must thank Members of the Committee for their collaborative work in agreeing this report. I hope this report will help inform the potential development of legislation for Artificial Intelligence in Ireland and I look forward to furthering engagement on the matter.



Deputy Maurice Quinlivan T.D

Cathaoirleach

Joint Committee on Enterprise, Trade and Employment

11 October 2023

Recommendations

1. The Committee recommends the establishment of a Joint Oireachtas Committee on Artificial Intelligence. As the topic is far reaching, a Special Committee should be established to examine the broader scope of AI beyond an employment perspective. The Committee scope should be broad to examine the potential of AI from all aspects of society and to further investigate the level of transparency and regulation that may be required.

2. The Committee recommends comprehensive discussions and regulatory measures at a forum level that safeguard both worker rights and employer interests on an inclusive basis with all stakeholders.

The Committee has concerns about the potential harmful impact AI may have on consumers and therefore further recommends enhanced safeguards for digital manipulation are considered for consumers and workers when transposing the AI act

3. The Committee acknowledges that concerns exist in respect of potential abuse of workplace surveillance technology. The Committee note that evidence of AI-driven constant monitoring marks a significant shift in the workplace environment, where employers can track employee activities without their awareness. The Committee recommends the need for measures to provide for transparency in this tracking.

4. The Committee further recommend that the Minister revisits the representation on the Department of Enterprise, Trade and Employment's GovTech forum board particularly from an employment perspective and strongly advocates for more inclusive representation from trade unions and other bodies such as legal, regulatory, governmental and tech industry experts.

Glossary	
AI	Artificial Intelligence
The Department	Department of Enterprise, Trade and Employment
FSU	Financial Services Union
ICTU	Irish Congress of Trade Unions
MEP	Members of the European Parliament
The Minister	The Minister for Enterprise, Trade and Employment
OECD	Organisation for Economic Co-operation and Development

Date	Witnesses
Meeting 1 24 May Transcript Video	<p>Topic: Employee Experiences of Technological Surveillance in Financial Services <i>Financial Services Union Ireland</i></p> <ul style="list-style-type: none"> • Mr Brian McDowell Head of Communication and Public Affairs • Mr John O'Connell General Secretary <p><i>Department of Works and Public Studies, Kemmy Business School, University of Limerick</i></p> <ul style="list-style-type: none"> • Dr. Michelle O'Sullivan
Meeting 2 21 June Transcript Video	<p>Topic: Artificial Intelligence in the Workplace <i>The Bar Council of Ireland</i></p> <ul style="list-style-type: none"> • Mr Ronan Lupton S.C. <p><i>Trinity College Dublin</i></p> <ul style="list-style-type: none"> • Professor Gregory O'Hare Professor of Artificial Intelligence and Head of School of Computer Science and Statistics, O'Reilly Institute. <p><i>Irish Congress of Trade Unions</i></p> <ul style="list-style-type: none"> • Dr Laura Bambrick Social Policy Officer • Mr David Joyce Global Solidarity Officer and Social Policy

Summary

The Joint Committee on Enterprise, Trade and Employment selected the topic of Artificial Intelligence in the Workplace as a matter of importance and urgency due to the potential impacts AI will have on all aspects of society. The Committee agreed to narrow the scope of this area to employment and the workplace as the topic of AI is wide ranging and far reaching.

AI is fast becoming one of the advances in technology which has brought many opportunities for positive change in the workplace. However, developments in technology have also brought new risks and challenges that require appropriate scrutiny to ensure that the rights of businesses and staff are sufficiently protected through robust legislation and policy.

A 2019 report by the OECD on [Well-being in the Digital Age](#) found that the digital transformation could compound existing socio-economic inequalities, with the benefits in terms of earnings and opportunities accruing to a few, and the risks falling more heavily on people with lower levels of education and skills. The report notes that 14 per cent of all jobs are at high risk of being lost due to automation, with another 32 per cent at risk of significant change over the next 10 to 20 years. This means that nearly half of the labour force will be impacted by changes to their jobs because of automation by 2040.

The pandemic provided a powerful test of the potential of online learning, and it also revealed its key limitations, including the essential requirement of adequate digital skills, computer equipment and internet connection to undertake training online, the difficulty of delivering traditional work-based learning online, and the struggle and challenges of digital transformation in all aspects of society.

One of the common worries regarding AI is the potential for job losses. While it is true that automation may lead to the automation of certain tasks, it is unlikely to result in complete job displacement. A number of job roles may be automated, but humans will still play a vital role in overseeing and complementing automated processes. The evolution of AI and automation should be seen as an opportunity to

redefine job roles and emphasise creativity and problem-solving skills. Upskilling and digital dexterity will be crucial to adapt to the changing landscape.

The EU AI Act

In April 2021, the European Commission proposed the first EU regulatory framework for AI. It says that AI systems that can be used in different applications are analysed and classified according to the risk they pose to users. The different risk levels will mean more or less regulation. Once approved, these will be the world's first rules on AI.

On 14 June 2023, MEPs adopted the European Parliament's negotiating position on the AI Act. The talks will now begin with EU countries in the Council on the final form of the law. The aim is to reach an agreement by the end of this year. As part of its digital strategy, the EU wants to regulate artificial intelligence to ensure better conditions for the development and use of this innovative technology. AI can create many benefits, such as better healthcare; safer and cleaner transport; more efficient manufacturing; and cheaper and more sustainable energy.

The rules aim to promote the uptake of human-centric and trustworthy AI and protect the health, safety, fundamental rights, and democracy from its harmful effects. The rules would ensure that AI developed and used in Europe is fully in line with EU rights and values including human oversight, safety, privacy, transparency, non-discrimination, and social and environmental wellbeing.

Prohibited AI practices

The rules follow a risk-based approach and establish obligations for providers and those deploying AI systems depending on the level of risk the AI can generate. AI systems with an unacceptable level of risk to people's safety would therefore be prohibited, such as those used for social scoring (classifying people based on their social behaviour or personal characteristics).

High-risk AI

The EU ensured the classification of high-risk applications will now include AI systems that pose significant harm to people's health, safety, fundamental rights, or the environment.

Obligations for general purpose AI

Providers of foundation models - a new and fast-evolving development in the field of AI - would have to assess and mitigate possible risks (to health, safety, fundamental rights, the environment, democracy, and rule of law) and register their models in the EU database before their release on the EU market. Generative AI systems based on such models, like ChatGPT, would have to comply with transparency requirements and ensure safeguards against generating illegal content. Detailed summaries of the copyrighted data used for their training would also have to be made publicly available.

Supporting innovation and protecting citizens' rights

To boost AI innovation and support SMEs, the EU added exemptions for research activities and AI components provided under open-source licenses. The new law promotes so-called regulatory sandboxes, or real-life environments, established by public authorities to test AI before it is deployed.

Chapter 1: Engagement with the FSU

Summary

The Committee held two public sessions relating to Artificial Intelligence in the Workplace. The Committee met with officials from the Financial Services Union [the FSU] to discuss the report on their research project '[Employee Experiences of Technological Surveillance in Financial Services](#)' which was published in April 2023.

Recent advances in technology and the creation of ChatGPT, have brought technological advances in the workplace to a new level. One area where workplace technology has advanced in recent years is in respect of technological surveillance of employees.

FSU Report

The FSU emphasise that workplace technology will advance and be enhanced over the next few years. The FSU highlight the importance of research and legislation keeping pace with these changes so society, businesses and staff can both benefit and be protected from any unforeseen consequences.

The FSU first commissioned [research](#) in partnership with the University of Limerick in 2019 and again in 2021, with a follow-up survey carried out by the FSU in 2023. The research project sought to establish the experiences and attitudes of financial services employees to technological change in their job and their report focuses on employees' experiences and attitudes towards technological surveillance by their employer.

Globally, this took a massive leap forward as millions of office-based workers moved overnight to being home workers due to the Covid-19 pandemic. The findings are based on interviews conducted with financial services employees by the University of Limerick pre-Covid in 2019, followed by a large-scale survey of employees during Covid-19 restrictions in 2021, with a further survey of members conducted in February 2023.

Surveillance of staff by their employers and how data on staff is collected, stored, and used have always been issues that needed to be addressed. The FSU advocate

the need for regulation and legislation to keep pace with the changing nature of technology. A finding in the report is that a large number of respondents to the survey were unaware of the level of employer tracking and monitoring, with over half indicating they did not know if their office or home computer was monitored.

Almost one quarter of respondents reported that their employer had increased data collection on their work since they started home working, while 28% said data collection had stayed at the same level. Two thirds of respondents felt surveillance was demoralising and indicated that surveillance increased their levels of stress, while over half felt that surveillance at work was a violation of privacy. 60% felt that surveillance indicated a lack of trust on the part of their employer, while an even larger percentage, 63%, felt that the use of surveillance erodes trust.

The discussion revolves around workplace surveillance based on two 2019 surveys with over 1,000 responses each. Data from varied sources, including interviews and external surveys, highlight the evolving landscape of surveillance practices in Ireland and internationally. The distinction between direct (email, internet monitoring) and indirect surveillance (process-improvement related) is noted. Limited data on its prevalence in Ireland, despite indications of growth, raises concerns about employee privacy and impacts on work experience.

Forms of surveillance surveyed.

The report focused on specific webcams, which were not mentioned in interviews. However, the technology is adaptable for various sectors. Keystroke logging is another surveillance method, although its prevalence is uncertain, and evidence was lacking in finance. Some banks monitor interactions comprehensively, including phone and login data. Emotion-detecting badges like Humanyze are used internationally to track employee interactions.

In their report the FSU emphasise the need for updated regulations as technology evolves. A striking discovery is that many surveyed individuals were not aware of how closely employers tracked them. More than half were uncertain if their work computers or even home computers were monitored. A significant majority, around

two-thirds, found surveillance disheartening and stress-inducing. More than half saw it as an invasion of their privacy.

The FSU report highlighted in detail surveillance practices in Ireland, revealing a range of concerns. The extent of surveillance varies based on the organisation and job type. Notably, some companies in the financial sector have heavily invested in technology, leading to constant and detailed data collection, a significant departure from the past. Unlike earlier automation trends, technology now focuses on managing workers and making managerial decisions.

Respondents in the survey had some familiarity with their devices being monitored, but many were not sure if it happened. Employees spoke about different levels of tech surveillance by employers before Covid, ranging from minimal to intense. The general sentiment was negative, as workers found it demoralising and stressful, reflecting employer distrust.

The report offers recommendations for both employers and the Government. For employers, the focus is on addressing employee concerns through collective bargaining with trade unions. The report calls on employers to prioritise:

- Providing justification for the need and appropriateness of technological surveillance.
- Seeking agreement from unions and affected employees before implementing surveillance functions.
- Negotiating data collection and usage terms with unions and affected employees.
- Collaborating with unions to mitigate the impact of surveillance on employee well-being, stress, and trust.
- Sharing evidence of cybersecurity measures, especially for safeguarding biometric employee data.

FSU engagement with the Committee

In their opening statement the FSU suggest that over the coming years, workplace technology is expected to undergo significant advancements and improvements. To ensure that society, businesses, and employees can fully capitalise on the benefits while safeguarding against potential unexpected outcomes, it's crucial for research and legislation to evolve alongside these changes. This will enable everyone to harness the advantages of new technologies while also providing necessary protections and safeguards.

The FSU called upon the government to initiate a report on workplace surveillance. If a report were to be undertaken the FSU suggested the report aim to assess whether legislative changes are needed to safeguard workers and give them a say in this matter and the FSU attested that this might involve strengthening laws to enable trade unions to represent workers' concerns, requiring employers to collaborate with unions on surveillance tech, creating regulations for fair data usage, and empowering the Data Protection Commission to ensure GDPR compliance through proactive inspections in workplaces.

The Committee noted with concern that the topic of surveillance was highlighted, emphasising that it has been occurring extensively and without much public acknowledgment. The Committee was referred to the position in the United States, which has formally organised a forum for employees whose employers utilise automated surveillance systems. The intention is to gather insights on what priorities the US Administration should focus on when it comes to regulating emerging workplace technologies, especially those related to AI. The forum aims to gain a better understanding of how businesses implement automated technologies to monitor their workers.

Considering this, the Committee explored whether a similar forum would be worthwhile in Ireland. However, there's also a concern that such a forum could end up being merely a platform for discussions without leading to concrete actions. FSU advocated that while dialogue is valuable, it's necessary to also move beyond discussion and creating legislation on the issue of surveillance and additionally for employers to be transparent and share surveillance details.

The Committee noted the need to establish clear levels of workplace surveillance, understanding that some regulation might be necessary to prevent excessive intrusion. The focus is on striking a balance between preserving an employer's right to monitor productivity while safeguarding employee privacy. The Committee acknowledges that concerns exist in respect of potential abuse of this technology without adequate safeguards in place. The Committee note from the report that evidence of AI-driven constant monitoring marks a significant shift, where employers can track employee activities without their awareness. The Committee support the need for transparency in this tracking.

The central question the Committee noted in each engagement is what legislative changes are required to protect workers in this evolving landscape. The objective isn't to impede employers' legitimate interests but rather to ensure a fair and respectful environment. The Committee suggests a call for comprehensive discussions and regulatory measures that safeguard both worker rights and employer interests on an inclusive basis with all stakeholders.

Different approaches to Monitoring

The FSU advocated that the first step is deciding if monitoring employees using technology is agreeable on any level. The FSU attested that some countries have strict rules – like in Germany, employers can only check online activities if they suspect a crime. In Portugal, they can only use things like fingerprints for attendance or building access, like waiters using fingerprints for cash registers.

When deciding about monitoring, the FSU suggested working together with employees' representatives, like unions. The FSU highlighted the need for caution, especially where third-party software is being used.

The EU is creating an AI Act that labels tech-monitored employees as high-risk. The FSU stated that the problem is, the Act mainly focuses on tech developers assessing themselves. It lacks attention on workers and employers. The FSU noted their report is one of the initial studies in Ireland about surveillance and AI, further noting that Ireland is not as advanced in regulation as other EU countries.

The FSU noted that in specific sectors like retail banking, extensive data collection, especially related to sales targets, is prevalent. Employee actions are recorded and compiled into scorecards. Conversations are even monitored and recorded, both in retail banks and call centers. However, there's a variation of approaches, with some organisations prioritising employee autonomy over extensive technology use, depending on the job role.

Globally, there is growing awareness of data collection practices, though comprehensive data remains limited. A European Parliament resolution highlights the widespread use of artificial intelligence in HR departments, covering hiring, monitoring, and termination processes. Practices vary widely across organisations; for instance, in warehousing, productivity is tracked using devices like palm pilots. This research emphasises the diversity of surveillance practices and their impact on different work environments.

The FSU noted that in the context of work quality monitoring, benefits exist based on the job, though excessive monitoring can occur. Worker rights in such situations remain unclear. However, in some cases where off-script conversations are recorded, employees may face disciplinary actions or heightened monitoring, despite intending to assist customers. While employees aim to provide good service, technology occasionally hampers rather than aids them, creating inefficiencies and unwarranted discipline. The FSU appreciate technology that aids work, but the FSU is concerned when such technology opposes their efforts.

Right to Disconnect

The Committee highlighted concerns around the absence of regulations regarding data storage by employers and the potential lack of comprehension about proper data management. However, the current pervasive surveillance is generating an "always on" work culture, which is problematic. The Committee note that the surveillance, driven by apps and monitoring, has led to an increase in expectations for constant availability. The Committee is concerned that monitoring practices being undertaken might not necessarily correlate with increased productivity and acknowledges there could be various reasons behind employers' surveillance

practices. The Committee highlight the potential consequences of unchecked monitoring and its impact on work-life balance.

The FSU noted that the right to disconnect and the need for surveillance go together. There are specific regulations in other countries that refer to technological surveillance, and specifically about remote working surveillance and the right to disconnect. The FSU have advocated for this in respect of Irish legislation. An assessment of the effectiveness of the code of practice could be part of it, because the FSU believe that good employers will adhere to the code of practice. Other employers will not, and it is those other employers the FSU are concerned with.

Definition of surveillance

The Committee highlighted that there is no specific definition of surveillance. The FSU noted the difficulty with the issue of a surveillance definition as it varies across fields, like employment relations. In employment legislation, "monitoring" and "surveillance" are often used interchangeably, focusing on tracking employee performance.

GDPR has advanced privacy, yet its relevance to AI in workplaces is debated. It addresses automated decision-making, but FSU note issues remain about explaining AI decisions. One of the problems, is the way in which the AI models are trained and maintained, and the conflict with privacy laws. To comply with GDPR and any additional AI specific data protection laws, organisations need to explain the way in which data is being used by artificial intelligence.

The FSU noted that the scope of monitoring employees in areas including health, safety, and bullying. The European Agency for Safety and Health at Work emphasises this, covering both physical and mental well-being. Despite potential benefits in reducing bullying, a mere 11% in a survey believed surveillance helped. International views on employee monitoring vary, as some countries, like Portugal, impose strict limits. The legal basis for collecting worker data also sparks debate. While consent is common, the power imbalance makes it complex, with bodies like the European Data Protection Board asserting that employee consent is rare.

The FSU highlighted the lack of available data and information regarding employers' surveillance practices, data storage locations, and retention periods is a notable concern.

Co-governance and collective bargaining

The Committee members expressed support for advancing legislation on the matter, highlighting the issue of consent in situations where there is a significant power imbalance, especially when people must agree to contracts for employment. This raises the importance of workers organising and joining unions to ensure proper implementation of any legislation.

The FSU raised concerns that while there is knowledge from the employee's perspective, understanding the employer's viewpoint is lacking. A key aspect is the concept of collective bargaining, which empowers workers to initiate dialogues and address power imbalances. Transparency is also crucial, encompassing clear explanations in plain language about what is being monitored, the reasons behind monitoring, and the legal foundations supporting such monitoring.

The FSU noted that with the German model, the key issue is about criminal activity and is specific to the monitoring of the internet and emails. Outside of that, in other areas of surveillance of employees, there are strong co-determination rights so that works councils have co-determination powers regarding the introduction and use of technology to monitor work. Countries such as Austria, Denmark, Norway, and France all have laws that are about co-determination or consultation of worker representatives on anything regarding technology and monitoring performance.

Two crucial developments in collective bargaining are also particularly noteworthy: the European Minimum Wage Directive aiming for 80% collective bargaining in Member States, and the upcoming implementation of good faith bargaining through the Labour Employer Economic Forum. These developments require support from the entire Oireachtas to establish a foundation for collective bargaining.

The importance of providing workers and their representatives with both physical and digital access is emphasised. The ability to hold meetings online, involving large numbers of participants, has become significant. Access to both digital and physical

platforms is seen as pivotal for workers to voice concerns confidently, knowing they will be addressed by employers responsibly.

The FSU's key concern highlighted in the report is the lack of awareness and transparency surrounding surveillance practices on employees' home and work on computers. A significant finding is that more than half of the respondents were unaware of being monitored or subjected to surveillance on their digital devices. This issue emphasises the importance of collective bargaining, as discussions with the trade union movement should occur before any monitoring activities are initiated on employees' computers or phones.

The FSU noted the EU AI Act aims to enhance transparency, protect employee rights, and ensure informed decision-making regarding workplace surveillance. For the FSU, the issue of access enshrined in a right to collectively bargain for workers that is supported and recognised by the State is key.

The FSU strongly argued that they are not opposed to change. The FSU maintain they are not opposed to AI but advocate for it to be used in a context that is for the benefit of consumers and staff, and used in a way that is ethical. Countries such as Australia are developing ethical AI frameworks, with some international legislation providing that worker representatives should have a lot of input at the development stage and that no technology should be introduced before they are involved.

Displacement

The Committee queried to what extent is technology used to manage workers, thereby displacing managers and if there also other sectors where technology is displacing human managers.

The FSU explained that the financial services sector, particularly banking, displays high levels of technological surveillance of employees internationally, as indicated by a survey done by the Trades Union Congress, TUC, in the UK and another by the European Agency for Safety & Health at Work, EU-OSHA.

The FSU provided that the transport and storage sector also show significant surveillance. The introduction of technology in banking has led to job losses and

restructuring, including reduced pay for some managers. While technology benefits certain sectors by displacing tasks, it also increases work intensity and pace, affecting employee well-being.

The FSU highlighted the importance of human intervention and oversight in various aspects. This intervention is crucial in areas such as hiring, performance management, and decision-making, particularly when AI systems are involved. The tools and data provided by AI should contribute to decision-making but not operate independently, as a lack of human oversight can lead to bias propagation and unjust outcomes. This need for oversight is particularly significant in settings like remote call centers, where traditional physical boundaries no longer apply. The FSU advocate that all forms of AI should be subject to human interaction, appeal, and oversight to ensure fair and ethical outcomes.

The concern is about the complexity arising from layers of technology in call centers, including AI and monitoring systems. These technologies analyse customer interactions and may lead to restricting tasks based on the frequency of customer issues. This can frustrate both customers and employees, potentially leading to role changes where tasks are eliminated or shifted due to automation.

Work intensification

That feeling of work intensification comes with surveillance or monitoring and the oversight, where workers feel they must do certain things because they are being monitored or analytics are being developed regarding what is occurring. Work intensification is a huge issue for the financial services sector. The FSU note the sector transitioned overnight to being remote workers and now there is a hybrid element for employees which has been maintained.

Personal data and GDPR

The Committee raised the concern that the rapid pace of technological advancement makes it difficult to keep up, particularly regarding data privacy in the context of personal data being collected through mobile phones, including biometrics, retinal scans, and fingerprints.

The Committee raised further concerns regarding monitoring through technology, like tracking customer interactions or recording conversations for performance reviews, and that such tracking raises ethical questions. The move towards full digitisation in areas like banking is concerning, particularly for older individuals. There is also a concern about employees' lack of awareness regarding monitoring software on devices provided by employers, and that employees must have access to information about such monitoring.

The FSU suggested that the issue at hand involves advocating for workplace agreements to be supported by collective bargaining. The argument is that when employees raise concerns and approach their employers, there is often a significant power imbalance. To address this, there is a call for legislation to establish collective bargaining rights, which would allow employees to be represented and negotiate their concerns through workplace agreements.

The FSU highlighted that co-governance, a concept present in other countries, can be beneficial. This approach involves collaboration between employers and employees in shaping workplace policies with the aim to create improved policies and a clearer understanding of what is being monitored. This transparency would help employees comprehend the boundaries while ensuring those boundaries are respected. FSU contend that that co-governance should not be seen as a threat to employers and can lead to better workplace practices.

The FSU is concerned with employers needing to prove that such methods are necessary and could not be replaced by less invasive alternatives. While some organisations use AI for decision-making, it currently aids management rather than fully replacing human decisions. The potential for further data usage and automation raises concerns about privacy and fairness.

The EU AI Act

The FSU noted that the weakness in the EU AI Act is assessing risk. The FSU note that some law experts in the field of technology argue that there should be a licensing of technologies involved in surveillance to ensure they are compliant with employment laws before they are introduced into organisations. Even though the EU AI Act mentions that such use in employment is high risk, it places very little emphasis on what employers should be doing and very little mention, if anything at all, on workers or workers' rights. The FSU maintained that the view internationally is that it will not be strong enough in its present form to be able to protect workers in the workplace or even give guidance to employers in the workplace in terms of AI.

The FSU advocated that properly managed AI can enhance existing processes, despite inevitable job changes. The focus is on how change occurs, as seen in financial digitisation. Concerns about leaving communities behind and job security persist. Rapid AI changes lack regulation, necessitating safeguards for workers and consumers.

Proportionality

The FSU stressed the need for proportionality when assessing AI and its use. For example, it would not be credible for an organisation to use technology to do a 30-second recording of an individual and, based on those 30 seconds, an algorithm would decide whether he or she is suitable for a job. Principles are being proposed that could help with the issues around proportionality.

The FSU noted the difficulty now is that regulation is generally very far behind internationally. People had an assumption that AI would be biased. There is now lots of research showing that while equality legislation is useful, the information being fed into systems in recruitment is itself biased. Therefore, the algorithmic management systems are themselves biased.

Chapter 2: Engagement on AI in the Workplace

The Committee met with officials from ICTU, the Bar Council of Ireland and Trinity College Dublin for an engagement on AI in the workplace.

On 30 Nov 2022, OpenAI released the open-source generative AI tool, ChatGPT, where GPT stands for generative pre-trained transformer. ChatGPT is the fastest growing technology in history, having amassed more than 100 million users in two months. AI in the workplace can manifest itself in a myriad of ways, including application screening, analysis and monitoring of facial expressions, eye contact, voice tone and cadence in video-recorded interviews, automation of tasks, monitoring engagement and biometric identification and classification.

Engagement summary of concerns

Professor Gregory O'Hare of Trinity College Dublin noted that AI is a profoundly disruptive technology. He noted that the latest generation of AI, generative AI as typified by ChatGPT, is underpinned by large language models, LLM, built and subsequently refined using both supervised learning and reinforcement learning with human feedback. While it does not understand their inputs, they are able to establish statistical patterns and learn from data sets of a large scale that enable them to generate content that exhibits contextual relevance and appropriateness.

Professor O'Hare referred to a 2023 OECD report, 49% of workers in finance and 39% in manufacturing said their company's application of AI collected data on them as individuals or how they perform their work.

ICTU acknowledged that AI systems offer opportunities for improving work and workplaces. ICTU also noted that without appropriate regulation, the increased usage of these largely invisible technologies poses potential risks to workers.

ICTU provided that the shift to remote working brought the intrusive use of AI to monitor and supervise workers centre stage and, as has been mentioned, in the past six months, the launch of the content generating AI platform, ChatGPT, has opened public interest in the potential for AI to transform jobs and displace some of the workforce along the way.

ICTU highlighted that the danger of dehumanisation of decision-making processes, especially when used in human resources tools, for example, to recruit workers, monitor their work, analyse their behaviour, and even terminate their employment, is already occurring.

ICTU attested strongly that trade unions are not looking to hold back the tide of progress. ICTU acknowledged the potential of AI for improving work and workplaces when used in the right way. ICTU advocated strongly for robust regulation. ICTU contended that workers' rights and protections must be fit for purpose to keep pace with these powerful technological developments. AI in the workplace must deliver for workers as much as for business.

The EU AI Act

The EU's AI Act will seek to be the world's first AI legislative framework. The Act is framed around input from the high-level expert group of the EU on ethics guidelines for trustworthy AI. It adopts several ethical principles, including respect for human autonomy, prevention of harm, fairness and explainability, the last of which demands system transparency, system auditability and system traceability. This will enable individuals to contest decisions of AI systems and seek redress because of such decisions.

Ronan Lupton, S.C. of the Bar Council of Ireland noted that the key challenge is to keep pace with technology and where it is going. The AI Act proposed would provide legal protections for workers and foster employment.

Mr Lupton noted the challenge of legislating for the future in terms of employment rights, and employer rights and obligations. However, there are no changes to what the GDPR says and does. Mr Lupton further noted that one of the most interesting features of the Act, as passed, relates to the issue of a prohibition on biometric technology, specifically real-time biometric screening, and scanning.

ICTU noted that on a European level, trade unions have been advocating from the beginning for regulation that promotes the positive effects of AI while shielding workers from potential harms that could arise, especially to their rights. ICTU contend that the EU's AI Act is not suitable for regulating the use of AI in the

workplace, preserving the dignity of workers and counteracting dehumanisation at work.

ICTU suggested that the proposal submitted by the European Commission was disappointing from the workers' point of view. It requires software providers to self-assess their own technology between low-risk and high-risk before putting it on the market and did not include any rules on the use of AI in the workplace.

ICTU noted that although the EU Commission has defined AI systems used for hiring, promotion or dismissal as high risk, the use of AI applications in the workplace will only be restricted if it poses a significant risk to workers' safety or fundamental rights. It is not clear when a risk is considered high enough to be significant or how to determine the risk ex ante. Software providers can be expected to self-classify their own applications as non-significant. The procedure provided for in the legislation is not capable of preventing this and will only lead to forum shopping for the weakest supervisory regime.

ICTU submitted that the proposed AI Act, while it will not be perfect, will also be a minimum standard. There will be nothing, therefore, to prevent Ireland from improving on it in a national context, as we have in the cases of some other directives.

Professor O'Hare noted that the EU AI Act has been in gestation for quite some time as there have been delays associated with it and the particular framing and construction of a very complex Act with a rapidly evolving landscape.

Mr Lupton noted one aspect of the Act, Article 29, and an amendment that was submitted, No. 5a. It states: "Prior to putting into service or use a high-risk AI system at the workplace, deployers shall consult workers representatives with a view to reaching an agreement in accordance with Directive 2002/14/EC and inform the affected employees that they will be subject to the system."

The Directive establishes a general framework setting out the minimum requirements for the right to information and the consultation of employees in undertakings or establishments within the Community. Mr Lupton notes that the AI Act states the

information is high-risk information, as is biometric data that is processed. With modern technology, there can be biometric data processed. The EU AI Act does in fact, have employee information set out as high-risk data.

Stakeholder Engagement in development stages

Professor O'Hare believed the involvement of unions at the earliest stage possible in developing initiatives around this is key to addressing the concerns. He noted the challenges can only be properly approached if the right stakeholders are around the table. Because of the challenges, it is key that workers and their representatives are represented in any forum that is making decisions that will fundamentally impact the world of work.

Professor O'Hare strongly advised that it is crucial that to have appropriate, considered engagement of all the stakeholders involved. He noted that such engagement ought not to be rushed and necessarily takes considerable time. However, he acknowledged that the velocity at which the uptake and deployment of AI systems is occurring does not afford a huge amount of time.

Where stakeholders call for transparency, it is not just about publicising or publishing the algorithm specifically referencing transparency about how decisions are made. Professor O'Hare noted that there is typically not an algorithm and typically not a set of algorithmic steps that one could scrutinise, with a trained eye. AI and, in particular, deep AI, does not have an algorithmic basis.

Transparency requires auditability and one of the current watchwords, is explainable AI. Professor O'Hare noted the importance that the legislation mandates that such systems can support explainable AI in the spoken language or written language.

Professor O'Hare advocated that explanations should explain that, based on a statistical high correlation between concept X and concept Y, this resulted in an inference, and in turn, when this was combined with another strong correlation between some other phenomena, this resulted in the particular recommendation.

ICTU noted that all systems at work need to be transparent and explainable. ICTU would like people to have the right to receive information about new developments being introduced and receive it in plain, understandable language.

ICTU wanted employees to have the right to engage external expertise if that is required. ICTU strongly advocated for a form of fundamental rights and equality impact assessment needs to be carried out along with workers and their representatives in this area.

All stakeholders strongly advocated for complete stakeholder representation at discussions urgently to explore the challenges and opportunities of AI. Professor O'Hare noted the velocity of AI technology is fast exceeding the rate at which the law regarding AI can be framed.

Employee rights

Mr Lupton noted concerns around the rights of workers in the gig economy, exemplified by Deliveroo riders and similar roles. These workers often lack union representation and operate under non-traditional contracts, such as zero-hours agreements. This poses challenges in ensuring fair compensation, job security, and benefits for these individuals. The absence of strong unions shifts the focus to rethinking legal frameworks and mechanisms to protect the rights of these workers in the evolving economy. The importance of collective bargaining becomes more apparent and needed to safeguard these employees.

Fake news

The Committee highlighted the concern of this technology and how it can be used to put out what has been termed "fake news". This may pose a fundamental threat to democracy and freedom.

Mr Lupton cautioned that technology in that sphere does not catch the fake news and the disinformation part because the story can be written in such a way that it looks bona fide.

Mr Lupton discussed the issue of fraudulent online listings selling counterfeit items. They emphasise that such activities are unequivocally criminal, whether they are

orchestrated by AI technology programs or criminal groups. The geographical location of these criminals, whether in Ireland or elsewhere, falls under the jurisdiction of law enforcement agencies. While the context is a meeting in the employment sphere, Mr Lupton highlights the out the dual concern of the issue: a law enforcement concern and a matter of civil liability.

The Bar Council of Ireland's previous submission focused on civil liability issues, particularly regarding media, privacy, and data protection. The submission emphasised that any changes made should not radically alter the existing legal norms. It pointed out that in certain other European countries, there exists strict liability, such as in cases involving AI, where even technology manufacturers can be held accountable in court. In contrast, in Ireland, a claimant can only succeed if they can establish the identity of the responsible party on the balance of probabilities.

The Bar of Ireland cautioned against making sudden and drastic changes to the law, highlighting a conflict between the need for speed in adapting to evolving technology and the potential disruption that overnight legal changes might cause. The submission suggested that while it is important to keep pace with technological developments, this should be achieved without making hasty alterations to the legal framework.

Mr Lupton noted the movement to try and address that where the leading tech companies have come together to try and see another way whereby, we could have some certification of images that are seeded into the Internet. Companies, such as Adobe and Microsoft, have shared their intellectual and technical power bases. This will create a situation whereby images that are verifiable, accurate and bona fide will have a little icon in the top right-hand corner and someone can click on this icon and establish the provenance of that particular image creating a kind of certification and provenance opportunity, not merely for imagery but for every kind of content that is seeded into the internet.

Mr Lupton noted the issue of regulatory impact assessments when it comes to AI technology being dropped into media and literally any line of society and work, are of critical import.

Mr Lupton drew attention to the fact that the recent ChatGPT and OpenAI offerings have been provided open source. No intellectual property, IP, is impacted or protected.

Legislative change

Professor O'Hare referred to the legislative possibilities of effecting change within Ireland and note in referencing AI, AI that knows no boundaries. It knows no political, geographic, or socioeconomic boundaries.

Professor O'Hare suggested that AI requires a global position and highlighted that the State needs to find a way and a voice in that global discussion given Ireland's fortunate position of playing host to significant tech companies.

Impact on persons with a disability

The Committee raised the concern of the potential positive impacts AI may have on persons living with a disability. Mr Lupton noted anticipation of such positive impacts to facilities that would be developed using AI technologies. They may be iPads or speech development technology or gene editing technology based on developments that AI would use to look at massive gene clusters and to correct gene deficiencies will be developed very shortly.

Professor O'Hare noted with regards to disability and the possibility of this technology assisting those who are less fortunate, without question, that is a possibility. AI has profound opportunities.

Impact on wages

Professor O'Hare highlighted the concern that automation could lead to reduced salaries, particularly in white-collar professions like law, where routine tasks could be automated. This could challenge the assumption that such jobs are immune to technological advancements. He noted, new high-skilled, well-paid roles could also emerge because of technological revolutions, as history has shown. The situation presents a balance between potential wage reduction and the creation of new jobs.

GDPR and personal data

Mr Lupton noted that looking back, Facebook, Google and other big names did not feature on our landscapes. There are going to be new developers, innovators and people placing new items onto the market that fundamentally are self-certified. Mr Lupton raised the issue of regulatory governance and regulatory impact assessment. The issue of human autonomy, reputational harm and explainability are the three principles requiring consideration.

Mr Lupton referred to the GDPR framework, which is the processing of personal data. That should work hand in glove with the AI Act, insofar as people can vindicate their rights and deployers, developers and controllers of the data who are deploying AI systems must comply with the GDPR norm. It is important that we understand the fundamental difference between personal data and the associated legislation and the kind of things we are witnessing today.

Professor O'Hare observed that new entities and emerging technologies will come forward and the question is how to regulate them, because they will be below the radar. He noted that data relating to categories and classes of people, people from areas and people who previously did X, Y and Z is a fundamentally different form of content, and it is not sufficiently legislated for within the legislative framework.

Mr Lupton noted that companies using and investing in AI are doing so to make efficiencies in their businesses. They will be subject to pre-existing frameworks under GDPR, which is a personal data framework. Mr Lupton noted that we are slightly deficient in other aspects of data governance and regulation in this regard.

Regulation in sectoral spaces has cleaned up many aspects of certain areas. With the internet, for example, there was no regulation or there was so-called "self-regulation". We now have the Online Safety and Media Regulation Act 2022, the Digital Services Act in development, the Audiovisual Media Services Directive 2, and the Government putting detail into how that regulator will work.

Technology Surveillance

The Committee raised the concern of excessive surveillance as discussed at the first meeting in this report. The Committee noted the need to look at machines examining people's behaviour and making decisions about them. Surveillance can relate to purchasing habits but, it is important to discuss issues that could have people terminated in employment.

Mr Lupton noted the difficulty legislating for something that is so difficult to even define and the need for urgency. Even the speed at which we are moving at a European level is not sufficient. The boundaries around this technology are not governed by political or geographic barriers.

Collective Bargaining

The stakeholders noted that in legislating or regulating for AI, it raises the importance of the absence in collective bargaining legislation to support it. ICTU note that if workers are to be involved, it must be noted that our framework for collective bargaining up to now falls way behind the rest of Europe.

ICTU noted the focus is on regulation and that is right. However, if we are going to discuss the topic of AI in the workplace, another area we must look at is the potential for technological unemployment. That will also mean preparing today's workforce to be able to use that technology to prevent unemployment where we can.

ICTU cautioned that collective bargaining will not be enough to prevent that. There is an additional need to look at our skilling, reskilling and upskilling opportunities and we will have to look at the right of workers to have paid leave.

ICTU expressed concern around the need for employers to take responsibility due to the lack of income protection and skill training leave rights for workers. This is especially important in Ireland, where these rights are uncommon.

ICTU suggested that the regulation of AI, both in general and within the workplace, should be considered. It's essential to future-proof the workforce by preparing employees for job changes caused by AI and automation. This preparation should enable workers to transition along with their evolving roles. For jobs that might be

displaced by AI, there is a need to create strategies to transition workers into new roles, with a focus on ensuring that these new opportunities are of high quality.

ICTU highlighted the importance of addressing the intersection of AI and the workplace through careful planning and policymaking.

Mr Lupton noted that in heading to an EU and national regulatory perspective, the proposed Act does set out national supervisory authority and a board structure in respect of notifications and approvals.

Mr Lupton further stressed that there are also those not represented by unions, for example, including those who are sole traders, such as barristers who practise in the Law Library. He informed the Committee that if the courts were made more efficient using AI technology, the courts would embrace that because more cases would get through the system. Replacing the advocate in this context, however, is something Mr Lupton would object to.

APPENDIX 1- Membership of the Joint Committee

Deputies

Maurice Quinlivan (SF)	Cathaoirleach
Richard Bruton (FG)	
Francis Noel Duffy (GP)	
Joe Flaherty (FF)	
Mick Barry (S-PBP)	
James O'Connor (FF)	
Louise O'Reilly (SF)	
Matt Shanahan (Ind)	
David Stanton (FG)	

Senators

Garret Ahearn (FG)	Leas-chathaoirleach
Ollie Crowe (FF)	
Róisín Garvey (GP)	
Paul Gavan (SF)	
Marie Sherlock (Lab)	

Notes:

1. Deputies appointed to the Committee by order of the Dáil on 8 September 2020.
2. Deputy Maurice Quinlivan was appointed as Chair on 8 September 2020.
3. Senators appointed to the Committee by order of the Seanad on 25 September 2020.
4. Deputy James O'Connor replaced Deputy Niamh Smyth on 26 November 2020.
5. Deputy Mick Barry replaced Deputy Paul Murphy on 28 March 2023.

APPENDIX 2-Terms of Reference of The Joint Committee

a) Scope and Context of Activities of Committees (*derived from Standing Orders – DSO 84, SSO 70*)

- 1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
- 2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil/and or Seanad;
- 3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993;
- 4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 111A; and

The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

- (i) a member of the Government or a Minister of State, or
- (ii) the principal officeholder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

- 5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

b) Functions of Departmental Committees (*derived from Standing Orders – DSO 84A and SSO 70A*)

- (1) The Select Committee shall consider and report to the Dáil on-
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—

- (a) Bills,
- (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187
- (c) Estimates for Public Services, and
- (d) other matters as shall be referred to the Select Committee by the Dáil, and
- (e) Annual Output Statements including performance, efficiency, and effectiveness in the use of public moneys, and
- (f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) Without prejudice to the generality of paragraph (1), the Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
- (b) public affairs administered by The Department,
- (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
- (d) Government policy and governance in respect of bodies under the aegis of the Department,
- (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
- (f) the general scheme or draft heads of any Bill
- (g) any post-enactment report laid before either House or both Houses by a member of the Government or
Minister of State on any Bill enacted by the Houses of the Oireachtas,
- (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
- (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
- (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
- (k) such other matters as may be referred to it by the Dáil from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where the Select Committee has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other members of the European Parliament.
- (8) The Joint Committee may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department or Departments, consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 111F apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter, or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.

Appendix 3- Reference Links

Meeting 1 in public session – Wednesday, 24 May 2023 in CR1

Topic: Employee Experiences of Technological Surveillance in Financial Services

- [Video](#)
- [Transcript](#)
- [Financial Services Union Opening Statement](#)
- [Financial Services Union Report on Employee Experiences of Technological Surveillance in Financial Services](#)

Meeting 2 in public session – Wednesday, 21 June 2023 in CR1

Topic: Artificial Intelligence in the Workplace

- [Video](#)
- [Transcript](#)

Opening Statements

- [Professor Gregory O'Hare](#)
- [ICTU](#)
- [Ronan Lupton S.C.](#)

OECD report 'Wellbeing in the Digital Age' - [Report](#)

Department of Enterprise, Trade and Employment [Report -](#)







Houses of the Oireachtas

Leinster House
Kildare Street
Dublin 2
D02 XR20

www.oireachtas.ie

Tel: +353 (0)1 6183000

Twitter: @OireachtasNews

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