

LUXEMBOURG EU SUMMER SCHOOL: IMPACT OF AI ON OUR DAILY WORK

The use of AI in an employment context –
an illustration of a “high-risk” use case

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AI can fully automise recruitment procedures:



Identification and “scoring” of candidates via social media



CV screening



Automated interviews

AI can evaluate performance:



Monitoring of employees
Automated Performance Reviews
Decisions on bonus allocation,
termination of work contract

Is it an « AI System » or not ?

The AI Act definition (art. 3, point 1), inspired by the OECD definition:

*“a machine-based system designed to operate with varying levels of **autonomy**, that may exhibit **adaptiveness** after deployment and that, for explicit or implicit objectives, **infers**, from the input it receives, **how to generate outputs** such as predictions, content, recommendations, or decisions that can **influence** physical or virtual environments;”*

What types of risks do you think the use of such AI systems could entail



Risks for
fundamental
rights of
employees:

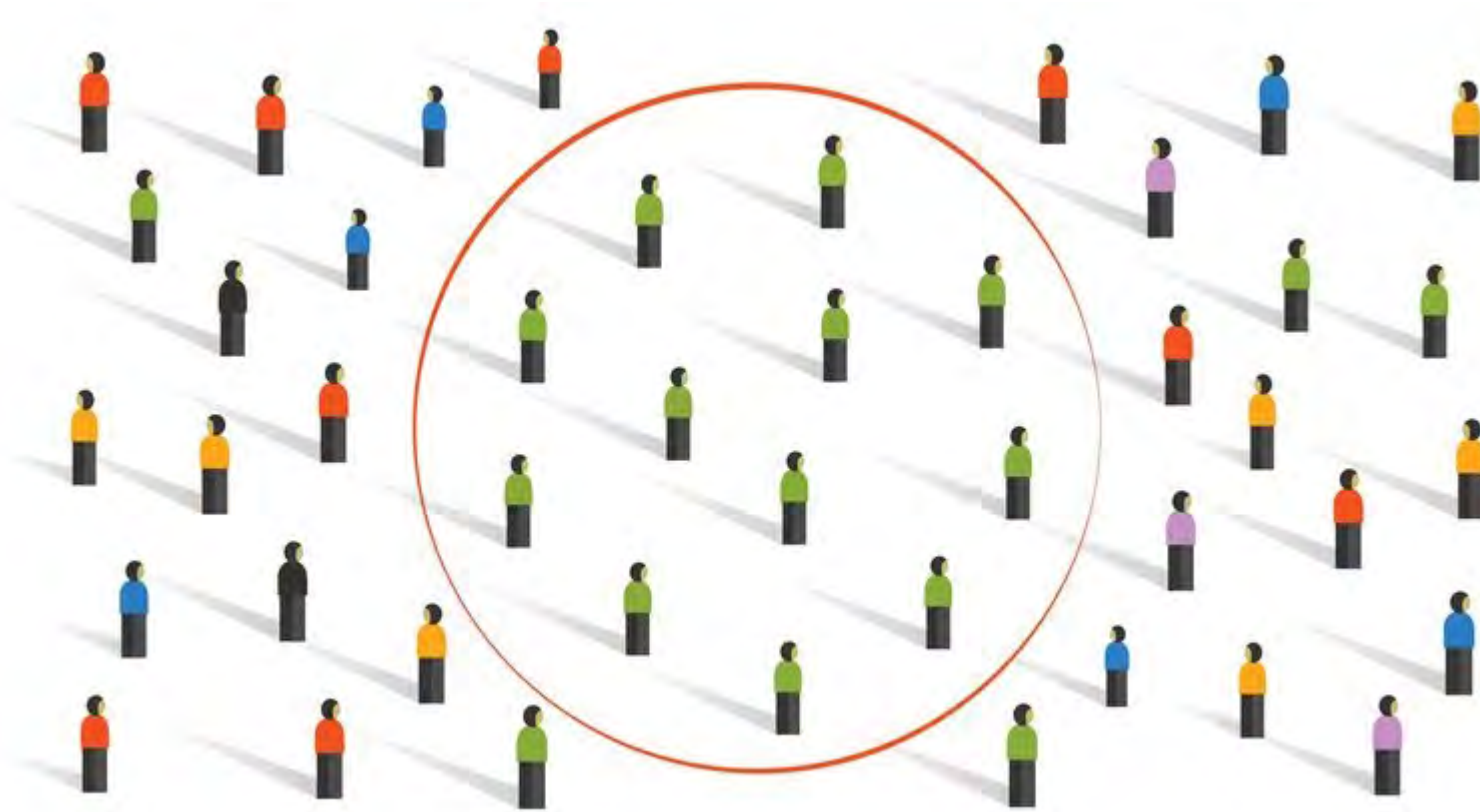
Principle of non Discrimination

Personal Data, Privacy

Constant surveillance – what is the limit?

CNIL imposes a fine of €32 million on AMAZON FRANCE for oversurveillance of warehouse workers

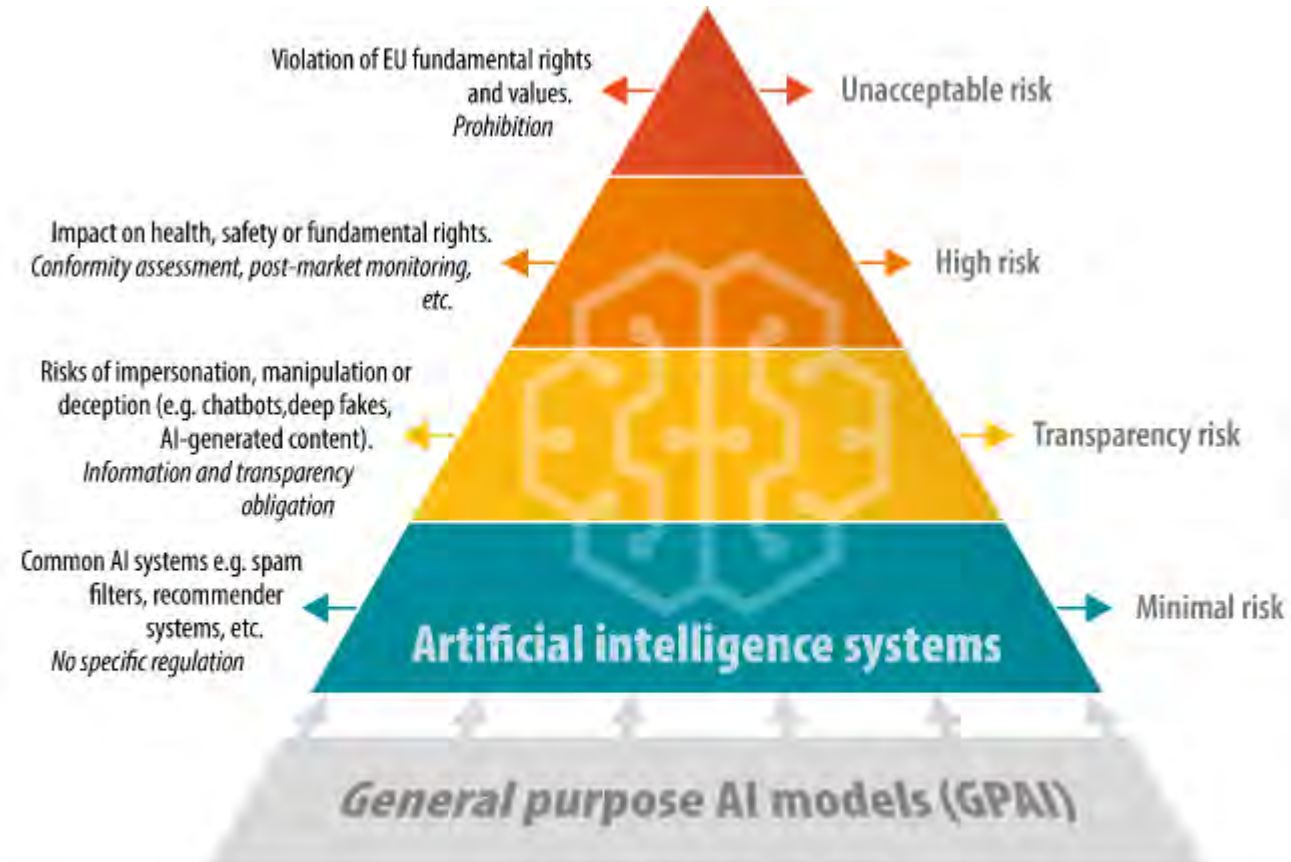
Article L. 261-1 of the new labour code and strict conditions for Workplace cameras



The classification of certain uses of AI in the employment context as « **high-risk** » AI

*“Throughout the **recruitment process** and in the evaluation, promotion, or retention of persons in work-related contractual relationships, such systems may **perpetuate historical patterns of discrimination**, for example against women, certain age groups, persons with disabilities, or persons of certain racial or ethnic origins or sexual orientation. AI systems used to **monitor the performance and behaviour** of such persons may also **undermine their fundamental rights to data protection and privacy.**” (AI ACT, preamble 57)*

The European Union has adopted a risk-based approach:



GPAI models - *Transparency requirements*

GPAI with systemic risks - *Transparency requirements, risk assessment and mitigation*

Data source: [European Commission](#)

What does « **high-risk** » mean in practice?



General obligations for *users* (selection):

Especially for AI systems at the workplace

Human oversight
by qualified
individuals
(art. 14 & 26 §2)

Ensure input data
is representative
(art. 26 §4)

Constant
monitoring of use
according to
instructions
(art. 26 §4)

Log (record)
keeping for
at least 6 months
(art. 26 §6)

***“employers shall inform
workers’ representatives and
the affected workers that they
will be subject to the use of the
high-risk AI system”
(article 26 §7)***

The employees' right to contest an automated decision or profiling - Article 22 of the GDPR

Right not to be subject to a decision based solely on automated processing, including profiling, which produces legal or similarly significantly affects.



SCHUFA (C-634/21) and the notion of a decision based “solely on automated processing”

Exception: possible for entering into or performance of a contract



Right to express a point of view, right to contest

Open questions

- Ambiguity of certain notions in Article 22 of the GDPR (legal uncertainty, implementation in divergent ways by member states)

Ex. *When does the decision produce “significant” legal effects?*

- Text which does not consider the recent proposed regulation on AI (classification as “high-risk AI”)
- What about automated decisions/profiling that do not involve processing of personal data?
- We could interpret this provision in the light of the requirements of an effective remedy (Article 47 of the Charter of Fundamental Rights) and the right to good administration (Article 41)

The use of AI in the workplace – opportunities and challenges



A tool against human bias ... can be biased as well



The promise of efficiency ... many administrative obligations, costs, complex contestations



The guarantee of effective human oversight ... shortage of IT skills in Europe



Transparency of how your system works ... what is the limit?

Thank you for your attention!

Any questions?