



## Trade union control over the use of artificial intelligence in employment in Polish labour law

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### Abstract

The use of artificial intelligence in employment should be subjected to the control of the trade unions. In Polish reality the company trade unions should be entities equipped with rights to perform such control. This article contains the analysis of the current legal status in this field and indicates the amendments necessary to improve the possibility of trade unions control over the use of AI in employment.

**Keywords:** trade unions, control, workplace, employment, artificial intelligence

### 1. Introductory remarks

The use of artificial intelligence in employment is becoming increasingly common. Increasingly rapid developments in AI are likely to significantly affect jobs.<sup>1</sup> Adoption of these technologies is generating new challenges for workers' rights, especially in four broad areas: surveillance and control, transparency, discrimination, accountability:<sup>2</sup>

Technology-enabled surveillance can generate new pace and efficiency pressures for workers and may lock workers out from important aspects of decision making, such as being able to use personal discretion. Algorithmic management can create power imbalances that may be difficult to challenge without access to how these systems work as well as the resources and expertise to adequately assess them. If used to make decisions about workers, tools like consumer-sourced rating systems can

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<sup>1</sup> S. BROECKE: Artificial intelligence and the labour market. Introduction. *OECD Employment Outlook 2023: Artificial Intelligence and the Labour Market*. Paris, OECD Publishing, 2023.

<sup>2</sup> A. MATEESCU – A. NGUYEN: EXPLAINER: Algorithmic Management in the Workplace. *Data & Society*, February 2019, 1.

introduce discriminatory practices towards workers. Algorithmic management can be also used to distance companies from the effects of their business decisions, obscuring specific decisions made about how a system should function.<sup>3</sup>

The introduction of AI technologies at the workplace may entail different types of risks on the quality of the working environment, but also raise fundamental ethical issues, such as excessive surveillance, breach of privacy, potential discrimination among workers and risk of de-humanisation due to the emergence of AI-based management in the workplace providing potential unprecedented form of control at the workplace.<sup>4</sup> Artificial intelligence systems used to monitor the performance and behaviour of these individuals may affect their right to data protection and privacy. The development of algorithmic management makes it possible to execute previously impossible multidimensional control over employees. In order to understand the new level of intrusion enabled by algorithmic data analytics, it is important to highlight its distinguishing features – i.e. ubiquity and interoperability.<sup>5</sup>

It is not without reason that the draft legislation presented in April 2021 by the European Commission to regulate this technological area, the Artificial Intelligence Act (AI Act), explicitly recognises artificial intelligence systems used in employment as a “high-risk system”. In accordance with section 36 of the preamble to the draft Artificial Intelligence Act, “Artificial intelligence systems used in the area of employment, workforce management and access to self-employment, in particular for recruitment and selection of candidates, for promotion and termination decisions and for the assignment of tasks, monitoring or evaluation of persons in contractual employment relationships, should also be classified as high-risk systems, as these systems can significantly affect the future job prospects and livelihoods of these persons [...]”.

One of the measures which can be used to limit these risks and to assure that AI will be implemented to the workplaces in a way which is safe and ethical is social dialogue. Social dialogue can play an important role in addressing some of the key challenges driven by AI technologies.<sup>6</sup> It is pointed out, that social dialogue and collective bargaining may also play an important role in smoothening the impact of AI in the labour market, facilitating the introduction of new technologies as well as complementing public policies in the deployment of re-training and upskilling programmes.<sup>7</sup> Moreover, collective bargaining systems, when coordinated, can also reduce inequalities and foster inclusive

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<sup>3</sup> Ibid.

<sup>4</sup> The impact of Artificial Intelligence on the labour market and the workplace: What role for social dialogue? *OECD Social, Employment and Migration Working Papers*, 25 January 2021. 6. [Foreinafter: The impact of Artificial Intelligence...]

<sup>5</sup> M. OTTO: Algorithmic discrimination in employment. *Studies on Labour Law and Social Policy*, vol. 2. (2022) 146.

<sup>6</sup> C. KRÄMER – S. CAZES. Shaping the transition: Artificial intelligence and social dialogue. *OECD Social, Employment and Migration Working Papers*, No. 279. (2021) <https://dx.doi.org/10.1787/f097c48a-en>

<sup>7</sup> The impact of Artificial Intelligence... op. cit. 5.

labour markets.<sup>8</sup> Thus, the necessity to encourage and facilitate the consultations and discussions on the AI transition with social partners.<sup>9</sup>

The role of employee representatives for the safe and non-threatening use of artificial intelligence is also highlighted in the European Social Partners' Framework Agreement on digitalisation. Among other things, it emphasises that "it is crucial that digital technology is introduced in right time, in consultation with employees and their representatives, within the framework of the industrial relations systems, so that confidence in the process can be built."

The role of employees representatives is also emphasised in the Proposal for a directive of the European Parliament and of the Council on improving working conditions in platform work<sup>10</sup>. In section 9 of the proposal it is settled, that Member States shall ensure information and consultation of platform workers' representatives on decisions likely to lead to the introduction of or substantial changes in the use of automated monitoring and decision-making systems referred to in Article 6(1), in accordance with this Article.

Also the empirical researches confirm the positive influence of cooperation with employees representatives on the results of AI implementation in the workplaces. It seems, that consultation regarding the adoption of new technologies is associated with better outcomes. The workplaces in which workers or worker representatives are consulted regarding new technologies are the same workplaces where the most positive impacts on worker productivity and working conditions are reported.<sup>11</sup>

Thus, it is possible to make an assumption, that use of AI in the employment should be undertaken in cooperation and under control of employees representatives.

Meanwhile, Polish labour law does not take into account such risks in the working environment at all. It is therefore necessary to initiate a wide-ranging discussion on how to ensure that employees are protected from the dangers of the use of artificial intelligence in the employment process and what role the employees representatives and social dialogue should play in this field. Ensuring decent work in today's reality cannot therefore overlook the influence of workers' representatives over the use of artificial intelligence in employment. In the latter, in my view, trade unions should play a fundamental role.

This text focuses on the issue of trade union control over the use of artificial intelligence in employment in Polish labour law. The author analyses, from the perspective of the possibility of performing such control, the current regulations, the level at which such actions should be undertaken and formulates *de lege ferenda* postulates, the implementation of which in the Polish legal order

<sup>8</sup> KRÄMER–CAZES op. cit.

<sup>9</sup> S. CAZES: Social dialogue and collective bargaining in the age of artificial intelligence. *OECD Employment Outlook 2023: Artificial Intelligence and the Labour Market*. Paris, OECD Publishing, 2023.

<sup>10</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52021PC0762>

<sup>11</sup> M. LANE – M. WILLIAMS – S. BROECKE: The impact of AI on the workplace: Main findings from the OECD AI surveys of employers and workers. *OECD Social, Employment and Migration Working Papers*, No. 288. (2020) 79.

should contribute to limiting the risks that the use of artificial intelligence in employment may pose for employees. In doing so, it must be noted that control in this text should be understood in a broad sense, as all possibilities and forms of monitoring by trade unions of the employer's use of artificial intelligence in employment, both at the stage of its implementation and control of the effects of its use.

This article concentrates on the trade union control over the use of artificial intelligence performed at the workplace. The levels of the trade unions influence on using the AI in employment can be different – national, sectoral or workplace level. From Polish perspective the workplace level seems to be the most important. It is connected with the specific model of Polish trade union movement which is dominated by the organisational units operating within one employer – so called company trade unions organisations<sup>12</sup>.

## **2. The company trade union as a predisposed entity to exercise control over the use of artificial intelligence in employment**

When analysing the problem of the social partners' control over the use of artificial intelligence in work processes, the first question to be asked is what kind of entity should be equipped with this kind of power. In the author's view, trade unions should undoubtedly be equipped with such powers in the first instance. Trade unions are organisations specialised in the protection of the rights and interests of workers, equipped with the most far-reaching competences in this regard. As indicated in Art. 4 of the Trade Union Act<sup>13</sup>, trade unions represent persons performing gainful employment for an employer and defend their dignity, rights and material and moral interests, both collectively and individually. This is supported not only by the purpose of trade unions and the powers they have in this respect, but also by the wide range of entities that can be represented by a trade union. Indeed, trade unions represent not only the employees themselves, but also persons performing paid work for the employer on a basis other than employment.<sup>14</sup> This is particularly relevant, as the risks of artificial intelligence apply not only to employees, but also to those providing work on a basis other than employment, including, in particular, the platform workers.

The risks associated with the use of artificial intelligence in employment manifest themselves primarily at the workplace level, at the individual employer. Trade union structures operating at workplace level should therefore be equipped with these powers. In Polish labour law, *de lege lata* such a structure is the company trade union organisation. It may operate either in the form of an independent trade union whose scope of action is limited to a single workplace, or as a company-

<sup>12</sup> Z. HAJN: Trade union representation of employees at the workplace in Poland – evolution, current status, future. In: Z. HAJN: *Trade union representation of employees at the workplace*. Warsaw, 2014. 35–36.

<sup>13</sup> Act of 23 May 1991 on trade unions. *Journal of Laws*, 2002. item 854.

<sup>14</sup> Art.1<sup>1</sup> (1) of Trade Union Act.

based organisational unit of a larger, supra-company trade union established on the basis of a trade union statute. Irrespective of the form of action (a company trade union organisation established under the law or under the procedure laid down in the trade union's statutes), company trade union organisations have equal powers to represent workers' rights and interests. In this regard, it should be noted that *de lege lata*, company trade union organisations are the only trade union structures entitled to represent employees at the workplace level, the powers ascribed to them cannot be exercised by other trade union structures (apart from the inter-company trade union organisation)<sup>15</sup>. In addition, they are equipped with extensive powers of a guarantee nature<sup>16</sup>, which enable them to conduct an equal social dialogue with the employer. It should also be noted that in the Polish system of employee representation there is basically no alternative to company trade union organisations, as the creation of a strong non-union representation that could responsibly perform such a function has failed<sup>17</sup>.

Though the level of unionisation is not high – company trade unions organisations function within 10% of all employers, it should be noted, that they function mostly in big companies<sup>18</sup>. And – as the practice show – big employers are more eager to use the artificial intelligence in the processes connected with employment than the small ones.<sup>19</sup>

There is therefore no doubt that, *de lege lata*, it is the company trade union organisation that should be endowed with powers relating to the control of the use of artificial intelligence in employment in the workplace.

### 3. Trade union control over the use of artificial intelligence in employment – current status

In order to diagnose the extent of the changes needed to establish an adequate level of trade union control over the use of artificial intelligence in employment, it is necessary to analyse the current state of the law. In particular, the areas of control and monitoring of employee work, performance appraisals and the consequent decision-making by artificial intelligence to terminate employment will be analysed. Indeed, these are the areas in which artificial intelligence is most often applied. The analysis will not cover the area prior to the establishment of the employment relationship, as this is in principle excluded from the scope of the company unions' competence.

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<sup>15</sup> Z. HAJN: Trade union representation of employees at the workplace in Poland – evolution, current status, future. In: Z. HAJN: *Trade union representation of employees at the workplace*. Warsaw, 2012. 35–36.

<sup>16</sup> In particular, mention should be made of the special protection for the permanence of the employment relationship of activists of a company trade union organisation.

<sup>17</sup> Theoretically, employers conducting business activity who employ at least 50 employees have work councils with information and consultation powers. In reality, however, very few of these councils function. In the remaining scope, there are representatives selected in the mode adopted by a given employer, selected ad hoc for a specific case in which the provision provides for the need to cooperate with employee representation, which is a very weak and unstable form of representation.

<sup>18</sup> Trade Unions in Poland. *Public Opinion Research Center CBOS, Research Report*, no. 140/2021.

<sup>19</sup> For smaller employers costs and a lack of skills can be barriers to AI adoption. See LANE–WILLIAMS–BROECKE op. cit. 85.

At the moment, trade unions in Poland do not have any powers directly related to the application of artificial intelligence in the process of employment. This is hardly surprising, as the Trade Union Act was enacted in 1991, in a very different reality of labour provision. However, even with the recent, very comprehensive amendment of the Trade Union Act<sup>20</sup>, which came into force on 1 January 2019, the legislator did not address this problem in any way. In particular, company trade union organisations do not currently have the general power to obtain information about the employer's use of artificial intelligence at the workplace. However, the company trade union organisations have been equipped with a number of competences, some of which – in my opinion – can indirectly serve to obtain a certain degree of control by the company trade union organisations over the use of artificial intelligence in the workplace. This applies both to the implementation phase of such solutions in the workplace and to the control of their operation.

First of all, it should be stated that the use of artificial intelligence in employment can be regulated by a collective agreement. Pursuant to Article 240 § 2 of the Labour Code, in a collective agreement the parties may regulate not only the terms and conditions of employment relationship or mutual obligations of the parties to the collective agreement, but also other matters not regulated in the labour legislation in a mandatory manner.<sup>21</sup> Thus, there is in my opinion no legal obstacles to regulate the issues concerning the use of AI in the collective agreement. It should be however noted, that in Polish reality the scope of such regulations won't be big, because of decreasing number of the concluded collective agreements and their scope which is usually limited to one employer.<sup>22</sup>

It is also need to be considered, if it possible to have a collective dispute over the use of artificial intelligence in employment. Indeed, Article 1 of the Act of 23 May 1991 on the Resolution of Collective Disputes<sup>23</sup> states that an industrial dispute concerns working conditions and wages, social benefits and trade union rights and freedoms. Doubts arise as to whether the use of artificial intelligence can be considered as part of broad working conditions. Undoubtedly, artificial intelligence can have an impact (even a very large one) on working conditions, but – at least in the concept so far – it hardly fits in this term. An industrial dispute could therefore only take place in relation to the working and pay conditions arising from the use of AI, and not directly as to the use of AI itself. However, it is not excluded that the concept of working conditions will evolve under the influence of the needs and new conditions in which work is performed. Already now, some representatives of the science of labour law define the concept of working conditions very broadly, as all factors determining directly or

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<sup>20</sup> Act of 5 June 2018 r. on amendment of trade union act and some other acts. *Journal of Laws*, 2018. item 1608.

<sup>21</sup> Article 241 § 2 of the Labour Code.

<sup>22</sup> Ł. PISARCZYK – J. RUMIAN – K. WIECZOREK: Company – level collective agreements – a glimmer of hope for social dialogue? *Praca i Zabezpieczenie Społeczne*, no. 6. (2021) 10.

<sup>23</sup> *Journal of Laws*, 2020. item. 123.

indirectly the content of the employment relationship<sup>24</sup>. This view most appropriately meets the goals and essence of the regulation of collective disputes, which, on the one hand, should enable workers to solve the problems that are most interesting to them, and, on the other hand, protect the general interest by providing arbitration mechanisms to prevent the escalation of tensions.<sup>25</sup> With this view, the use of artificial intelligence systems can also be included in the working conditions. Adopting such an interpretation would allow trade unions to pursue an industrial dispute over the use of artificial intelligence systems in employment, which would undoubtedly constitute a significant strengthening of their position in this regard.

Company trade union organisations have also some more particular rights which can be executed to control the use of Artificial Intelligence in the workplace. Company trade union organisations have the right to obtain certain information from the employer. Pursuant to Article 28 of the Trade Union Act, the employer is obliged to provide, at the request of the company trade union organisation, information necessary for the conduct of trade union activities, in particular information concerning: 1) working conditions and remuneration rules, 2) the employer's employment-related activities and economic situation and anticipated changes in this respect, 3) the status, structure and anticipated changes in employment and measures to maintain the level of employment, 4) measures that may cause significant changes in the organisation of work or the basis of employment. None of these points relate directly to the use of artificial intelligence. Indirectly, however, it may be referred to in para. 4) relating to activities that may cause significant changes in the organisation of work, if these changes are to result, for example, from the implementation of algorithmic work process management. Also, the right to obtain information on the state of the structure and anticipated changes in the workforce and measures to maintain employment levels may indirectly refer to artificial intelligence, as algorithms are used to diagnose the needs for competence development of individual employees. Also in this case the wide interpretation of notion "working conditions and remuneration rules" is possible, including the AI systems which shape the wage and work conditions. In addition, among the powers of the company trade union organisation was the power to control the observance of labour laws in the workplace, in particular health and safety regulations and rules.<sup>26</sup> Thus, if the use of artificial intelligence in employment results in a breach of the law or of safe and healthy working conditions the company trade union organisation will be able to use this power to seek to remove the risk to the life or health of employees.

Company trade union organisations also have powers in the area of termination of employment relationships, especially when these take the form of collective dismissals. In such a situation, the

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<sup>24</sup> K. W. BARAN: Commentary to the art. 240 of the Labour Code. In: K. W. BARAN (ed.): *Collective employment law*. Warsaw, 2019. 402–403.; J. Żołyński: *Commentary on the Act on collective disputes resolution*. Warsaw, 2012.; A. KOLWALCZYK: *The concept of collective dispute and peaceful methods of solving it in Polish law*. Rzeszów, 2017. 96.

<sup>25</sup> J. STELINA: Collective disputes. In: K.W. BARAN (re.): *Collective labour law. Labour Law System, vol. V*. Warsaw 2014. 553.

<sup>26</sup> Article 23(1) of the Trade Unions Act.

trade unions negotiate a collective agreement with the employer setting out the terms of collective dismissal. Among the elements of this agreement are in particular the selection criteria for dismissal<sup>27</sup>. It is also possible to determine how to apply these criteria<sup>28</sup>. In addition, during the consultation procedure preceding the conclusion of a collective redundancy agreement, company trade union organisations have the right to obtain additional information from the employer which may be relevant to the planned collective redundancies<sup>29</sup>. In this way, company trade union organisations may also seek to gain control over the process of applying artificial intelligence if it is to be used in the process of assessing and selecting employees for collective dismissal.

It should be also mentioned that the trade unions have gained some influence over the use monitoring of employees in the workplace in recent years. This is because, pursuant to Art. 22<sup>2</sup> of the Labour Code, these issues are regulated in a work regulations<sup>30</sup>, which are issued in cooperation with trade unions (the content of the work regulations is agreed with company trade union organisations). This is an important issue, because monitoring systems often use the artificial intelligence. The company trade union organisations also have the right to conclude an agreement on the conditions for the use of remote working<sup>31</sup>. Such an agreement should set out, in particular, rules for controlling the performance of the remote worker, rules for controlling health and safety at work and rules for controlling compliance with security and information protection requirements, including procedures for the protection of personal data. This gives company trade unions the opportunity to co-determine the control mechanisms applied to remote workers, including, it seems, the artificial intelligence systems used for this.

A more problematic issue is the area of evaluation of work performance. In Polish labour law, the right to evaluate employees is derived from the employer's managerial role in the employment relationship. Therefore, the area of evaluating the performance of employees has been completely excluded from the scope of trade union control. In Polish labour law, the right of appraisal is considered to be the area of the employer's directive powers, i.e. those which arise from the subordinate nature of the work performed by the employee and which the employer exercises, as a rule, independently, and the employee is obliged to submit to them<sup>32</sup>. The employer is only limited by the very generally formulated obligation in Article 94 of the Labour Code to apply fair and objective criteria for evaluating the performance of employees. This approach has resulted in the area of evaluation of employee work being completely excluded from the scope of control exercised by the trade unions. Trade unions also

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<sup>27</sup> M. LATOS-MILKOWSKA – Ł. PISARCZYK (ed.): *Dismissals for reasons not related to employees*. Warsaw, 2005. 93–94.

<sup>28</sup> Ibid.

<sup>29</sup> Art. 2 (5) of the Act on special rules for terminating employment relationships with employees for the reasons not related to employees. *Journal of law*, 2018. r. item 1969.

<sup>30</sup> However, only employers with at least 50 employees are required to issue work regulations.

<sup>31</sup> Art. 67<sup>20</sup> of Labour Code.

<sup>32</sup> M. KUBA: *Legal forms of employee control at the workplace*. Warszawa, 2014. 88.; H. LEWANDOWSKI: *Managerial powers in contractual employment relationships*. Warsaw, 1977. 25.



have no say in setting labour standards, which are a measure of employee workload, productivity and quality. The setting and changing of working standards is a unilateral action of the employer, who is only obliged to inform employees of the change in working standards at least two weeks in advance. Moreover, according to Article 262 § 2(2) of the Labour Code, disputes concerning labour standards are not subject to the jurisdiction of the labour court. Thus, the subsequent judicial review of the substantive validity of the established standard is also made more difficult<sup>33</sup>. Although Article 83 § 3 of the Labour Code stipulates that exceeding work standards does not constitute grounds for changing them if it is the result of an employee's increased personal contribution or professional efficiency, this stipulation is mainly postulatory<sup>34</sup>. Meanwhile, practice shows that, especially in this area, the use of artificial intelligence leads to problems and poses a significant risk to employees.<sup>35</sup>

The above analysis shows that at least some of the powers already held by company trade unions can be used by them to exercise broad control over the application of artificial intelligence in employment – both at the stage of its implementation and in monitoring the effects of its application. However, these are measures of an indirect nature, where the possible influence of company trade union organisations on the use of artificial intelligence systems in employment is the result of powers granted in principle for other purposes. This may hinder the effective use of these powers by trade unions to control the use of artificial intelligence in employment. This is because often – without knowledge of the principles behind a particular algorithm or AI system – it will be akin to “treating the symptoms of a disease rather than its source”. Certain areas of employment where artificial intelligence is increasingly used (mainly the evaluation of employee performance) have been largely excluded from the influence of company trade union organisations. Consideration should therefore be given to what measures could be used to strengthen the position of company trade union organisations in this regard.

#### **4. Demands for the increase of the powers of company trade union organisations in relation to the exercise of control over the use of artificial intelligence in employment**

To some extent, the Polish legislator seems to recognise the risks that may arise from the use of artificial intelligence in employment. This is reflected in the presentation of a draft amendment to Article 28 of the Trade Union Act. According to the draft, Article 28 of the Trade Union Act is to be supplemented by a further point, according to which the employer will be obliged, at the request of

<sup>33</sup> J. SKOCZYŃSKI: Commentary to art. 83 of Labour Code. In: L. FLOREK (ed.): *Labour Code. Commentary*. Warszawa, 2017. 526.; P. PRUSINOWSKI: Commentary to art. 83 of Labour Code. In: K. W. BARAN (ed.): *Labour code with commentary*. Warsaw, 2020. 729.

<sup>34</sup> PRUSINOWSKI op. cit. 729.

<sup>35</sup> The most high-profile and controversial example of the use of artificial intelligence in employee performance appraisal was the case of Amazon's employee appraisal system. The use of artificial intelligence to assess the work performance of employees has led to a continuous escalation of expectations of employees in terms of work performance. This was detrimental to the health and safety of employees (there were much discussed cases of employees fainting at work) and led to unjustified terminations of employment relationships. Trade unions pointed to their helplessness and inability to effectively protect workers' rights and interests in this area.

the company trade union organisation, to provide it with information about the “parameters, rules and instructions on which the algorithms or artificial intelligence systems are based, which influence decision-making and which may have an impact on working and pay conditions, access to and retention of employment, including profiling.” The explanatory memorandum to the draft indicates that “the purpose of the proposed amendment is to adapt the Act to changing technological realities. The proposed regulation gives trade union organisations the opportunity to check what standards actually apply in the workplace. There is a general consensus that access to this information is a fundamental labour right. However, the legislator did not provide for the new forms in which they can operate – correcting this state of affairs is the purpose of this amendment.”

Undoubtedly, the enactment and entry into force of this amendment will be a step in the right direction. The question arises, however, to what extent the entry into force of this amendment will improve the position of company trade union organisations with regard to their ability to exercise control over the use of artificial intelligence in employment.

It seems that the answer to this question is not clear-cut. The ability to obtain direct information on the algorithms and artificial intelligence systems used in employment will certainly strengthen the position of company trade union organisations in those areas where, as indicated above, they already have powers. Complementing the powers they already have with the additional right to obtain information on the algorithms and artificial intelligence systems used in certain areas – such as the provision of safe and healthy working conditions, provisions on allowed forms of monitoring in the workplace, the conditions for remote working or the setting of conditions for collective redundancies – should ensure that trade unions are in a stronger position and able to represent and protect workers’ rights and interests more effectively.

Instead, the question arises about those areas that have so far been excluded (either entirely or to a large extent) from the influence of company trade union organisations, in particular the evaluation of employees’ work performance. Merely being able to obtain information about the parameters, rules and instructions on which the algorithms or artificial intelligence systems are based without ensuring that company trade union organisations can influence their application in the workplace will not be sufficient. While it will identify the source of a potential threat to workers’ rights and interests, it does not offer a solution to the problem. The proposed amendment in this respect should therefore be assessed as necessary but insufficient. It should therefore be debated whether the legislator should not extend the competences of the company trade union organisations in the area of the forms and means used to evaluate the work performed by the employee. In particular, consideration should be given to the introduction of some form of trade union participation in the setting of work standards applicable in the company as a measure of the employee’s workload and its productivity and quality. Indeed, the legislator’s approach to this issue to date is anachronistic and out of step with today’s highly complex and technologically advanced conditions of work provision. Only then would company-based trade

union organisations gain the ability to effectively defend the rights and interests of workers against the threats posed by the use of artificial intelligence in this area.

#### 4. Conclusions

Social dialogue should play an important role in controlling the implementation and functioning of artificial intelligence in the workplaces.

Due to the specific model of Polish trade unions movement, which is dominated by the organisational units operating within one employer, it is the company trade union organisation that should be endowed with powers relating to the control of the use of artificial intelligence in employment in the workplace.

Already now there is no legal obstacle to regulate the matters connected with use of artificial intelligence in the collective agreements. However, it is necessary to be aware, that the scope of such regulations won't be big, because of decreasing number of the concluded collective agreements. It is also possible to conduct the collective dispute in this field.

Company trade union organisations have also some particular rights which can be executed to control the use of Artificial Intelligence in the workplace, i.a. the right to conclude the agreement on group dismissals, the right to agree on monitoring used within the workplace, the right to control the observance of labour laws in the workplace, in particular health and safety regulations and rules. However, these are measures of an indirect nature, where the possible influence of company trade union organisations on the use of artificial intelligence systems in employment is the result of powers granted in principle for other purposes. This may hinder the effective use of these powers by trade unions to control the use of artificial intelligence in employment.

In regard of this the amendment to the Trade Unions Act has been proposed, according to which the employer will be obliged, at the request of the company trade union organisation, to provide it with information about the “parameters, rules and instructions on which the algorithms or artificial intelligence systems are based, which influence decision-making and which may have an impact on working and pay conditions, access to and retention of employment, including profiling. It is undoubtedly a step in the right direction. The proposed amendment will undoubtedly strengthen the position of company trade unions in their ability to control the use of artificial intelligence in employment. Unfortunately, this law has not been passed yet, what has the far-reaching consequences. In this context it should be noted, that in November the cadence of newly elected Parliament will start. It means, that – in regard of so called principle of discontinuity – all legislative works which weren't finished by former parliament are not continued. Thus, it will be necessary to start the legislative works on this amendment from the beginning. For sure it will delay the process of strengthening the trade union powers in this field.