

# Regulating for Globalization

Trade, Labor and EU Law Perspectives

## What the corona-app can learn from robotisation: regulating the new DNA of labour markets

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The year 2020 will be known forever as a historic breaking point. The corona crisis poses unprecedented challenges for policymakers, businesses and citizens around the world. Mankind is, as it were, being forced to adapt to these new living conditions in the very short term. They imply not only a new lifestyle, but also a new way of working. Governments are imposing on businesses to allow their workers to work from home using digital communication routes, or they must guarantee that their workers can work with social distance. Although these measures are much needed to prevent the further spread of the coronavirus, they are not evident to some companies. In some cases, companies are not yet fully prepared to organise the homeworking of workers. Nevertheless, these companies are also forced to adapt to these exceptional circumstances in the short term.

The impact of the coronavirus on the labour market is visible, for example, in the growing figures of (temporary) unemployment. In a former blog, it has been questioned already whether today's reality tells anything about tomorrow's labour market. Now, policy makers are discussing the corona-app, a programme that could follow individuals, detect and alert for social approaching or possible contamination. The European eHealth Network developed a [toolbox](#) for Member States on the use of mobile applications in the fight against COVID-19. The purpose of these apps is to offer the possibility of alerting/warning citizens that they have been in close proximity with an individual who has been confirmed positive for Covid-19. These applications could support the public health authorities to rapidly identify contacts with a confirmed case of COVID-19 and to ask them to self-quarantine and to isolate them if they develop symptoms. We already can imagine that this is going to be used at a lot of workplaces, because an employer could also use this data to identify the employees who are possibly contaminated by COVID-19. However, an obligatory use of these kind of applications would be incompatible with the first principle of the EHealth network's toolbox, namely the voluntary principle.

It seems that the 'virtual workplace', which has been talked about so often, is now being introduced at an accelerated pace. The building blocks of a new labour market - the new DNA? - are thus being laid at high speed. But we have to be careful. We are already fundamentally thinking for a while about the new world of work. This new

world should be reflected upon very carefully and properly. There is a good parallel with the discussion on robotics and artificial intelligence, another disruptive issue for our labour markets. We can see it otherwise: does the corona-app issue not appear to us as a robotics discussion? As goes for robotics, theory (and sometimes hesitation) can be overtaken by reality. So in light of the corona-app discussion, let us look at relations between corona, robotics and the new world of work and let us see what we can learn. It should be clear that not only privacy concerns are at stake.

### **Heroes in corona times**

Just like the corona-app, robots might offer an answer to the coronacrisis. In some companies and countries, robots are used to prevent coronavirus contamination of workers. Examples can be found all over the world: [Danish](#) decontamination robots, self-propelled robots in [Qatar](#) to enforce the assembly ban, drones and robots to check whether civilians wear mouth masks in [China](#), robots to supply food in the [United States](#), etc. The examples are endless. Robots are even [called](#) the new 'war heroes' in the fight against the coronavirus. Of course, our own belief is that doctors, nurses, policemen and others who risk their lives every day are the real heroes in this coronation era. Also here, the humanization agenda should have preference.

This does not alter the fact that robots are now well received on the shop floor. Care robots are used to bring corona patients in hospitals into [contact](#) with their family and friends or to support nurses and doctors in the [care of](#) patients. This reduces the chance of them becoming infected by the coronavirus. Reading these news facts can lead to the feeling that the negative connotation towards robots disappears during this crisis period. Whereas less than two years ago, robots were seen as a major threat to the employment of workers. For example, the large-scale introduction of [self-scanning tills](#) in supermarkets met with much resistance. Today, supermarket employees probably want devices that reduce human contact. This change in mentality regarding the introduction of robots in the fight against the coronavirus is probably only one of the signs that our operating businesses will undergo thorough reform after this crisis.

### **Regulation**

What the robotics (and artificial intelligence) discussion shows, is the crucial role for rules and regulation. While robots may show added value in various areas, the demand for a legal framework on robots on the work floor has strongly increased. A good starting point here is the description of an autonomous robot that the European Parliament uses in its [resolution](#) on civil law rules on robotics. Robots that replace human workers are no longer located along the production line. They move - whether or not controlled by a worker - around in the workplaces. They are able to collect data from their environment that they need in order not to come into contact with people or other objects. They are also connected to other devices and the internet (a source of an awful lot of - personal - information). They can learn from previous experiences, so that they can adapt their actions to the environment and become better and better. Autonomous robots therefore have more competences than industrial robots. For example, small care and service robots, such as Zora or Pepper, will be able to provide more help in hospitals than the typical industrial robot arms that produce cars. The increasing autonomy of the robot therefore means that robots can be used for more

tasks than was previously the case. One of the drivers is that they take over people's tasks in dangerous situations.

It is therefore not surprising that the corona crisis is now looking at technology as the solution to reduce the spread of the virus or contamination. No matter how attractive this idea may seem in the midst of a crisis, it must not be forgotten that it has consequences for workers and societies.

### **Job security**

The corona crisis is taking a heavy toll on the labour market, which translates into increased (temporary) unemployment. It is clear that in disruptive times the classics of employment protection are central to the agenda. Job security is at the forefront.

We know this discussion from the robot issue. The fact that the use of robots leads to job losses is not uncommon, even a logical consequence of the replacement of human labour by robots. At the same time, it is equally logical that robots also create new jobs. Although the exact impact is still the subject of speculation, the fear of massive job losses is not unjustified. In fact, the question is whether the corona crisis should make workers fear losing their jobs. A robot does not get sick, except for the danger of a computer virus. Can a company, which is forced to close down because it is unable to comply with social distancing measures, simply replace its employees with robots? These are not new questions, but they are now highly being addressed. The parallel with the use of apps is striking. The use of an app in many business may create questions on job replacement and business restructuring.

### **Contractual arrangements**

The corona crisis raises many questions about the contractual position of employees who are asked or imposed to work with new technology, such as doing telework. Strictly speaking, it concerns an adjustment of the employment contract and, more broadly speaking, a new working environment. This discussion is also relevant to the robotization issue. When robots are used in the workplace, questions arise as to what this robot means for an individual worker. After all, it are the workers who come into contact with these robots and have to work with them. During the corona crisis, robots are mainly used to bring patients into contact with family members or to monitor their health remotely. Other countries go much further with robots to maintain *lockdown* measures, control temperature or disinfect hospital rooms. If workers have to work with such robots, this impact will be of a very different nature than what is currently the case. These implications should therefore certainly not be overlooked.

A general consequence is that the employee will be confronted with a changed working environment and may even end up in a different position. The corona crisis is sharpening this discussion again and the robotization phenomenon gives lessons for this, also when looking at the corona app.

### **Wellbeing**

COVID-19 is considered as an occupational risk in the workplace against which the employer must protect workers. The corona-app may also be seen as a case of

occupational health and safety. That runs parallel with the robotization debate.

As the person ultimately responsible for the safety and health of the personnel, the employer must avoid risks of contamination of the personnel. But a worker must also contribute to safety and health at work. Everyone must therefore assume part of their responsibility, even in these exceptional times. Nevertheless, the ultimate responsibility of the employer as the person responsible for the organisation of the work is clear.

Health and safety, and wider well-being at work, are important obligations that are also central to working with autonomous robots. However, a renewed way of thinking will be needed here as well. A robot must be regarded as a work tool. Special obligations apply in connection with the use of machines in the workplace. However, these are outdated in the context of autonomous robots. For example, there must be safety screens or devices that prevent access to hazardous areas when there is a risk of accidents in the event of mechanical contact. This means that a worker must be protected when he comes into contact with a robot. Of course, this is not easy when a robot is manoeuvring between workers. In addition, it is also necessary to avoid machines determining the pace of work. This obligation is therefore incompatible with an autonomous robot that acts independently and is therefore able to determine the pace of work.

Technology in the work environment is about translating principles anew. For example, there are safety principles in the light of the obligation to provide information to employees. They must be adequately informed about the conditions in which robots are used and the foreseeable abnormal situations and dangers that robots may entail. This is not easy, as robots - or technology broader - might act independently and behave in an unpredictable way.

### **Privacy**

A common issue with robots is the protection of privacy. Even in these exceptional times, citizens are aware of the protection of their privacy. The controversy surrounding the corona app demonstrates this too. Privacy is central in the debate.

When monitoring takes place in the work context, this is often even more sensitive. After all, the employee is under the authority of his employer. This presupposes that the employer is allowed to monitor his employees, but he must respect their privacy. The issue of consent is very relevant in an employment context. Workers are considered not to be free to give their consent. This has always been a difficult consideration, but now it is even more complex because there is a certain need to collect certain personal data in the fight against the coronavirus.

### **What can we learn?**

The coronavirus poses many challenges to our society. One of them is technology for solutions on the labour market. Teleworking is the most well-known example. The corona-app is now launched as another one. Autonomous robots may be part of a solution to deal with this period of crisis.

What this all has in common is that, in the new labour market, many obstacles still need to be overcome before they can really replace more traditional models of working with human labour. Using the case of robotics, the experience still is that legislation has not yet been adapted to robots in the workplace. The corona-app discussion will have to learn from the robotics case. Recommendations with regard to robotics can thus also play a role here.

1) The logical first step is to revisit the existing resolution(s) on the robot agenda. The European Parliament's resolution can give direction in the elaboration of future legislation on robots in our society. The Resolution calls for the involvement of social partners in this elaboration.

2) Robots (and also apps will) have an impact on employment. However, this does not mean that all technology should be banned. But it should work properly. The lowering of risks of coronavirus infection is a positive feature, if it effectively can be used for this. But good preparation is needed and it is relevant to investigate the rights background. It should also be seen which skills are best taught to workers in light of this.

3) The robot discussion learns that it is important to assess the impact of new technologies on the well-being of workers. An employer is responsible for the safety and health of personnel. For robots, it is necessary to examine what adjustments are needed to guarantee safety in *collaborative robots*, or technology in a more broader sense that collaborates with workers.

4) Privacy stands central in the debate. Intelligent technology requires access to a lot of personal data. In any case, the European GDPR builds in some source of protection for workers, so that they do not fall prey to a far-reaching collection and processing of their personal data. However, the rights in the GDPR require further elaboration, so that the boundaries between the authority of the employer and the protection of the employee are clearly defined.

5) The broader issue is what society (and working society) we want and how much individual or human command can be given. The classical hierarchical lines may receive a strong shift due to new technologies. The robot (including the artificial intelligence) agenda learns that a sound reflection on the use of new and intelligent technology is necessary.

We have already spent a lot of time on debate since the robotization discussion came up. The corona crisis and its technological aspects (like the corona-app) now show the urgency of reflection on the broader agenda, keeping in mind this: a human-centered approach for our new working society remains an absolute must.

\*This blog post (in Dutch) is inspired by our former blog: S. Taes & F. Hendrickx: "Robotisering en werk in coronatijden: een kijk op het nieuwe DNA van de arbeidsmarkt", commissioned by the Flemish Knowledge center Data & Society. Freely available on <https://data-en-maatschappij.ai/publicaties/paper-robotisering-en-werk-in-coronatijden-een-kijk-op-het-nieuwe-dna-van-de-arbeidsmarkt>.

***The Regulating for Globalization Blog is closely following the impact of COVID-19 on the labour, trade and European law communities, both practically and substantively. We wish our global readers continued health and success during this difficult time. All relevant coverage can be found [here](#).***

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