



# **‘Game that you can’t win’?**

## **Workplace Surveillance in Germany and Poland**

Final Report

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In collaboration between:

Centre for Internet and Human Rights (CIHR) and Center for Interdisciplinary Labour Law Studies (C\*LLaS) and at European University Viadrina in Frankfurt (Oder)

Institute of Sociology, University of Warsaw

Panoptykon Foundation

Funded by:

DEUTSCH	POLSKO
POLNISCHE	NIEMIECKA
WISSENSCHAFTS	FUNDACJA
STIFTUNG	NA RZECZ NAUKI

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<sup>1</sup> Suggested citation: Bronowicka, Joanna, Mirela Ivanova, Wojciech Klicki, Seán King, Eva Kocher, Julia Kubisa, and Justyna Zielińska. 2020. *‘Game That You Can’t Win’? Workplace Surveillance in Germany and Poland*. Frankfurt (Oder): European University Viadrina

## Contents

1. Introduction .....	4
2. Overview of Topic .....	6
2.1. A Surveillance Blind Spot? — Workplace Surveillance .....	6
2.2. Why do Companies Monitor? .....	8
Effects on Productivity.....	9
2.3. Effects on Employees.....	9
Quality of Work .....	9
Health and Safety .....	9
Blurry Boundaries between Private and Work Life.....	10
Workers Adapting and Taking the Technology On-board.....	10
Acceptance of Monitoring .....	10
Resistance.....	11
2.4. Surveillance in Call Centres.....	11
Efforts to Control .....	11
The Importance of Teams .....	12
Control of Time.....	12
Call Centre Resistance .....	12
The Experience of Call Centre Supervisors .....	13
3. Results from Interviews with Call Centre Employees .....	14
3.1. Germany.....	14
General Work Experience .....	14
Monitoring Practices .....	15
Feelings about Monitoring .....	16
Resistance and Opposition .....	19
Awareness about data protection law.....	21
3.2. Poland.....	21
General Work Experience .....	21
Monitoring Practices .....	22
Feelings about monitoring .....	23
Awareness about data protection law.....	24
4. Expert and Stakeholder Analysis .....	25
4.1. Legal context.....	26
Levels and sources of regulation.....	26
Regulatory methods and general framework of employee data protection: German law.....	27
Regulatory methods and general framework of employee data protection: Polish law.....	28

4.2. Expert opinions about regulatory framework in the European Union .....	29
German Dissatisfaction .....	29
Polish Reaction .....	30
4.3. Expert opinions about regulatory framework in Germany .....	31
Technology-Driven Changes .....	31
Workplace Technology Re-imagined .....	31
Imprecise Regulation .....	31
Workplace Bargaining Power and Lack of Enforcement .....	32
Power Imbalance on National Level.....	32
What is Needed .....	32
4.4 Expert opinions about regulatory framework in Poland .....	33
Key Events .....	33
Political Norms of Technological Monitoring and the Lack of Public Debate .....	33
Social norms and values.....	34
5. Summary and key takeaways.....	35
5.1. Workplace surveillance in the eyes of employees .....	35
Surveillance as a socio-technical system .....	35
Link between surveillance and productivity .....	35
Surveillance conditions and attitudes as a spectrum.....	35
Surveillance as a factor in power imbalance.....	36
Dynamics of normalisation .....	36
5.2 Workplace surveillance in the eyes of other stakeholders .....	37
Public debate .....	37
Dominant frames.....	37
Scope of surveillance .....	37
Regulatory changes .....	38
Regulatory gaps.....	38
Perspectives on future developments.....	38
5.3. Key takeaways .....	39
Bibliography.....	41

# 1. Introduction

People's lives are more tied up with technology than in any previous point in human history. Many of us communicate primarily through electronic messaging apps on our phones and through email, we use search engines and the internet to explore our most intimate inner thoughts and concerns, we have devices in our homes that listen to our conversations with loved ones and take orders from us, we give our personal information, sexual preferences and drug usage habits to apps in the hope their algorithms will find us a partner to love. With unimaginable swathes of information about us being collected, stored and analysed every day, down to minute details like how long we leave a mouse cursor on a given picture or news story, private technology and telecommunication companies, as well as various agencies of a number of states, have access to profoundly rich information about us.

As these technologies have grown in prominence and ubiquity, and as we have become increasingly dependent on them, there is a growing awareness of the more problematic side of these new abilities and conveniences: the loss of privacy and handing over of all this personal information to various external actors. Through news stories such as those on the Snowden revelations, Cambridge Analytica and the controversy surrounding Huawei and Western nations, the information these large companies are in possession of, the potential uses of it, as well as the companies' often close ties to state intelligence agencies, have been problematised. Following these scandals, it is now commonly understood or assumed that much, if not all, of what we do online is under surveillance.

One area in which we have seen parallel developments — of increasing use of technology combined with the gathering of information and loss of privacy — which has not received the same amount of public attention or been as much of a cause for concern, is surveillance at the workplace. Just as individuals in their private lives have, management and supervisors of the majority of companies and organisations have also made use of new technologies and incorporated them into their work processes. After punching-in via electronic swipe-card, workers can often expect a large portion of their daily activity monitored, including their internet usage, the keys pushed on their keyboard, the content of their emails and other communications, social media posting, where and when they moved around the building, how many times and for how long they visited the bathroom, a tally of the tasks they have completed in a given minute/hour/day and whether or not this reaches their given targets. In recent years, further facets such as employees' tone of voice, heart rate, step-count and body temperature have also become objects of surveillance by management.

In our study and with this report, we wish to draw attention to this site of surveillance. Most people spend significant portions of their lives as an employee in the hierarchical employer-employee relationship, and yet it seems the demand for some amount of privacy and freedom from surveillance is largely expected to be relinquished when one arrives at the office. As these technologies allow ever deeper penetration into the actions, movements and moods of workers, we have to stop and ask the question, how can we ensure the dignity of employees going forward and prevent this kind of monitoring from going too far?

One industry that is well-known for its workers being under heavy surveillance and their actions controlled down to minute detail, is call centres. Ball (2014) says that call centres, along with other services industries such as gambling and logistics, were the sites of the most intensive electronic surveillance. Monitoring technologies are deeply embedded in call centre work and the industry is infamous for supervisors keeping a close eye on call agents and having a focus on statistics and pushing quantitative targets. To understand in more detail the processes and dynamics of workplace monitoring, including how those being monitored and doing the monitoring feel about it, we

conducted in-depth interviews with staff from different hierarchical positions from a number of call centres in Germany and Poland. While it is certainly not the only line of work where employees are tightly monitored, and while companies in the sector do not make use of every possible modern monitoring technology, we think that zooming into this one example can be illuminating for understanding the broader topic and issues.

When it comes to the limits of workplace monitoring and the forces preventing it from becoming unacceptably thorough, one naturally thinks of the law and how workers might have legal recourse to defend against such excessive encroachments. Our study put a specific focus on questions of legal policy. We asked the interviewees in call centres about the law, and conducted legal analyses of the German and Polish law of data protection following the coming-into-force of the EU's General Data Protection Regulation (GDPR) in 2018. Finally, we conducted interviews with stakeholders and experts from a wide variety of backgrounds to hear their opinions and insights as actors involved in the real-world unfolding of the topic. Interviews were conducted with representatives from employer's associations, trade unions, public data protection agencies, a national digitisation ministry, amongst others, and with actors operating in both the German and Polish contexts.

Throughout the project we heard a wide range of views, concerns and potential solutions to the problems the different actors perceive. We hope to drive the conversation on workplace monitoring forward and spur engagement with the topic so that workable solutions can be found that protect the dignity, rights and privacy of workers and bring clarity to all involved parties. In the following section we will give an overview of what has already been written on the topic of workplace surveillance, drawing mainly from the academic literature. This is followed by the results of our interviews with call centre workers. The section after these results focuses on the legal and regulatory frameworks related to the topic, including opinions from the experts and stakeholders we interviewed.

## 2. Overview of Topic

### 2.1. A Surveillance Blind Spot? — Workplace Surveillance

Edwards describes employee surveillance as the ‘Cinderella sister of surveillance studies: neither as outright shocking to citizens as state surveillance in the post-Snowden era, nor as ubiquitously discussed as consumer targeting and profiling in the ‘surveillance capitalism’ ecology of social media, search and e-commerce platforms like Google, Facebook, Amazon et al.’ (2018, p.17). Given the centrality of the workplace to our mode of production, and the amount of time we spend as employees, there is no denying that surveillance at the workplace is a worthy topic of investigation.

Control and surveillance of workers at the workplace is not a new topic (Burawoy, 1979; Foucault, 1979). There is a rich and varied history of bosses watching over and monitoring the people labouring at their behest, passing through key events and periods of time including warfare, slavery, colonialism, globalisation, and into the present day with employers using modern technologies to control workers (Ajunwa et al., 2017). Surveillance of the employee has always been a key component of the capitalist mode of production (Thompson, 2002), and it’s generally agreed that employers have good reason to conduct some amount of monitoring of their workers. It’s often taken for granted that workplace surveillance is a necessity: normal, expected, and good management practice (Ball, 2010). Taylorism and ‘scientific management’ over a century ago undertook the analysis of workflows and focused on ways to maximise efficiency and labour productivity (Taylor, 1911). One aspect of the Taylorist re-organisation of the workplace, for example, was changing office lay-outs so that supervisors would have the ability to physically oversee a number of typists in different locations in the room from one position (Thompson, 2002). If the surveillance of employees goes back for so long, the question then presents itself, why is there such increased interest in and importance given to the topic in the last two decades? Upon inspection, an unprecedented intensification of the surveillance process, especially in its new electronic forms, along with an increase in its scope and reach into life outside the workplace, seem to be the two driving factors of this renewed scholarly and public interest (Thompson, 2002; Moore et al., 2018a).

In the literature, ‘monitoring’ and ‘surveillance’ are often used interchangeably (as they will be in this paper), although usually choice of terminology reflects something about the background of the researcher, and both words can have quite different connotations (Sarpong & Rees, 2014; Botan & Vorvoreanu, 2000). Ball (2010) makes a rough divide between the sociologists interested in power, politics, resistance and employee meaning-making that tend to use the term surveillance, often with a negative connotation, and the researchers from a psychology background who investigate ‘monitoring’ which tends to not have the dystopian baggage that “surveillance” can.

There is a wide range of surveillance techniques being used by management currently, including computer and phone logging, drug testing, mystery shopping, closed circuit television, GPS tracking and electronic recruitment systems (Ball, 2014). There are accelerometers in mobile phones as part of different phone applications, facial recognition software that assesses employee mood, as well as applications that put together information from the entire workforce’s social media posting and prepares it for use by management (Ball, 2014). Some acts of surveillance occur only as singular events or as series of random ones, while other techniques like call monitoring or key logging are typically ongoing (Rosenblat et al., 2014). Moore et al. (2018b) point out that while this movement tracking software has been around for a few years now, the more recent iterations have greatly advanced in scope and precision. These technologies can have profound impacts for workers and management, including the rationalisation of workforces: wearable tracking badges that tracked

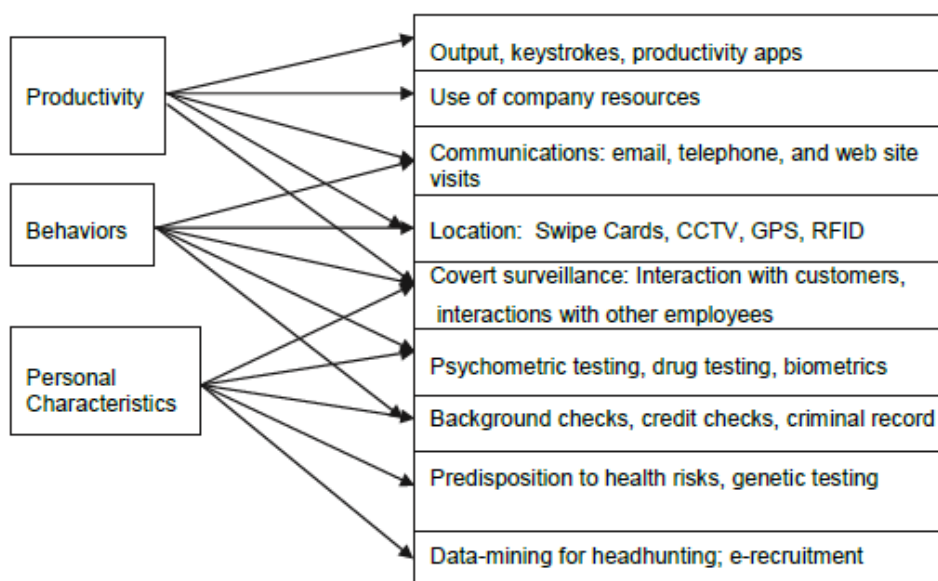
working speed in Tesco warehouses were shown to reduce Tesco’s need for full-time employees by 18% (Wilson, 2013). The speed and direction of movement is not all that is recorded now but often also physiological information such as steps taken and heart rate. This level of surveillance is not limited to jobs where moving around is central such as warehouse transportation or truck driving, but much office work now also features desks and chairs that measure heat and movement levels, as Radio-Frequency Identification (RFID) badges are attuned to workers tone of voice and gesturing (Moore et al., 2018b). It is also reported that nurses now wear electronic badges that track how often they wash their hands (Ajunwa et al., 2017, p.110).

As far as computer-logging goes, it is now possible, and common, for considerable different types of data to be recorded. This can include the content of files stored and websites visited, keystrokes, time spent at the keyboard, email and messenger monitoring, as well as content uploaded onto various social media sites or blogs (Schumacher, 2010). The data can then be used for many purposes, including building typical behaviour profiles and patterns, in order to then be able to detect when someone is deviating from the norm.

There are advanced technologies for ID and ‘Smartcards’ that control and record workers access to different parts of buildings and company data centres, with some firms using fingerprint scans, facial recognition and iris scans to control such access (Schumacher, 2010). Boston-based analytics firm Sociometric Solutions have developed ID badges which come with built-in microphones, location sensors and accelerometers (Ajunwa et al., 2017).

There are some types of surveillance that are largely industry-specific. For example, it is common for crowdworkers and other independent contractors working from home to have their employer take photos using their computer’s webcam at random, to ensure that they are at their desk working at that time. Things like screenshots of the display, keystrokes and mouse clicks are also recorded. Some technology is even capable of detecting anger, raised voices, or children playing in the background in workers’ home-offices (Ajunwa et al., 2017, p.112).

In figure 1 below which is adapted from Ball (2010), we can see some of the main targets of surveillance and the techniques and tools employed to control them.



**Figure 1.** The range of employee surveillance techniques used by organizations (Ball, 2010, p.90)

Edwards et al. (2018) explain how collected data is now being taken an extra step and being fed into algorithms that not only analyse past performance but lay claim to a certain level of predictive capabilities. These algorithms have a sort of parasitic relationship with the preceding data collection phases, and then add their predictions and analyses which have been shown to be in danger of bias, error, discrimination and unfairness, yet are virtually impossible to challenge, question or understand given their opacity and lack of transparency. Sometimes recruitment decisions as well as promotions and dismissals can be decided entirely by algorithms, based off the data from pervasive electronic surveillance, with no human input (Edwards et al., 2018).

## **2.2. Why do Companies Monitor?**

To explain why employers resort to electronic surveillance, Ball (2014) identifies three reasons, namely: to maintain productivity and monitor resources used by employees, to protect trade secrets, and to provide evidence in case of a legal dispute. We may also hear businesses say the reason they implement these types of electronic monitoring systems is to improve efficiency and innovation (Ajunwa et al., 2017).

We see in the advertisements and descriptions from these surveillance equipment manufacturers the different threats they tell businesses they should be weary of. Abacus group for example claim their software will ‘tell you which members of the team are idling away their time’ and ‘prevent fraudulent and abusive use of your phones and networks’ (Stevens & Lavin, 2007, p.48). Rosengren and Ottosson (2016) speak about how these software providers fuel narratives that are often difficult to verify, such as there being a large number of employees out there that are spending their days at work browsing porn on the internet, and thus businesses having real issues of productivity and costs to deal with. The fear of “loafing”, “time-theft” and other immoral workplace behaviour play a significant role in organisations implementing intensified monitoring, which is consistent with the historical perspective that recognises wage labour has generally had a negative connotation, with the labourer appearing as a ‘despised character’ (Rosengren & Ottosson, 2016, p.183).

Stevens & Lavin (2007) say that the main point of this surveillance is to document the entirety of the working day and thus acquire exhaustive statistical computation of how each worker spends their day at work. Based on all this data, management builds an assemblage of calculative and calculating practices based around regulating time. All transgressions by the worker are recorded on their file and are then available for use by management in the future should they need to argue a point of contention or discipline the worker at some point in the future. Levy (2015) speaks about managers wanting their workers day-to-day practices to be more visible and measurable, and how once this data is measured and recorded, it opens up new pathways of action for management. One example is using abstracted knowledge to create new barometers and make comparisons between workers, teams, regions and firms.

Moore (2018, p.40) says new work design methods use surveillance technologies to measurement types of labour that were previously unquantifiable (e.g., affective labour) —not necessarily to remunerate for it however, but to uncover to what extent workers can cope with accelerations of change in digitalised workplaces. She presents management systems as attempting to predict the mental load-bearing capacity of workers under the weight of the increasingly oppressive labour process, in order to prevent and counteract any future challenges of labour against capital. These new technologies, as observed in her case study, take aim at aspects of the labour process and the worker that were previously not directly measurable such as mood, fatigue and stress.



## **Effects on Productivity**

There seems to be no clear-cut universal answer to whether digital monitoring improves or worsens employee performance. In Alder's (2001) paper there are a lot of examples of evidence for both sides. Sarpong and Rees (2014) report that monitoring can be counterproductive and negatively impact employees' productivity, commitment and attendance, and could also bring about an atmosphere of mistrust and hostility. Monitoring can also cause resentment as employees might feel they are being treated like children (Lim, 2002). Ariss et al. (2002) report that those being monitored were believed to be apprehensive and inhibited due to the presence of an unseen audience. Aiello and Svec (1993) found in an experiment that workers' task performance was poorer when monitored (either electronically or in person) than when they performed the same tasks unmonitored. In Schumacher's (2010) article there is evidence of workers focusing only on the monitored and quantitative aspects of work to the detriment of those that are unmonitored, and quality.

## **2.3. Effects on Employees**

### **Quality of Work**

There is further research on effects of employee surveillance in general and how it has consequences for employees' well-being, work culture, productivity, creativity and motivation. Ball (2010) makes a list of some of the main reasons monitoring can be problematic: employees privacy can be compromised if their information is disclosed to unknown parties without authorisation; surveillance technologies can exhibit 'function creep', when more information than needed is collected and management then has the option of extending monitoring without employee consultation; worker creativity can be stifled if they are aware that their actions and communications are monitored; tasks will be prioritised by workers depending on how tightly or loosely they are monitored; messages (that are potentially unintentional) are sent to workers regarding the relative importance of quantity over quality, or working as a team vs individually; trust levels can be reduced. Rosengren and Ottosson (2016) say that monitoring indicates to workers that their employer doesn't trust them to behave in the appropriate manner, and may actually reinforce the behaviour that the monitoring seeks to minimise. They say the relationship between trust and surveillance is a two way street. We know that stress levels can be raised if monitoring is inappropriate or badly designed (Nebeker, 1987), or if the findings of the monitoring will lead to discipline rather than development or training (Nebeker & Tatum, 1993).

### **Health and Safety**

There are a number of studies that report fairly straightforward results about the physical, social and psychological harms that monitoring technologies can cause to workers. Schumacher (2010) reports that it can lower employee's self-esteem and confidence, cause stress, anxiety, paranoia, carpal tunnel syndrome and nerve disorders. The presence of an "unseen audience" may cause those workers under surveillance to be 'constantly apprehensive and inhibited' (Fairweather, 1999). Some workers have even compared the experience of working under electronic monitoring to that of a slave, except they are being whipped 'not in our bodies, but in our minds' (Fairweather, 1999). In one study a data processor felt their life had become intolerable due to their screen periodically flashing 'You're not working as fast as the person next to you' (Nussbaum, 1992) (Qtd. In Ariss et al., 2002, pp.23-24). Others have written about the explicitly dehumanising aspects of surveillance. Rothstein pointed out how human dignity is denied by treating the employee as a mere factor of production, and as being a transparent mechanism to the view of the supervisor at a distance, to be manipulated and potentially disposed of (2000, pp.383-384).

Sarpong and Rees (2014) report, citing Kizza and Ssanyu (2005), that monitoring creates an atmosphere of fear, especially the fear of losing one's job. They, amongst others (Alder, 2001; Mujtaba, 2003), also report that monitoring can create a lack of trust. Kizza and Ssanyu (2005) say stress, repetitive strain injury, lack of individual creativity, reduced peer support, lack of self-esteem, worker alienation, lack of communication and psychological effects on employees are some of the other effects of being monitored. Monitoring can also constrain the right to autonomy and freedom of expression (Hoffman et al., 2003) (from Sarpong & Rees 2016, p.218). Blood pressure (Henderson et al., 1998), tension, workload satisfaction (Schleifer et al., 1995), depression, anxiety and sore wrists (Smith et al., 1992) have also been linked empirically to electronic monitoring. Varca (2006) reports that employees can get more stressed from not having control over the monitoring system, than the actual process of being monitored.

### **Blurry Boundaries between Private and Work Life**

One case mentioned by Ajunwa et al. (2017) highlights how surveillance of workers now reaches into their private lives and not just time spent at the office. In 2015, a woman was fired for deleting a tracking app on her phone (pp.104-105). This app had tracked the woman's movements during and also after working hours, when she was outside the office, and even when she manually turned the app off. This ability for employers to track their employees' precise location is increasingly possible and common, with more workers being supplied mobile phones and other digital devices that they can use outside of work hours. Rosengren and Ottosson (2016) see a new situation emerging where the home of the employee becomes a place of work, since they take their employer-provided technology home with them, sometimes work from there, and use the technology for their private communication. The Economist magazine highlight how when workers are using a company-provided laptop in a hotel for example, there is a good chance that unbeknownst to them, their IT department will have details of all their internet activity. Levy (2015) documents how long-distance truck drivers are rendered visible and contactable to their employers even when they are off-duty. The software in her case study could sometimes not be turned off or muted so even during sleep breaks management could contact the drivers.

### **Workers Adapting and Taking the Technology On-board**

Employee surveillance is not a simple top-down process that can be understood in pure objective, physical or technical terms. Just like any other element of organisational life, monitoring practices are subject to worker sense-making, and becoming embedded within organisational histories (Ball, 2010). It can also become an issue in negotiations over working conditions (Ball, 2010). When a new monitoring technology is introduced it does not necessarily function exactly as planned but must be interpreted, understood, and — to varying extents — taken on-board by the staff, before it can be said to have its place within the organisation. This doesn't just apply to those being monitored, but managers may also give the surveillance different meanings at different times, themselves manipulating or circumventing certain aspects of the system if it is in their interest (Bain & Taylor, 2000; Ball, 2010).

### **Acceptance of Monitoring**

Westin (1986), quoted in Alder (2001) found that some employees were OK with digital monitoring because they would trust its fairness of judgement more than humans'. Conrad Cross, chief information officer for the city of Orlando, is quoted in Schumacher (2010, p.141) as saying that, 'Employees are less likely to complain if they have some level of control over the monitoring, even if it's only the freedom to check their own data. If they see the system as a way of helping them to do their job, then they will feel less that it is a way for management to spy on them'. Schumacher (2010) suggests that employers explaining why they need to undertake monitoring and asking employees for

feedback on the system can create ‘buy-in’, and thus less worker resistance down the road. Alder (2001), and Ambrose and Alder (2000) highlight the importance of perceived fairness by employees of the monitoring system, in determining the extent of acceptance or resistance to such systems. Institutional theory (Powell & DiMaggio, 1991) teaches us that workers’ acceptance of monitoring can be in part explained by the norms of the industry.

### **Resistance**

Allen et al. (2007) make the point that employees often lack the power and/or motivation to participate actively in the privacy negotiation process, and so the ‘turbulence’ at the contested boundaries is often limited (p.190). They found that workers face institutional norms that reinforce the surveillance practices, experience great risk if they do attempt to challenge the norms — ‘Employees usually do not come forward and complain about or question the company’s rule. If they did, they could lose their job’ (p.191) — and generally have low expectations when it comes to privacy at the workplace (2007, p.191). So just because workers resist surveillance and make their own meanings, doesn’t mean it can be completely relativised or presented as a neutral change to the workplace; it still exists within the hierarchical employment structure and can have a real impact on the staff on both sides of the monitoring technologies.

Lim (2002) found that self-identified ‘cyberloafers’ (who use their internet access at work for personal use) did not just do it out of boredom or laziness, but as an act of defiance against their employers. The truckers in Levy’s (2015) study were deeply resistant to the monitoring technologies brought in, and refused to take orders, or advice on when to sleep from a ‘box’: ‘You, as a professional, you know when your body is tired. You know when your mind is fatigued. You know when you need to stop and rest. That dispatcher doesn’t know. And by God, that electronic device certainly does not know’ (p.170). Anteby and Chan (2017) say that this process of monitoring and workers’ resistance to it can start a reinforcing cycle where both are intensified.

## **2.4. Surveillance in Call Centres**

Throughout the literature on call centres, one sees comparisons to the labour processes from previous eras, including factory work. Jamie Woodcock (2017) refers to call centres as the ‘factories of our times’; Taylor and Bain (1999) use the notion of an ‘assembly-line in the head’ to describe the nature and intensity of the labour process of call centre work; and Peaucelle (2000) says that the conditions often resemble those of Taylorian workshops where breaks are limited, there are high levels of tension and workers are pushed to the maximum levels of work that they can manage. There is quantitative data that indicates call centre agents have higher stress levels than coal or gold miners (Van den Broek, 2002).

Despite similarities in the labour process and many aspects of workers’ experience, call centres do vary along many axes and so should not be treated as uniform. Depending on factors such as the relative value of retaining customers, the volume of calls to be taken, the level of employee specialisation, whether management is more focused on quality or quantity, specialisation or routinisation, the management style and level of monitoring can differ markedly. It should be noted that the research summarized in the following mostly depends on small case studies in different kinds of call centres, situated in diverse national and regional contexts.

### **Efforts to Control**

Taylor and Bain (1999) argue that regardless of the extent of electronic monitoring in call centres, they still rely upon a combination of these technological measurements and the human supervisors interpreting them. Bain and Taylor (2000) also note the huge amount of supervisory time and energy

that must be committed to these methods of surveillance and control, e.g., learning how to use the systems, listening back to calls, retrieving the outputs of data collection and collation, interpreting the statistics and making decisions based off them, carrying out the coaching and disciplinary activities. They see surveillance as just one tool amongst many that is used by employers and management to exert control over their workforce. They emphasise that control is what matters most to management, not surveillance itself (2000, p12).

### **The Importance of Teams**

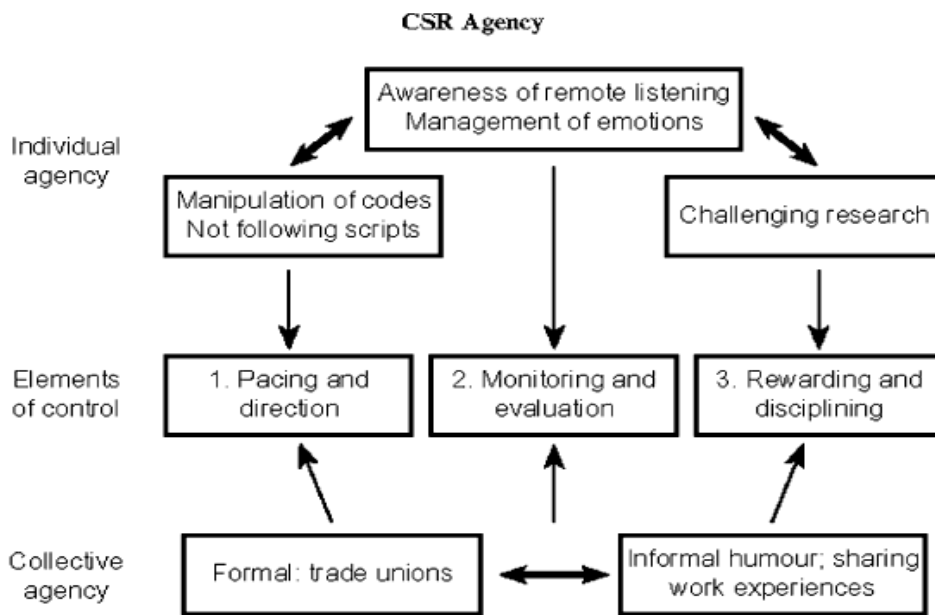
Townsend writes about how in call centres there are often multiple modes of control coexisting, each in place to support management's main goal — running a profitable business venture (2005, p.48). The author reports on the use of 'teams' by management, which tries to control the actions of employees through attention to normative or cultural control. Management tries to make the 'team' the locus of 'fun', with the intention that workers internalise the idea of these teams, and commitment to work (2005, p.51). Mulholland's (2004) case study in PhoneCo had similar programs, and provided interesting insights into how such non-surveillance methods of control are also subject to negotiation, interpretation and buy-in from workers.

### **Control of Time**

Stevens and Lavin (2007) focus on the strict surveillance of time in call centres. As in other call centres, the workers' time in their study is monitored and analysed electronically; each minute is accounted for and categorised definitively. In their case study, and as is common in the sector, workers are punished for taking an extra minute on a lunch break, yet are expected to arrive for ten or fifteen unpaid minutes of work before their shift officially starts. The authors describe the situation as advances in information and communication technologies, especially their capacity for surveillance, having given management the opportunity to monitor and thereby exercise more detailed control over the labour process—an opportunity that management has eagerly seized (2007, pp.54-55). The authors also give some examples which highlight well this obsession with time monitoring, and how dehumanising it can be when one considers the individual and human nature of the employees involved. The company has regular 'cleaning binges'— usually in Autumn — where there are mass firings of workers, selectively applied under the pretext of time theft (e.g., an extra minute on break). Workers are made to feel like kindergarteners by having to ask permission to go to the toilet, a practice which is common in many call centres and can lead to worker hesitating to go out of fear of discipline and has been referred to as 'bathroom break harassment' (Stevens & Lavin, 2007; van den Broek, 2004; Snider, 2002, p.103). Citing other examples such as pregnant women being told they are going to the bathroom too often and that they should instead get sick in the garbage can next to their desks, Stevens and Lavin say that workers are being treated like miscreants and are being perceived to be committing offences against capital simply for not fully controlling their bodily functions (2007, p.50).

### **Call Centre Resistance**

It has been argued that most worker resistance in call centres can be characterized as getting the better of the monitoring systems and appropriating it for their own ends, rather than actively and directly challenging or breaking the overall practice (Ball, 2010, pp.93-94; Ball & Margulis, 2012). Callaghan and Thompson (2001) illustrate with this graphic how workers actively engage with the various elements of control in call centres:



**Figure 2.** Customer Service Representative Agency (Callaghan & Thompson, 2001, p30)

Another method of resistance that has been observed is workers quitting their jobs and missing days of work. Zielińska (2019) and Mulholland (2004) note that quitting was a commonly resorted to method of resistance in their studies. Turnover and absenteeism are generally high in call centres, and (turnover at least) is sometimes even welcomed and encouraged by management. One manager in Van den Broek's study felt that after 12 to 18 months in telemarketing, workers were 'hitting the end of the road' (2002, p.54). Callaghan & Thompson (2001) also report on management viewing turnover as a positive, and as having learned through experience to judge how much of the work people are mentally able to handle. One quote from a manager does a good job of highlighting this: 'To me attrition is very healthy in a call centre, very costly, but very healthy. Because of the stressful nature of the job and because you want these people to keep constant energy and enthusiasm, it does the organization some good if you can pump in some fresh blood' (Callaghan & Thompson, 2001, p.33).

### The Experience of Call Centre Supervisors

Call centre managers and team leads are often themselves under pressure and some levels of surveillance, and so it can happen that the worker and supervisor's interests align and collusion is possible (Bain and Taylor, 2000; Ball, 2010). Both supervisor and worker want to maximise 'greens' and minimise 'reds', since supervisors are oftentimes themselves judged on the combined individual statistics of the call agents they monitor. Sarpong and Rees's study (2014) showed how the style of management required in some call centres can affect the managers, those doing the monitoring. They felt under pressure to manage excessively through electronic measures, and their own innate or acquired management skills went underutilised (2014, p.220). Reverse surveillance is another form of resistance, where information collected by the monitoring systems is used against management, forcing them to adhere to certain performance standards (Ball & Margulis, 2012, p.116).

The literature survey shows a rich body of research on the topic of workplace surveillance and call centre work. Our study contributes to it by providing an interdisciplinary and international perspective on the topic just one year after the GDPR has been implemented. By combining a legal and a sociological perspective in Poland and Germany we want to understand what are the social and legal norms of key stakeholders in relation to workplace monitoring and how do call centre workers make sense of and influence these monitoring systems.

### 3. Results from Interviews with Call Centre Employees

We conducted semi-structured interviews with call centre employees in Germany and Poland. The interviews were conducted with employees from different levels of the organisational hierarchy. In cooperation, the Polish and German research teams developed two interview guides — one for call centre agents, and one for managers of different levels (supervisors, team-leads, managers, etc.). They aimed to elicit employees' knowledge and opinions about the management style and practices, including monitoring, as well as the working atmospheres within the companies.

In Germany, we interviewed mainly call agents, some of whom had also worked as 'senior agents', as well as with team leaders and a trainer. Interviewees had worked in a number of different call centres and widely varying management styles; they had not spent more than four years in a single call centre. In Poland, we did a case study and interviewed members of one team in a call centre; most of the staff we spoke to have been working at this company for over ten years. We do not intend to compare country-wise, but rather give a picture of the diversity of these workplaces in different social contexts.

#### 3.1. Germany

In Germany, we conducted six interviews with employees who are currently working or had previously worked in call centres. A snowball sampling method was used to find respondents from a variety of different call-centres after it was not possible to gain access to one firm.

##### General Work Experience

###### *Emotional Labour, Unprofessional and Abusive Environments*

In general, surveillance was only of secondary importance to the interviewees, considering their general work experience: interviewees consistently reported having to interact with unsatisfied, angry and, at times, abusive customers, as the worst and most stressful part of the job. Regardless of how customers treated them they were expected to maintain a friendly attitude:

‘it's not fun to come to work and deal with abusive customers the whole day’;

‘it is hard to say nice things to people who are being really mean to you’.

The relationships they had with colleagues and supervisors appeared to also be an important factor in their feelings about the job. While the working atmosphere was often described as pleasant and easy-going when agents were friends with their colleagues and had positive relationships with their supervisors, one agent told of how the 'gross' office atmosphere was the most stressful aspect of the job for him/her:

‘Bad taste jokes, racist jokes.... one of the managers would take pictures of people and send it to them with comments like ‘you look hot today’’.

### *Precariousness*

Almost every worker spoke about how their employers would actively remind workers of how replaceable they are, through means such as not renewing short-term contracts, or sudden and mass dismissals that were often done in public view of colleagues. In almost all of the workplaces mentioned, respondents said that agents are on short-term employment contracts, which, as one interviewee put it:

‘makes people know that they could be fired at any minute’.

An agent reported how at times they had witnessed the situation where ‘somebody shows up late for work one day and they just want to fire someone so they do’. One team leader we interviewed told of how a manager at the call centre they worked in, in an attempt to combat absenteeism, explicitly tried to ‘instil fear so people come to work’.

The link between the poor conditions of the job (low salary, unfavourable contracts etc.) and levels of pressure and monitoring was brought up in multiple interviews, one agent feeling as if:

‘it’s like they knew the job was crap so they were worried people would treat it like a crap job. So instead of making it into a better job ... they just spied on them all the time’.

### **Monitoring Practices**

#### *What is measured?*

In the different call centres our interviewees spoke about, the type and extent of monitoring conducted by management varied. In all but one, the number of calls, emails and live chats completed by agents were counted and tracked. Time spent on a contact was commonly measured and evaluated, as well as other aspects of working time such as “wrap up” time (time spent entering information to the system after a call) and length of breaks. Calls and online communications were also recorded (at least partially) in all call centres, bar one.

As well as these measurements aimed at the speed and effort of employees, attempts were also made to measure qualitative aspects of employees’ work, by supervisors listening to and reading agents’ conversations with customers, as well as feedback scores sent in by customers. Such qualitative evaluations in one call centre were based on ‘human touch, compliance, accuracy and efficiency’. Some call centres also had metrics such as ‘first-contact resolution’.

The combination of these qualitative and quantitative evaluations, enabled by the various monitoring technologies used, meant almost all dimensions of agents’ work could be assessed. To varying degrees of strictness, supervisors in a number of the call centres would also check if staff were visiting non-work-related websites on their computers while at work.

These collected statistics would then contribute to management decisions about who receives pay bonuses and other rewards. It was also reported in some call centres that if call agents’ statistics weren’t close enough to the given targets, they would have meetings with their supervisors and be put on ‘personal development plans’ until their numbers improve sufficiently. In one call centre, and as is often seen in the industry, the recent statistics of individual agents were displayed publicly in the office on a whiteboard for all to see.

#### *Role of Team Leads*

This monitoring is possible only through the work of team leads, who listen to and read through the agents' customer interactions, interpret the numbers, and eventually praise or discipline the workers. Team leads' themselves are then partially assessed by their superiors based on the aggregate statistics of their teams.

#### *What is not measured?*

While great energy and resources were expended by companies in tracking all these facets of call agents' days, interviewees repeatedly reported larger problems of their work environments that management seemed to have no interest in monitoring. On top of the abuse agents would persistently have to put up with from customers, such problems included sexual harassment and bullying in the office, unprofessional behaviour, having to work in offices that were consistently filthy, and being forced to lie to people. There were reports of agents developing mental as well as physical health issues in their time in call centres.

### **Feelings about Monitoring**

#### *Does Monitoring Motivate?*

A former teamlead and a trainer both emphasised that monitoring is needed in order to ensure that everyone is doing their job. However, they also pointed out that excessive monitoring could decrease employee morale. Therefore according to them, a moderate level of monitoring is optimal for employee motivation. One interviewee, however, who had experience working in two very different call centres (in terms of the strictness of their monitoring systems) disagreed with the above opinions of management interviewees. They had worked in a context where they were paid well and their statistics were not tracked, and also one where their base pay was lower and they depended on the tightly-monitored metrics to receive the bonus. They expressed that they felt a lot less pressure when not being tracked and could better perform their tasks:

‘I can stay motivated at my current job because I know how to do my job well. I don't need people monitoring me to do a good job’.

One agent explained how the main overall effect of being closely tracked that they saw was just people being ‘less productive’, becoming unhappy with the job, and eventually looking for a new one. In their opinion, less monitoring is actually associated with better efficiency and more motivation:

‘I understand that the company wants it [monitoring] because they want to have the best performance but this does not directly lead to a better performance. And at the company where I work now if they would do that I don't know if my work would be better, I think even the opposite.’

#### *On the Output of Measuring*

As well as targets being unachievable and not adjusted for different individuals, agents expressed their dissatisfaction with how the statistics don't measure what they purport to:

‘That's what the metrics are, they're nonsense. They don't measure anything about you. ... They're like fake ways of testing who is working hard. Because you can do something really bad really fast’

‘You had a number which represented how hard you are working, but it didn't really represent how hard you are working’



Some workers brought up how the customer feedback systems being relied on to assess their work quality didn't actually capture information about agents' individual performance, but rather were related to general issues customers had with the company. As one agent explained:

'All the time you'd get responses that weren't about you, they were about the company. They'd be like "spoke to a nice person, but this company's shit and I hate it", but then you'd get like one star out of 5 and get told off'.

This fact that the feedback was often unrelated to agent performance was sometimes admitted by management. In some call centres, regular bonuses that workers come to rely upon, given the low base salary, are dependent on these feedback systems from customers, a fact one interviewee expressed frustration with:

'[it] should be the company that judges you, your employer, not the customer'.

The fact that issues stemming from management or other departments (e.g., faulty products, understaffing of the call centre, policy changes), and so outside of their control, impacted their individual statistics (longer average call-time, lower customer satisfaction etc.) and thus chances to get a pay bonus or promotion, was a source of frustration for interviewees.

### *Quality vs Quantity*

One agent said they felt this tension between their quantitative and qualitative targets — to get the customer off the phone quickly, but also resolve the issue to their satisfaction — was difficult:

'They were asking you to be nice but they were asking you to be rude at the same time. So it is definitely not an easy situation'

'Pressure' and 'stress' were often mentioned in relation to the performance targets that workers would have. Numerous interviewees spoke about how this pressure to limit the length of phone calls was inefficient and overall created more work and issues for the company since the quality would be sacrificed:

'if you weren't pressuring people all the time, if you weren't pressuring hanging up on people than when things are a little bit more casual then it is easier to communicate things to people. There are a lot of conversations that would have may be went a lot better if you weren't told you have like 5 minutes to do this'.

They reported that often when a customer is not dealt with properly due to this time pressure put on agents, not only will their satisfaction be lower, but they are much more likely to have to call the hotline again as the issue was not properly resolved. The knowledge of what statistics management are looking for also affected how the calls went:

'in the back of your head you know you're expected to do X amount of calls per hour, so when somebody keeps talking on the phone it can get frustrating and sometimes cause you to get into an argument'.

### *The Use of Data*

Respondents expressed how there is all this information and statistics being stored about them and at the disposal of management, yet often for things like dismissals, bonuses and salary negotiations the worker cannot rely on them, but rather they can be arbitrarily used to justify the decisions of management that have more to do with how they feel about workers personally. Speaking about trying to get a bonus, one agent explained:

‘you knew there were a lot of things you had to do but there was no like “if you do 50 percent of this then you get this”. There was nothing concrete; it was always a moving goalpost’.

Another agent similarly explained that:

‘it’s meant to be decided by the metrics, but it’s actually decided by the managers’;  
‘apart from going out and drinking with the managers and maybe sleeping with them or being friends with them, I can’t see a way of getting further in your career or getting more money’.

This influence of favouritism in the enforcement of monitoring and discipline was also true for the day-to-day, or even second-to-second, experience of the job. One example was smoking breaks, and how workers who were friendly with managers and went on smoking breaks with them would not be disciplined for them regularly going over time, while other workers who did other things on their breaks would be told to get back to work or get in trouble.

Ultimately, once the call agents realised these numerous flaws in the monitoring systems and the futility of trying to engage with it and apply oneself, agents reported how it became a profoundly demotivating factor:

‘[it] felt like a game sometimes, where you just try to rack up the numbers, like playing candy crush or something’;

or as another agent put it:

‘It feels like you’re entering into a dumb game that you can’t win’.

### *Psychological Impacts and Dehumanisation*

One agent called a call centre a ‘contact factory’, while another compared the feeling of being watched constantly and only being “a number” in one particular call centre to being in prison:

“...[as] if you are in jail or something. You are just here to make some money; you are just a number for them. They really monitored everything, like everything you did”.

Interviewees had differing feelings about their calls being listened to and emails read. Some expressed that they did not feel well at all about having people listen in, in real time or retroactively, and that it created an unhealthy work environment, even contributing to them quitting the job. One agent said they noticed it having an impact on their colleagues and that ‘it made people really nervous’. Only one agent said it didn’t bother them, since as they put it:

‘I’m not a person when I’m at work. I’m just like another machine that works there, I didn’t write anything personally, I just wrote the shit they told us to write over and over again’.

And so for this agent the level of alienation from the work was so thorough that it didn’t matter if they would have their correspondences viewed and judged, since they felt none of their own being or identity was being put into the job, and so supervisors were essentially reading and assessing their own words rather than the agent’s. While these reactions to that same condition — of being under surveillance at work — differ dramatically, both paint a grim picture of the atmosphere and response of the worker it leads to.

### *What is acceptable*

While different agent interviewees drew the line in different places with regard to how much monitoring they viewed as being acceptable, the majority felt that monitoring would be acceptable if it is 'fair', not excessive and gives them 'freedom' at work. If companies are going to record the work of employees and track it using some sort of metrics, agents expressed that it should then at least be done clearly, transparently, professionally and consistently.

Respondents spoke about how they understood that monitoring could be useful for companies on an aggregate level to figure out how to improve company products or processes, and didn't have a problem with this sort of use. For example, using monitoring to answer questions such as 'how many complaints are we receiving about product X compared to product Y', or 'how many calls are we receiving in a day?'

There was a distinction made in some interviews between this type of monitoring, and then using it to make judgements about individual employees, tracking for example how long somebody is on a break or how many calls they've taken that day and telling them 'you don't do enough!'. Some interviewees did say that they understood why their company monitored them from the 'business side' and why they would want to check if people are actually working.

One expressed however that monitoring wasn't being used to help them, that even when they asked for help with something it usually wasn't there for them. Instead, it was used to treat them as 'objects' and make sure they were doing what management wanted them to:

'You don't need to watch them, they're not children, it's just patronising and kind of creepy'.

### **Resistance and Opposition**

#### *Tricks of the trade and "gaming" the system*

Examples were given of interviewees' colleagues using different tricks to have impressive stats but in reality doing only tiny amounts of actual work. This was largely made possible by work-quantification methods that equalised all contacts, so an hour phone call would be viewed as equal to taking five seconds to send an email template. One extreme case of gaming the metrics was outlined in the example of a

'person who was doing really well and they found out four months later he's just been picking up the phone and hanging it up, picking it up and hanging it up'.

In an interview with a worker from the management side of their company, they spoke about the attitude of team leads towards such tricks:

'we don't care how you do it... Yes, they said the numbers are good; whatever you are doing, keep on doing it'.

This approval of and turning-a-blind-eye to such methods could be a result of the management systems and hierarchies in place where team leads and supervisors are also judged on the aggregate stats for their teams, which was reported to also be stressful in itself.

### *Exit Strategies*

Based on the interviews with agents, we can hypothesise that part of the reason why nobody ‘plans to stay long’ in many call centres has to do with the strict monitoring systems in place. The high rates of people quitting can be viewed as a form resistance to such systems.

### *Active Resistance*

Our findings show that even in these highly monitored, thoroughly-controlled working environments characterised by short term contracts and precarious working conditions, some forms of overt but “soft” resistance do take place. Agents sometimes would openly question the way the number of contacts are counted, how their performance is measured and their bonuses awarded. Other subjects that drove agents to openly disagree with the management policies were the shift planning, the break times and the way people were dismissed. One agent refused to have their name displayed on the public white board with everyone’s statistics:

‘it just felt a bit fucked up to rank people like that, it’s just a bit weird, it’s not something that I think is ethically sound. I didn’t want to be a part of it, it made me feel uncomfortable. It doesn’t matter if you’re doing well or not doing well, I think it should make you feel uncomfortable to be compared like that and to be used to shame other people and make them worried for their jobs’.

### *Keeping Workers in Check*

The fear of not having one’s short-term contract renewed seemed to be one of the main reasons why agents would not speak out about their issues:

‘I didn’t have the feeling that if we go like group they will change it because they would rather say “Ok you are working here for 6 months, we are not going to renew your contract”. You are just a number there’.

They explained that agents who have short-term contracts ‘wouldn’t open their mouth so fast’ as the workers who have permanent contracts.

The other factor that appears to be relevant for the probability of worker resistance is the management style of the company. In workplaces where agents had already had experiences indicating that their superiors would not listen to their feedback, ideas, and criticism, they lost belief that something could be changed:

‘It is hard to explain, it is just a personal feeling if you work there, they just wouldn’t listen, they just care about the calls you are doing and if it is not you then they will get someone else’.

Furthermore, the melting of boundaries between work-life and private-life in start-up style companies, who utilise normative forms of control, might also deter resistance. A work atmosphere that promotes Friday beers, friendly relationships with the bosses, and claims to disavow hierarchies could discourage people from speaking up, or alert management in advance of attempts to organise:

‘They’re also pitted against each other, and then they’re meant to be friends with the people who do that. If you’re going out drinking and taking drugs with your manager, and then you are meant to go to a meeting to arrange better treatment, they’re going to know about it’.

Finally, our findings suggest that the very emotional work that agents are expected to perform during calls teaches obedience, which in turn could decelerate resistive behaviour. As an agent explained:

‘you don’t learn anything that you couldn’t learn anywhere else apart from to let people talk shit to you all day long. And most people who do that job are used to people talking to them like shit anyway, otherwise they’d just leave’.

This suggests that when workers learn to suppress their emotional reactions to being abused and mistreated by clients and customers, they also become less likely to show their dissatisfaction with the management system.

‘I think that people don’t feel like they have a right to anything better’.

### **Awareness about data protection law**

All of the employees interviewed but one said that they did not know of any changes related to the way they are monitored due to the introduction of the GDPR. They associated GDPR only with changes in the company’s policies in relation to customer data. Only an employee of the online travel fare agency mentioned that due to the regulation there has been a change in the way workers’ data is stored and processed.

According to the employees, in many of the places agents worked for there was a works council. In all cases except of the online travel fare agency workers thought that work councils ‘have nothing to do’ with the monitoring system. As an agent explained, the work council is

‘there for if you have any questions, they are there to help you... for example if you have a problem with another colleague or whatever, if you have a problem with a system that doesn't work. They are not busy with any of the monitoring or of how you work. It is not related to them’.

## **3.2. Poland**

In Poland, we conducted eleven interviews with staff of different levels in the hierarchy of the same company — one with the chief manager, one with a senior manager, one with a middle manager, two with coordinators, two with team leaders and four with operators (two senior specialists and two operators). The interviewees admitted that their team is unique in comparison to other teams in this contact centre, and the operators have more freedom, slower pace of work and better employment conditions than staff from other teams. All of the interviewees we spoke to were chosen by the company and so there is a likelihood this biased the views we were exposed to. Most of the staff we spoke to have been working at this company for over ten years.

### **General Work Experience**

The biggest problems for employees were the low salaries, the civil-law contracts they were on, skills mismatches, and the emotional labour involved in handling difficult customers — the monitoring was not directly brought up as a significant source of discontent (an exception being the monitoring of workers' breaks which was a sensitive area). The biggest problem mentioned by management was the high employee turnover; they find it difficult to recruit and retain workers.

The organisational structure within the firm was rather hierarchical, despite the managers striving to make the employees perceive it as horizontal one (i.e., by being on first name terms with each other). Middle and senior managers said that they tried to create an amicable atmosphere and engage workers (e.g., organising sports activities, games, common breakfasts). Indeed, some of the employees we spoke with did praise the working atmosphere. Above all, they praised the fact that they were a small team, knew each other well and could rely on each other.

The female respondents with children brought up how certain types of work contracts entitled them to social benefits and allows them to combine work with family life (i.e., they can take maternity leave). Some employees who had been working there for many (10+) years had not received permanent contracts of employment and instead were still obtaining temporary contracts. On the other hand, some respondents claimed that it is now easier to obtain a contract of employment in their company than in the past, probably because of the change in the labour market situation in Poland (i.e., a significant reduction in the levels of unemployment).

### **Monitoring Practices**

Workers claim that their work is monitored 'to the second'. They say they are under surveillance from the moment they enter the building, as they have cards they have to scan to enter. They also scan them in the elevator and then at the entrance to the company's office. They then log into the computer system, which starts the monitoring of their time working.

Surveillance over the operators' work was described as being strict. The first-line managers are the first people who supervise the operators. All operators' conversations with customers are recorded and some of them are listened to and evaluated by team leaders. The leaders conduct coaching sessions with the operators once a month. The content of conversations with clients is considered important (maintaining professional knowledge), as is sticking to the instructions and guidelines given by management on "soft" issues, such as tone of voice. Some conversations are also audited and evaluated by a special quality service department and the headquarters. The respondents emphasised that recording the operators' conversations with clients is not only used to control the operators' work, but is also useful in cases of clients complaining. Clients are sometimes asked directly to evaluate the operators (by filling in a questionnaire consisting of five questions). In addition, employees of an external company make phone calls to customers and ask them about their level of satisfaction with the service.

The coordinators supervise and create reports about the number of conversations conducted by operators, when they logged in, their working time and breaks etc. Supervisors spoke about how they use many different programmes and applications to conduct their work and monitor the work of the call operators. An interviewee told us that there are some operators who telework from home, and they have their desktops monitored. There is also a system in place where the security department receive an alert when someone from the company uses a word in an email that has been defined as dangerous. The IT department can also monitor aspects of e-mails sent by employees — they can access the files that are sent and see who they were sent by.

### *Video surveillance and arrangement of the workplace*

All teams work in an open plan office, and the meeting and training rooms all have glass walls. The office space features some of the attributes of the Panopticon, in that one can see as much as possible and people can watch each other from different places in the room. Video cameras are located in the corridors of the office. However, some of the interviewed workers did not know if there are cameras in their workplace.

The managers interviewed claimed that they try to give the operators a certain degree of freedom, for example, allowing workers to visit websites between calls (theoretically the operators should be learning and improving their skills during such moments). However, some websites are blocked on the computers and the workers' activity on the internet is monitored.

In an interview with a member of senior management, they told us about new technologies they expect to be using within the next two or three years that can track emotions. They also spoke about an application currently being implemented that allows call agents to assess their supervisors since ‘the opinion of our workers is important for us’.

### **Feelings about monitoring**

Overall, interviewees’ appraisal of monitoring has to be characterised as positive or neutral. Monitoring was not a topic that people talk about in the call centre we studied. The operators did not report talking about it with each other, nor with the management. The managers say that the operators do not ask them questions related to monitoring and do not complain about it. Both management and the operators said that when they started work in the call centre they knew that there would be monitoring and it was no problem for them.

Here are some examples of the responses we heard after asking interviewees how they felt about monitoring in their workplace:

‘it enables work, makes work easier’;

‘it is indispensable in this industry’;

‘we do not pay attention to it’;

‘I do not talk about it and do not think about it’;

‘I am used to being monitored’;

‘thanks to it is easy to catch people who avoid work’ ;

‘without monitoring there would be no commitment’;

‘it is good for employees because it gives a sense of equality’.

### *How management felt*

All the managers (from chief managers to front-line managers) were enthusiasts of monitoring and the new technologies that improve supervision. They claimed that it would be impossible to work in a call centre without it. One manager said that monitoring must be used in every call centre and that without it ‘we would be like babies in the woods’. It was also said that monitoring, especially in large teams, is a priority because it allows control. On the one hand, the new technologies are said to help serve customers more efficiently, and on the other hand, to supervise employees more precisely. So, the argument goes, monitoring enables the increased rationalisation of the work process and thus, profitability. The management said that new technologies are developed and introduced very quickly and that they make work easier. Managers claimed that monitoring is useful for the workers who want to work well, and can be harmful to those who do not want to work.

Another reason given was that it can prevent favouritism. One respondent (a manager) stated that perhaps monitoring can make workers feel trapped, but he/she had not noticed this in their company.

While in different interviews managers spoke about how monitoring was used to make sure operators were working at sufficient speed and saying the right things, in some interviews interviewees spoke about how monitoring can be used improperly if it loses track of improving the work process and

instead bothers workers and focuses on their mistakes. Managers also acknowledged that monitoring in the toilets would be excessive.

### *How employees felt*

The operators admit that their conversations are strictly monitored and controlled, but generally claim that it is not a problem for them. Some said they are monitored for their own good. They receive feedback from their supervisors and thanks to that they can perform more professionally. They also claim that due to monitoring, they are more cautious about what they say to clients.

The length of breaks allowed to workers was the most sensitive topic for operators (although this was expressed indirectly). Workers try to negotiate the length of breaks specified by the management and extend them. Interestingly, workers are obliged to watch their breaks – workers discipline each other in order not prevent break times being exceeded, because then other operators cannot go on a break.

Call operators acknowledged that ‘every second’ of their work is being monitored, but it does not bother them because they ‘are at work, so they are working’. One of the interviewees said that monitoring is so obvious to her/him that she/he forgets about it. The operators seemed to accept the managers’ argument that monitoring is good for them as it enables them to improve their performance and the managerial perspective that without it, everyone would just do whatever they want. Operators were particularly in support of the calls being recorded to protect them from groundless complaints from customers.

One interviewee however, expressed that when they are having a bad day they don’t want anyone to listen to their conversations, indicating that sometimes there is a want for privacy in the workplace. Other operators said that they would find having video cameras ‘over their heads’ unacceptable.

### **Awareness about data protection law**

Both the management and the operators talked about the GDPR only in the context of the relations with the company's clients. Nothing was said about what the GDPR means for the employees and whether it has changed something in their situation at work. When we asked the operators about it, they said that the GDPR has changed nothing and has no impact on their situation in their workplace.

The operators pointed out that first of all, the GDPR has hindered their work with clients. It was said that there is “more bureaucracy” right now. The operators have to read more formulas to clients, these formulas are boring and they lengthen conversations, so clients often get angry with the operators. Additionally, the operators have to ask for clients' data or for sending documentation, but some of them do not want to do this because of the GDPR (clients want to protect their privacy). Some managers claim that the GDPR helps to protect clients’ data better (and that data security is one of the most valuable goods on the market nowadays) and made customers more aware of their rights.



## 4. Expert and Stakeholder Analysis

The interviews with the employees of the call centres revealed that they had little awareness of relevant national or European laws, such as the General Data Protection regulation (GDPR). We interviewed German and Polish experts and stakeholders of the public debates about workplace surveillance in order to better understand these relationships between practices, values, opinions and the law. The interviews were based on an interview guideline, developed collaboratively by the group's researchers in Poland and Germany. The guidelines included questions about past experiences with issues of privacy and employee monitoring at the workplace, supervisory technologies and the influence of institutional actors on the topic, and the reproduction and change of legal and social norms.

In Germany we conducted five expert interviews, with:

- (1) a former Federal Data Protection Commissioner (*Bundesdatenschutzbeauftragte*) in the state of Schleswig-Holstein,
- (2) a legal officer at the Federal Data Protection Commissioner (*Bundesdatenschutzbeauftragte*) in the state of Berlin,
- (3) a trade union representative working in the field of digitization and politics from ver.di (*Die Vereinte Dienstleistungsgewerkschaft*),
- (4) a trade union representative working in the field of employee data protection and collective bargaining law from ver.di (*Die Vereinte Dienstleistungsgewerkschaft*),
- (5) an advisor for work and staff councils (*Betriebs- und Personalräte*) at a technology consultancy organization (*tbs berlin GmbH*).

In Poland we conducted eight interviews, with:

- (1) a lawyer who specialises in monitoring and privacy cases,
- (2) a trade union representative from OPZZ (*Ogólnopolskie Porozumienie Związków Zawodowych*),
- (3) a trade union representative from NSZZ Solidarność (*Niezależny Samorządny Związek Zawodowy „Solidarność”*),
- (4) an employers' organization representative from Konfederacja Lewiatan,
- (5) an employers' organization representative from Pracodawcy Rzeczypospolitej Polskiej,
- (6) an officer of the Ministry of Digital Affairs (*Ministerstwo Cyfryzacji*),
- (7) an officer of the Personal Data Protection Office, the Polish data protection authority (*Urząd Ochrony Danych Osobowych*)
- (8) an officer of the National Labour Inspectorate (*Państwowa Inspekcja Pracy*).

## 4.1. Legal context

From a legal perspective, privacy of employees in Poland and Germany is protected in three interlinked levels of regulations.

### Levels and sources of regulation

The first one is the human rights framework established by Art. 8 of the European Convention on Human Rights (ECHR) which grants the right to respect for private and family life. Poland and Germany are among 41 countries of the Council of Europe which are signatories to the Convention. The ECHR has ruled on several cases pertaining to employees right to privacy at workplace, and these rulings provide important guidelines as to what type of workplace monitoring is compatible with the European human rights framework. Employees in these countries can seek redress for violations of their right to privacy in the European Court of Human Rights, but only if they have already tried their chances in domestic courts.

The EU Charter for Fundamental Rights provides a specific right to the protection of personal data, which is applicable in the realm of European Union law. It is to be interpreted according to the ECHR and forms the human rights background to the EU-GDPR.

Human rights are also granted in national constitutions, in accordance with international and European law. In the case of the German law of privacy of employees, the constitutional framework of the Federal Constitutional Court, establishing a personal ‘right to informational self-determination’ in 1983, has been of particular influence.<sup>2</sup> The Constitution of the Republic of Poland also gives everyone the right to privacy (Article 47) and information autonomy (Article 51).

The second category of privacy protections which applies to the workplace is rooted in laws and regulations pertaining specifically to data protection. In particular, the data protection regimes of the Member States of the European Union have been regulated with the General Data Protection Regulation (GDPR) which entered into force on May 25, 2018 and is directly applicable in the member states. In many cases, including Germany and Poland, the introduction of the GDPR required and/or lead Member States to update their national regulations concerning data protection.

A third set of rules concerning employee privacy and a source of diversity among Member States stem from the national labour laws. The role of legislation, courts, trade unions and employee representatives on the company level differ very much between the member states. And the way labour law has been shaped in the EU member states for decades more or less defines the methods and depth of regulation that have been used to implement the EU-GDPR into national law.

That’s why Art. 88 of the GDPR which does not so much regulate data processing in the context of employment, as give room for Member States to specify rules for employees further by law or collective agreements – as long as those rules ‘safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, (...) and monitoring systems at the work place.’ In fact, this “flexibility clause” allows for a certain freedom in the way regulation is adopted in the national laws, rendering it more of a Directive in this aspect, rather than a regulation which would be directly applicable across the EU.

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<sup>2</sup> Federal Constitutional Court, judgment of 15 December 1983 - 1 BvR 209/83.

While the new German Federal Data Protection Act (BDSG) of 2017 (implementing GDPR) only has one section referring to employment (Sec. 26), Poland amended its Labour Code and included more specific in order to include changes related to the GDPR. These technical and material differences have a lot to do with the history and regulatory methods used in the two countries.

### **Regulatory methods and general framework of employee data protection: German law<sup>3</sup>**

German law on employee data protection is characterized by two features:

Firstly, German law on the protection of an employee's personal data has been hallmarked and shaped for decades by the case-law of the Federal Labour Court (*Bundesarbeitsgericht, BAG*). Case-law has always been ahead of the legislature. Legislative codification, including implementation of the GDPR, has simply attempted to reproduce the principles developed in case-law.

While employee data protection has grown in importance since the mid-1980s, it took more than 30 years for the adoption of a specific legislative provision, then section 32 of the 2009 Federal Data Protection Act. In other words, employee data protection in Germany has been characterised from the outset by legislative inactivity. The legal rules concerning employees are today quite comprehensive, but have been shaped by the rulings of the Federal Labour Court for several decades. These rulings had been summarized in Sec. 32 of the 2009 Federal Data Protection Act, which was more or less upheld with the reform in the wake of the adoption of the GDPR. Today, Sec. 26 of the new Federal Data Protection Act 2017 (BDSG) in a rather general way provides the legal framework for case law concerning data processing for employment-related purposes.<sup>4</sup>

Secondly, work councils, due to their co-determination right on surveillance at the workplace, have an important role in creating specific rules for data protection at the workplace (see Sec. 87 para. 2 No. 6 Work Council Act, for the private sector).

The basic idea of case law, derived from constitutional law principles, is the requirement of necessity, now codified in a rather general way in section 26(1) of the 2017 Act. According to the Federal Labour Court, any incursion into an employee's private sphere is prohibited from going further than is absolutely necessary for the purposes of the employment relationship. In the balancing of interests, the principle of proportionality what is decisive.

For example, the Federal Labour Court held that the storage of protected data falls within the scope of the intended purpose [of the contractual relationship] only and as far as a direct connection exists between the intended storage and the specific purpose of use, in other words, if the data are necessary to satisfy the specific contractual purpose.<sup>5</sup> As for surveillance activities, the principle of proportionality protects employees against total surveillance. An example are covert video recording which subjects employees "to a constant pressure of surveillance from which they cannot escape when working".<sup>6</sup> The principle has also been applied to techniques such as "key-loggers", which produce data permitting the compilation of an essentially comprehensive and seamless profile of both the private and professional use of the computer by the employee.<sup>7</sup> The Federal Labour Court also

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<sup>3</sup> The following is a summary of expert opinion for the project, published as Middel, Lukas. 2019. Workplace surveillance in the light of employee data protection, European University Viadrina.

<sup>4</sup> However, it appears reasonable to harbour certain doubts whether section 26 of the 2017 Act is compatible with the derogation provided for in Article 88(1) of the GDPR. Namely, it is more than questionable whether the general balancing test that lies behind the necessity requirement of section 26 of the 2017 Act sets out *specific* rules for the employment context.

<sup>5</sup> Federal Labour Court, judgment of 22 October 1986 – 5 AZR 660/85.

<sup>6</sup> Federal Labour Court, judgment of 27 March 2003 - 2 AZR 51/02.

<sup>7</sup> Federal Labour Court, judgment of 27 July 2017 - 2 AZR 681/16.

held that a workload statistics scheme, which, by way of a technical monitoring facility, provides on a permanent basis for the recording, storage and analysis of individual work steps and thus of the material conduct of employees by reference to quantitative criteria through the whole of their working time, constitutes a serious interference in their personality rights, which is further not justified by overriding interests of the employer.<sup>8</sup>

In sum, the numerous Federal Labour Court rulings on employee data protection have given adequate shape to this area of law, but nothing more. This case-law that has developed over decades is no substitute, however, for comprehensive and long-overdue legislation to regulate employee data protection. The lack of specific legislation means that practitioners must continue to make do with rulings given in individual cases, where results often vary depending on the sector involved. For example, we do not know if a different outcome might have been reached on workload statistics in the context of a call centre, as a greater degree of surveillance appears generally accepted in call centres. Another shortcoming is that these kinds of surveillance systems are often, at any rate, tolerated by all parties (including work councils).

### **Regulatory methods and general framework of employee data protection: Polish law<sup>9</sup>**

Polish law on employee data protection is characterised by two different features. Firstly, the Polish Constitution and the Labour Code do contain personality and privacy rights as human rights (articles 30, 47 and 51 of the Constitution and article 11(1) of the Labour Code). However, there were no detailed regulations. In this situation, the case law of the European Court of Human Rights and general data protection principles (regulated in Data Protection Act which was based on Directive 95/46/EC) have been shaping Polish law and practice on surveillance before the GDPR came into force.

Secondly, while regulations concerning employee privacy were sparse prior to the introduction of the GDPR in 2018, the Polish Labour Code (LC) has then been designed to make it compatible with the European standards and now includes specific rules on video surveillance, mailbox monitoring and other forms of employee surveillance, which were previously not at all regulated in the Polish law. Further changes to the Labour Code, also related to GDPR, came into force on 8 May 2019.

As a preliminary remark, it is important to note that safeguards envisioned in the Labour Code may be applied only to individuals employed on the basis of an employment contract, but they do not protect individuals who provide services on the basis of civil law contracts (mandate contract, task-specific contract) or those who are self-employed. According to the Report of the Central Statistical Office, in 2018 over 12 million employees had an employment contact and over 2,5 million individuals are either self-employed (and don't employ anyone) or work on the basis of civil contracts. This second group only enjoys the protection on general terms, e.g., the provisions of GDPR and personal rights protection.

Under the Polish Constitution, proportionality is the fundamental rule governing the acceptability of any interferences in human rights, including the rights of an employee. Proportionality has two dimensions: first, the employer can use a surveillance tool only when it is necessary for the achievement of the legally acceptable desired objective. Second, the employer has to choose – among all available tools which allow for the achievement of the objectives and aims – the one that to the smallest extent interferes with the privacy of employees. In other words, the legality of advanced forms of monitoring (e.g., the monitoring of computer usage by tracking eye or cursor movements)

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<sup>8</sup> Federal Labour Court, decision of 25 April 2017 - 1 ABR 46/15.

<sup>9</sup> The following is a summary of Wojciech Klicki's legal report for the project.

depends on whether this is the only way in which the employer can achieve their aim, i.e., control over how employees use work equipment.

In specifying these rules, the Labour Code distinguishes three forms of surveillance: (i) video surveillance, (ii) the monitoring of the employee's mailbox, (iii) other forms of surveillance. Video surveillance, for example, may only be used if it aims for the safety of employees, the protection of property, production control or confidentiality purposes. Therefore, it cannot be used in order to verify the start and finish time of work or to monitor the availability and productivity of employees as well as their approach to customers, or for the purposes of periodic employee assessments. Monitoring which enables face recognition constitutes processing of biometric data and is regulated even more strictly (article 22(1b) No 2 LC).

Video surveillance may never cover communal sanitary facilities, changing rooms, canteens and smoking rooms unless the use of video surveillance in these facilities is necessary for the above purposes and will not violate the dignity and other personal interests of the employee; this effect can be achieved in particular by adopting techniques which make it impossible to recognise individuals making use of these facilities. In the case of video surveillance in shared sanitary facilities, consent of trade unions is required. Video surveillance in trade union's rooms is unacceptable in any situation. Recordings may be processed solely for the above purposes and stored no longer than for three months (unless the employer became aware of the fact that they can serve as evidence in court proceedings). In addition, there are transparency and information requirements (art. 22(1) LC). Mailbox surveillance (in relation to work-related mailboxes) is permitted as long as it is necessary for (i) ensuring work organisation which enables the full and productive use of working hours and (ii) appropriate use of tools made available to the employee (art. 22(3) LC). As for other surveillance measures, there is an open catalogue and mainly transparency and information obligations, they are acceptable only in similar purposes as mailbox surveillance.

In sum, the legal situation after 25 May 2018 explicitly resolves many issues concerning workplace surveillance, but still lacks case law which would allow a better understanding of current norms.

## **4.2. Expert opinions about regulatory framework in the European Union**

### **German Dissatisfaction**

In the interviews with German stakeholders and experts, it was repeatedly stressed that the GDPR failed in unifying the European digital market because a key aspect was excluded from it — employee data protection. The flexibility clause in the GDPR (Art. 88) means that member countries can still have differing employee data protection regulations. They stressed that the GDPR is not precise enough and wished for a stricter and more concrete regulation of these issues. A trade union representative made the point that the flexibility clause facilitates competition between European countries in terms of the laxness of such regulation, and allows companies to choose to move to another EU country with weaker data protection standards. The impact is not only felt in firms moving country like this, but also in the increased difficulty of countries with relatively high employee data protection laws maintaining them. A tech consultant said that it is good, however, that the national legislators are left to regulate the employee data protection, since she was afraid that regulating this on EU level could have decreased the existing German standards – a flexibility clause could be better than a set of regulations that would have explicitly lowered the existing employee data protection standards in Germany.

One impact of the introduction of the GDPR that was noted by interviewees was the increase in awareness of the topic amongst both employers and employees. According to the officer of the Federal Data Protection Commissioner, there has been a ‘clear increase’ in data protection-related reports by employees since the introduction of GDPR. Employers and international corporations have become increasingly weary of sanctions, but due to the imprecise nature of the legislation are often uncertain about what changes they must implement to ensure they are compliant with the new regulations. This is especially an issue with smaller business owners who do not have the money to hire data protection officers and legal experts to provide solutions and advice.

Co-determination was also said to be insufficiently accounted for in the GDPR; it was mentioned how work councils are now unclear about their obligations under the new legislation, since they also handle employees personal information. German trade union representatives reported that they have used the regulation as a reason to provide further education to work councils on the topic of employee data protection. They also warned of employers using the GDPR as a pretext to renegotiate and weaken company-level agreements that had already existed — companies using this moment of legislative change to introduce performance and behaviour controls ‘through the back-door’. They acknowledged that the legal argument could be made that the flexibility clause in the GDPR allows for modulation in both directions, i.e., the strengthening or weakening of existing national regulations.

A trade union representative and a former Federal Data Protection Commissioner spoke about how during the process of the GDPR legislation being written, employers’ organisations and lobby groups were the more powerful players. Compared to unions and employee lobby groups, these employer organisations had considerably more capital at their disposal to commit to lobbying the commission and parliament, partially due to an influx of money from American lobby groups campaigning on the side of employers. They said that these unequal resources of the lobbying groups contributed to workers’ interests being only loosely represented in the legislation, and their data protection rights being relatively vague and weak. A trade union representative expressed how they would have liked to have seen “privacy by design” introduced as a fundamental principle in the GDPR, as well as different standards being laid out regarding basic principles of technical infrastructures.

While we unfortunately did not get access to employers’ interpretation of the regulation, according to a trade union representative the GDPR is regarded by some employers as ‘the strictest data protection regulation in the whole world’. Nevertheless, the trade union representative described the new regulations as ‘just the beginning’ and ‘a good basis but not more’.

### **Polish Reaction**

The GDPR was characterised by Polish stakeholders as legislation that people were insufficiently informed about, and around which there had not been enough debate. The legal situation was said to be unclear before 2018, and that the changes in the Labour Code and GDPR did bring some clarification, however according to employers it was insufficient. Combined with the uncertainty surrounding what GDPR meant for the Polish legal framework that had already existed, the introduction of the GDPR was said to cause ‘panic’ among some of the stakeholders who were involved in the debate who were now potentially open to heavy sanctions. It was also regarded by some as an overly long and opaque document that was unclear in terms of what it obligated of stakeholders.

### **4.3. Expert opinions about regulatory framework in Germany**

#### **Technology-Driven Changes**

The experts from the German context spoke about how technological advancements in the last number of decades have increased the ease and prevalence of workplace monitoring systems, as well as the importance of the topic for all stakeholders. A legal officer at the Federal Data Protection Commissioner explained how in the period between 2000 and 2010 there was a massive uptick of questions to them specifically about internet and email, and how in recent years video monitoring has become a big topic due to how cheap and easy to use it has become. Some of the other new technologies mentioned in the expert interviews that are said to be driving the current debate include: key logging, GPS tracking, micro-chip implants, automated video pattern recognition, biometric access control, artificial intelligence, big data analytics, speech and body temperature tracking, emotions analytics, and robo-recruiting. A work council advisor gave an example of key-logging technology that they viewed to be excessive. A trade union representative brought up the example of hospital staff having their precise location secretly tracked by management via GPS chips inserted into their clothes. Many of these technologies that have become available in recent years were said to be able to penetrate the privacy of workers in ways much deeper than was ever before possible. The experts interviewed were unanimous that monitoring that does happen should be done in full transparency, be minimised as much as possible, and that total and constant surveillance of workers should not take place.

#### **Workplace Technology Re-imagined**

A trade union representative interviewed calls for a reframing of the whole idea of workplace monitoring and employee data protection. They argued that it has more to do with democracy and basic rights than protection of data, and that core principles of such systems should be employees having the power to co-shape their socio-technical reality in the workplace, and being treated as mature and with dignity. The trade union representative said workers should be more actively involved in designing and making changes to the technological systems at the workplace, and that such systems should be implemented in intelligent ways that empower and serve the interests of employees. They said that they were in support of technologies that promote exchange between colleagues and improve how they work, as long as they are under the control of the workers.

#### **Imprecise Regulation**

According to the stakeholders, as these technologies become more and more complex, it also becomes harder and harder to understand and regulate them. As in the case of European level legislation, the lack of precision was again a dominant theme with the experts and stakeholders when it came to German legislation of workplace monitoring and data protection regulations. The various stakeholders criticised the most recent German Federal Data Protection Act (BDSG-neu) and called for more concrete regulations and clear limits that deal with specific technologies, such as video monitoring, GPS tracking, or email monitoring. Other aspects that were brought up as requiring more concrete rules were how long data can be stored, under which conditions is certain monitoring allowed, clear limits on what can be monitored, surveillance-free areas for workers, and how data can be analysed.

The current state of legislation, which was described as imprecise and unclear, was said to lead to a variety of outcomes including different legal interpretations that can sometimes be at odds with one another. One example of such a grey area was how the definition of ‘immediately’ is not clearly defined (in the context of collected data being deleted immediately), and how it is often taken to mean ‘within 48 hours’ by various parties but that this is not written into the law anywhere. Another consequence is that the Labour Courts and public data protection agency have gained special

importance, since the court's rulings must be interpreted and implemented by the public data protection agency. A legal officer at the Federal Data Protection Commissioner saw this situation in a partially positive light since it handed them more room to manoeuvre. It was also said that due to the lack of clear regulations there is uncertainty for employees, employers and work councils, since nobody can be certain how the data protection agency or labour courts will evaluate specific cases. An example was given of two different court cases both related to video monitoring and dismissals resulting in two differing decisions.

### **Workplace Bargaining Power and Lack of Enforcement**

Regardless of past rulings or even concrete regulations that may exist, some stakeholders spoke about how there is often a power imbalance within workplaces, leading to the law being ignored by management. One tech consultant interviewed spoke about how what happens in practice might often be forbidden by the word of the law.

The consultant said that especially in small companies without long-standing traditions of co-determinations procedures, the voices and rights of workers and work councils are either not heard or disregarded. One example of rules being bypassed given by the consultant was HR managers approaching a company's IT department and asking for a specific analysis of a worker, and the IT department providing the information or analysis even if it is not allowed. The consultant also spoke about scenarios where small companies don't have the money to hire a data protection officer, or where the owner of a company acts simultaneously as manager and data protection officer, creating a clear conflict of interests.

The tech consultant as well as a trade union representative spoke about how work councils are often in a weaker position than the employer in negotiations. One example given by the tech consultant was when a large US corporation brought in new software internationally, the work council within the German division objected to such software, but the power and resources imbalance meant the situation was like 'David against Goliath'.

A legal officer at the Federal Data Protection Commissioner said, however, that the employers they deal with are usually co-operative and willing to work with the agency to reach a solution. The point was made that employers themselves sometimes lack in-depth knowledge of the monitoring systems they use and are in need of support and assistance in choosing such systems and implementing them in a way that complies with regulations.

### **Power Imbalance on National Level**

A similar power imbalance was said to also exist at the national political level. A trade union representative spoke about how employers' organisations have so much more financial resources to commit towards lobbying efforts, that it's often a case of international corporations that make millions versus unions that rely on the voluntary monthly contributions of bus drivers and care workers. A former Federal Data Protection Commissioner also said that employers groups are the dominant players in the relevant political discussions at the national level, and that the unions have a relatively weak influence, even within the SPD (social-democratic party) to which they have held close ties historically.

### **What is Needed**

Multiple stakeholders interviewed argued that a specific national Employee Data Protection Regulation is needed. In their view such regulation would compensate for the shortfalls of the current legislation, and regulate more precisely the different issues related to employee data protection and



monitoring. It was also said that this would provide legal security for all social partners. A legal officer at the Federal Data Protection Commissioner called for this legislation as it would also bring clarity for employers who are unsure about the legality of certain methods. A trade union representative argued that it could also strengthen employees' interest.

Another topic discussed by stakeholders was potential changes to co-determination processes and the rights of work councils. Trade union representatives called for the strengthening of co-determination right of work councils for data protection issues generally, as well as the right of initiative for work councils, since they were said to currently be in a merely passive role, having influence on technologies proposed by employers but not being able to start an own initiative on which technologies should be used. The tech consultant also stressed the need for a co-determination right over data processing in general, but was sceptical about the right of initiative. While acknowledging its positive aspects, the consultant stated that "as a rule I am for a clear differentiation between the responsibilities of the work councils for the medium that are introduced and the responsibilities of the employer". For that expert, it was important that the employer remains responsible for taking data protection measures and for coming up with technical solutions that are legally compliant.

#### **4.4 Expert opinions about regulatory framework in Poland**

##### **Key Events**

Overall, stakeholders characterised the introduction of GDPR and changes made to the Labour Code, both of which occurred in 2018, as the most important events for the debate around and practice of monitoring. Up until these changes the regulation situation was unclear and it was left to employers themselves to make decisions regarding the type and extent of monitoring they would use. It was expressed that there is a significant difference between the 'before' and 'after' periods.

##### **Political Norms of Technological Monitoring and the Lack of Public Debate**

Of the different forms of monitoring, video surveillance was said to be the most concretely addressed in legal regulations. Other forms such as the reading of staff emails and GPS tracking still remain unclear and there is doubt among employers as to whether or not breaches of employees' privacy are being committed through them.

In interviews with the Polish stakeholders, the issue of workplace monitoring was characterised more as a technical issue than a substantive point of contention between employees and employers. An employers' organisation representative called it just one tool of the employer to be seen within the broad range of employer's powers to control and supervise the organisation of work. The stakeholders interviewed said that the changes in the Labour Code that came in 2018, did not provoke a broader public debate on the privacy and monitoring of workers. Significantly, trade unions did not spur or engage strongly in a public discourse about the acceptability, pros and cons of workplace monitoring. The more established discourse is that of employer's organisation who focus on the technical aspects of monitoring and focus on the themes of rationality, efficiency, rule-obeying and the protection of employees' dignity. The National Labour Inspectorate is also not active in the public debate and it was reported that they do not get many inquiries about monitoring practices.

Therefore, two of the key stakeholders for employees' rights are not active on the national level in creating and engaging in a discourse about the monitoring of workers. The different public institutions are engaged in the topic of monitoring to varying extents; while the National Labour Inspectorate is not an active actor, the Ministry of Digital Affairs is involved in spreading information about

monitoring and GDPR, and the Personal Data Protection Office offers professional advice about the topic.

In interviews, the trade union representatives did not refer to any particular details of the legal changes that came in. Employers' organisations pointed out the insufficiency of the legal regulations in terms of forms of monitoring — they point out that the regulations are too narrow and focus only on certain forms of monitoring (video monitoring being notably more covered than others). Biometric data collection as a form of working time measurement is still unregulated. It was discouraged as a form of monitoring after a verdict from the National Administrative Court. The employers' organisations and chief labour inspectorate pointed out that there is still no adequate legal regulation of working time measurement.

There was also a reported disagreement between employers' organisations and the Personal Data Protection Office in Poland. Legislative changes were implemented along with a set of sanctions for employers who do not abide by them. The Office published a guide on GDPR implementation within companies, but employers have reported finding it insufficient, which is problematic for them given incorrect implementation of regulations could result in high financial fines. The Office however does not acknowledge these doubts and maintains that their guidelines are sufficient.

### **Social norms and values**

The lack of public debate and the prevalence of employers' "technical" discourse shape the context for the social norms and values of monitoring. All experts interviewed bar one — the OPZZ representative — were generally positive about monitoring and didn't question its presence or how it functioned. It was perceived as a normal workplace technology, or a trade-off for the security of employment. As justifications, the experts pointed to reasons such as safety, productivity, and control over the process of production. In cases of 'excessive monitoring', it was said to be the result of 'too much technology' or 'human failure', and to be driven by employers' will to know and control more.

Trust and cooperation was another aspect that was touched on by the stakeholders, in particular the OPZZ representative. The representative argued that some of these new technologies of monitoring and control can be detrimental to social trust, but mostly stakeholders saw monitoring as a technological issue, rather than a social one. It was said that communication between employers and employees is crucial for the proper functioning of monitoring, but that this can be a challenge in some company environments. Employers usually want to increase control, employees sometimes want to use monitoring for their own protection against their employers, and trade unions usually negotiate the boundaries. One stakeholder also said that over time people adjust to such monitoring systems and they become normalised and seen as a standard part of conducting business.

The theme of (a lack of) trust was also brought up regarding the relationship between employers and public institutions, with employers facing the threat of fines for non-compliance with regulations, but feeling their needs for clear regulation are not being met. Employer' organisations communicated a low level of trust between them and some public institutions and didn't see their interests being represented in the recent legislative changes.

Trade unions were said to contribute to the broader discourse on workers' rights, but not on the norms of monitoring, nor are they seen as a source of support for disputes and debates at the firm level, where the social norms of employees are negotiated and developed.

## 5. Summary and key takeaways

### 5.1. Workplace surveillance in the eyes of employees

#### Surveillance as a socio-technical system

Our findings from interviews with employees in Poland and Germany show that workplace surveillance must be understood within the broader context of precarious working conditions in call centres characterised by low wages, short-term employment contracts, emotional strain, low autonomy and poor bargaining power of the employees. This particular management regime is enabled by the ever-evolving surveillance technologies, as well as the active role of management personnel, who support their normalisation in the workplace.

In particular the team leads, who are at the front-line of this management regime, play a crucial role in implementing a logic of productivity based on both quantitative and qualitative targets. A complex technological mix was usually implemented so that they could monitor the number, frequency and length of calls or breaks, but also to control the accuracy of information and ‘friendliness’ of the operators. Computer and phone software, video cameras and chip cards worked, because they were constructed as compatible with the norms and values of the team leads.

#### Link between surveillance and productivity

The predominant logic supporting the normalisation of surveillance technologies appeared to be their purported link to productivity. In extreme cases, operators had become so accustomed to the surveillance system that it had effectively become *transparent*, as some declared that they were used to it, they did not think about it or ever talked about it. However, the more common attitude was that monitoring technologies are *indispensable* in this sector. The team leads in both Germany and Poland asserted that if there was no monitoring, then no work would get done. This attitude was echoed by some operators, especially from the Polish case study, who consider surveillance *necessary* or *useful*, because it makes work *easier* and *fair*. Fairness in this context was understood as being rewarded according to the individual output produced, and monitoring was *fair* because it made it possible to reward hard-workers and penalise slackers.

The link between surveillance and productivity was also apparent in some of the criticism of the surveillance system. Operators considered monitoring *unfair* when the metrics did not accurately capture their effort, or if the “objective” metrics were misinterpreted or ignored by the team leads. These opinions suggest that attitudes towards surveillance might be strongly linked with the degree of adherence to the norms of productivity and fairness defined by the management. According to this logic, surveillance was sometimes considered *excessive* when it undermined workers productivity. Some members of management were wary of high levels of monitoring which would demotivate and stress the operators to the point that they would quit. Others considered both intense monitoring and high employee turnover simply as characteristics of the sector.

#### Surveillance conditions and attitudes as a spectrum

In our research, the intensity of monitoring was not always correlated with similar attitudes of the operators. In one centre in Poland with high levels of control, where work was monitored ‘to the second’, employees demonstrated either neutral or positive attitudes to surveillance – for example, they considered the recording of phone calls as a safeguard against unfair complaints by customers. In other cases, operators working highly monitored workplaces in Germany described them as a ‘prison’ or a ‘contact factory’ and blamed monitoring for creating unhealthy work environments. On one side

of the spectrum, operators who experienced very low levels of monitoring reported that when the volume of calls was low, greater emphasis was put on their call quality, and the working atmosphere was 'easy going' and 'relaxed'.

Some operators saw monitoring as having demotivating effects on them and challenged the existing evaluation system, which assessed the quality of their work based on the customers' feedback. They were especially critical of the situations in which they received negative feedback from clients due to managerial decisions outside of their influence. Furthermore, a pressure to finish calls quickly due to quantitative targets combined with an expectation to deliver high customer satisfaction triggered stress. In Germany the link between productivity and surveillance was problematized with some operators questioning if monitoring is at all necessary.

In some case, operators' attitudes depended on the exact technologies or context in which they were used. For example, some considered any video surveillance too invasive for their privacy, while others were only opposed to cameras installed in the toilets. Rarely did the operators quote their own wellbeing as a limit to surveillance – for example, when they did not want their calls listened to when they were having a 'bad day'. The stress experienced at work was seldom linked to being monitored and much more often to the emotional labour performed dealing with unpleasant and abusive customers.

### **Surveillance as a factor in power imbalance**

In general, in both Poland and Germany monitoring was low on the list of employee concerns compared to other aspects of working conditions such as low wages, short-term contracts, office environment, shift scheduling or workplace relations. Operators sometimes openly challenged the management rule, but the resistance often took more hidden forms such as complaining to colleagues, absenteeism or trying to 'game the system'.

Yet, the management regime of call centres, boosted with the latest surveillance technologies seems to be a 'game you can't win', as one operator aptly described it. The poor bargaining power of the operators leads many of them to quit, which in turns makes resistance of the others less likely (Hirschman, 1970). Also, lack of access to information deepens the power imbalance between the operators who produce the data and the management staff, who use it for control purposes. In the cases we studied, none of the operators were aware of their privacy and data protection rights at work and most did not consider trade unions or work councils appropriate structures to challenge the surveillance practices.

### **Dynamics of normalisation**

To sum up, at least three dynamics support the normalisation process of the surveillance technologies at work. First is the normative belief that employee monitoring has a positive effect on productivity shared by management and accepted by some employees. Second, serious challenges to the surveillance system are difficult for employees in an already weak bargaining position due to poor working conditions, high turnover and weak employee representation structures. Finally, surveillance itself only increases the existing power imbalance, because employees have limited access to the data collected about them and low awareness of their data rights.

These dynamics make workplace surveillance in call centres appear indispensable, transparent or even invisible. As the surveillance system becomes neutral, it actually obscures the underlying power

imbalance between the employers and employees. In this context, it becomes almost impossible to believe that if the employees were given better working conditions and larger workplace autonomy, the high levels of monitoring control would not be necessary.

## **5.2 Workplace surveillance in the eyes of other stakeholders**

### **Public debate**

The interviews with experts from public institutions, trade unions and employer associations revealed interesting differences and similarities in how the topic of workplace surveillance is constructed in public debates in Poland and Germany. According to German experts, the interest in the issue has been rising for already three decades. In contrast, Poland experts considered that the topic of monitoring was largely absent from public discourse until the recent legal changes. Overall, it appears that implementation of the GDPR, coupled with the changes of the Polish Labour Code, had a greater impact on raising awareness about workplace surveillance in Poland than it did in Germany, where interest has been growing steadily over a longer period of time.

### **Dominant frames**

The public discourse in both countries appears to be marked by three different sets of perspectives or ‘frames’ – social, technological and economic. The Polish experts viewed workplace surveillance as more of a technological issue than a social one, while the German experts were more concerned with social issues such as workers dignity, right to privacy, or protection from excessive surveillance. However, in both cases the experts also showed awareness of the economic case for surveillance and claimed that employers’ lobby groups had played a dominant role in regulatory debates resulting in legal changes that are deliberately imprecise, flexible or delayed.

In Germany, trade unions were highly involved and active in the legislative process and public debates, while in Poland they rarely spoke out on the topic. It appears that in Poland the nascent public discourse about workplace surveillance is largely driven by public institutions from the field of digital affairs and data protection, with an active participation of a digital rights NGO, rather than the actors typically concerned with labour rights.

### **Scope of surveillance**

In both countries, the dominant topic of the debate was the appropriate scope of workplace surveillance defined in terms of type of technologies, purpose or consequences for employees. Excessive surveillance was often linked to specific tools, for example some German experts expressed opposition to video surveillance, key logging software or wearable chips, while some Polish experts considered video surveillance, email monitoring, GPS trackers and biometric technologies to be excessive. In Germany, video and key logging technologies were considered means of ‘total surveillance’, because they capture the whole behaviour of employees.

The experts also considered the purpose of surveillance an important limiting factor. Some German experts saw monitoring as an appropriate means of controlling quality, but not for evaluating productivity or behaviour at work in general. Some Polish experts also pointed to negative consequences of excessive monitoring, for example when it interferes with the work process, employee dignity (cameras in toilets) or their right to private life during the time off work (GPS trackers, monitoring of private devices or social media accounts). They also expressed concern that monitoring might undermine trust between employers and employees. In both countries, experts also

pointed to positive effects of monitoring for employees when it is used as a means of protection and evidence in cases of complaints from abusive customers, conflict with an employer or an accident.

### **Regulatory changes**

In Germany, the experts were dissatisfied with the introduction of the GDPR and the most recent Federal Data Protection Act, because the new rules did not offer sufficient legal clarity and security in relation to employee data protection. According to some experts, as a result of the domination of economic interests of the employers during the drafting of the GDPR, the regulation was deliberately imprecise in some areas leaving room for interpretation by the courts. In particular, the ‘flexibility clause’ was criticised as it also left room for manoeuvre between member states and thus failed to harmonise the rules in that aspect across the EU market. In Germany, the influence of employers was also cited as a reason behind the impasse on the development of a national regulation specific to employee data protection. It is important to note here that we were not able to confront these opinions with the perspective of German employers despite attempts to interview experts from the private sector and employers’ associations.

In Poland, considering the total lack of legal clarity on the topic beforehand, recent regulatory changes were considered a big step forward to all stakeholders involved. At the same time, employers did complain that the implementation of the new rules from the GDPR and Labour Code was a challenge because some regulations were still imprecise and guidance from public institutions was insufficient. Polish experts claimed that implementation of GDPR was led by both fear of fines, and the increased awareness about the need to protect employee dignity. German experts also cited the employers’ fear of financial sanctions and increased awareness of employee rights as important factors in the GDPR implementation.

### **Regulatory gaps**

Despite recent regulatory changes, experts from both countries criticised existing legislation on workplace monitoring as too imprecise and pointed out persisting regulatory gaps. The Polish employers’ organisations considered existing legal regulations to be too narrowly focused on certain forms of monitoring, such as video surveillance. They also considered use of biometric data and measurement of working time as not adequately regulated.

In Germany, it was generally expected that courts would have to deal with the leeway left by the imprecise regulations. The growing complexity of the technological mix used for workplace monitoring was cited as a challenge for both employers and work councils. They regretted that there are no concrete regulations concerning specific technologies, for example, video monitoring, GPS tracking or email monitoring, or precise deadlines for how long data could be stored or a definition of total monitoring. It was also pointed out that the agreements on the company level can only be concluded if a formal representation structure exists, which means that employees in workplaces without a work council or a trade union are the most vulnerable group when it comes to surveillance technologies.

### **Perspectives on future developments**

According to experts, the trade unions in Poland did not play an active role in the debate about surveillance technologies on the national level, but suggested that such discussions take place on a company level. In general, the negotiation of wages overshadowed the topic of surveillance, although

the topic of the future of work in the context of automation and developments of artificial intelligence did appear on the trade unions' agenda.

In Germany, the experts were more outspoken about the barriers to co-determination of surveillance technologies and proposed concrete legal solutions. The key obstacle for work councils was access to detailed information necessary to understand and assess the use of monitoring technologies. Trade union experts advocated for changes in the Works Constitution Act that would strengthen their role in employee data protection, in particular the right to co-determination of monitoring technologies, as well as the right to propose their own initiatives, so that they can take a more active role in the technologies' design.

Finally, multiple German stakeholders argued in favour of addressing the existing gaps with national legislation called Employee Data Protection Regulation. In their opinion, such legislation would strengthen the interests of the employees and provide additional legal security for the employers. However, other experts expressed concern that a more precise regulation would limit the room for interpretation by the Labour Courts, which have so far played an important role in establishing adequate levels of employee protection.

### 5.3. Key takeaways

The following conclusions about our results are not representative of the entire call centre sector, but might prove helpful in formulating more precise research questions about workplace surveillance in the future:

- The digital methods used for qualitative and quantitative control of call centre operators were often a complex mix of hardware and software solutions. At the same time, **middle management played an active role** in enabling the proper functioning of monitoring technologies.
- Levels of employee monitoring in some call centres **could be deemed excessive** depending on the types of technologies deployed (video surveillance), the purpose of monitoring (performance and behaviour hardware control) and its consequences for the employees (violation of dignity or right to privacy).
- Attitudes towards workplace surveillance varied greatly depending on workplace conditions, as well as the norms and values of the employees. Call centre employees appeared more likely to accept monitoring technologies when they believed that monitoring led to **fairer evaluation of employees**.
- Call centre **employees had very little awareness** of their rights concerning privacy and data protection at work, and the introduction of the GDPR had no effect in this aspect. Employees were also not involved in deciding which technologies or metrics are used to monitor them. Low awareness might have prevented employees from identifying violations and seeking redress in courts.
- The introduction of the GDPR did offer **an opportunity to increase awareness** about workplace surveillance and was used as such by trade unions in Germany who offered trainings to work councils. However, in the absence of concentrated efforts from public

institutions, trade unions and non-governmental organisations there is still a huge knowledge gap between experts and employees.

- The introduction of the GDPR and other recent regulations was a challenge for the employers who considered **the new rules to be imprecise** and expressed a need for more legal certainty. In both countries, stakeholders are expecting the courts to provide clarity about the precise interpretations of the law. In Germany, the need for precision is also fuelling calls for a new national regulation focused specifically on employee data protection.



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