

Ius Laboris Webinar

Data privacy: criminal record checks and vetting

Thursday 2 December 2021

16:00 CEST



SPEAKERS



Alexander Milner-Smith, Partner
Lewis Silkin (UK)



Roxana Ionescu, Partner
NNDKP (Romania)



José Miguel Mestre Vázquez, Senior Associate
Sagardoy Abogados (Spain)



Renata Bueron, Senior Associate
Basham, Ringe y Correa (Mex)



Jessica Jacobi, Partner
Kliemt.HR (Germany)



Jasper Pot, Associate
Bronsgeest Deur Advocaten (Netherlands)



Tiffany Downs, Partner
FordHarrison LLP (US)

Setting the scene

Perennial question

- We want to do criminal records checks?
- We want to do background checks?
- What can we do?



Setting the scene



Intersection of Law

- Data and privacy
 - Human rights
 - Employment law
- AND** different cultures

Setting the scene

Summary European law

- GDPR/UK GPDR
- Proportionality
- Special Data?



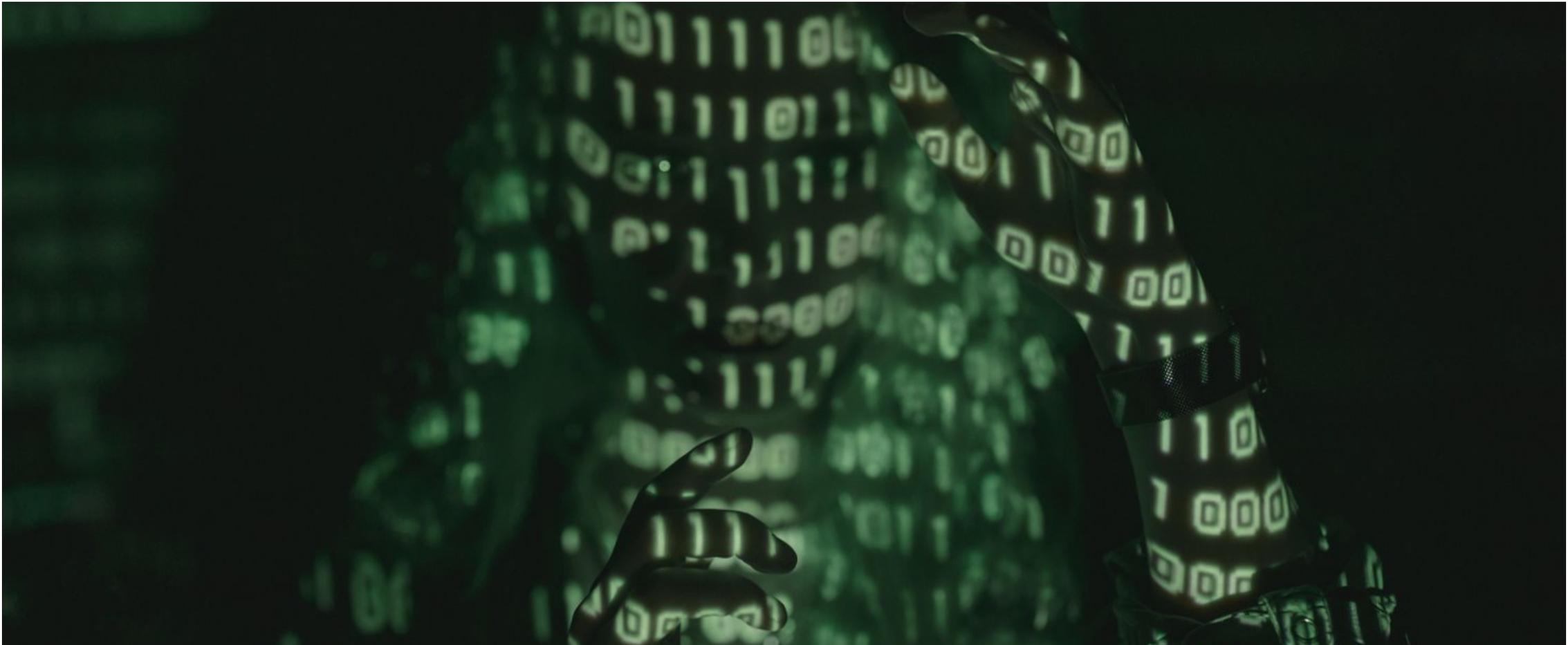
Scenario

A client headquartered in **Singapore** rings you up and wants some advice. They have been reviewing their recruitment processes and policies and have decided they want to make some changes.

They want to:

- carry out **criminal records checks** on all current employees, consultants, temporary staff etc regardless of the role or time with the company.
- they also want to update their recruitment process to carry out **vetting before** an offer of employment is made and they want this to encompass the **standard checks** on qualifications as well as an **online trawl**, particularly of social media.

The client doesn't want any embarrassing future revelations! They want to gather as much information as possible and don't want to limit it to professional sites or by date or how old the candidate was at any given time.



The View from Germany

Criminal records and vetting - Romanian perspective

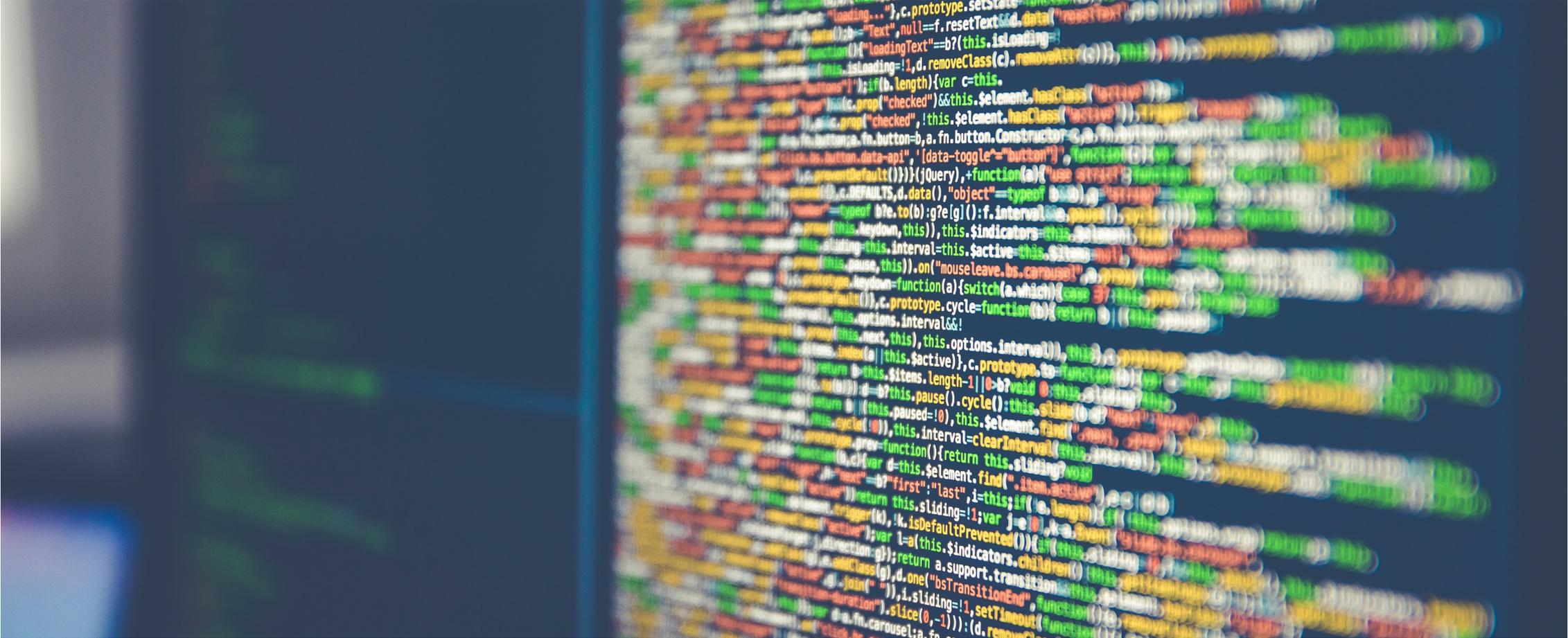
Vetting

- limited scope allowed
- information from past employers also limited
- social media – possible, but tricky
- education background – difficult in practice
- criminal records?

Criminal records

- Art. 10 of GDPR applies in part – when criminal record includes references to offences
- ... but Art. 10 of GDPR requirements are met
- if processing is based on legitimate interest, employers need to perform LIA

The View from the US



Criminal records and vetting - Mexican perspective



MEXICO

***Personal information** (including criminal records) must be processed in accordance with the Federal Law on Protection of Personal Data held by Private Parties (LFPDPPP) and its Regulations.*

Main obligations (Articles 8, 10, 16 LFPDPPP): consent (unless certain processing falls under one of the exceptions) and notify a **Privacy Notice**.

Criminal records: sensitive personal data, legal basis (written and express consent, unless processing is an explicit requirement specified in law) (Articles 3, VI, 9 of the LFPDPPP, and 6 of Convention 108 of the Council of Europe -Mexico is a Party-).

Ideally criminal records can be requested to the **corresponding authorities** by the interested individual

Information about criminal records is not available for **public consultation**

The **Mexican Supreme Court of Justice:** principles of equality and non-discrimination, contrary to freedom of work, commerce and industry (Inconstitutionality Action 85/2018)



The View from The Netherlands

The View from Spain



MORE ON DATA PRIVACY

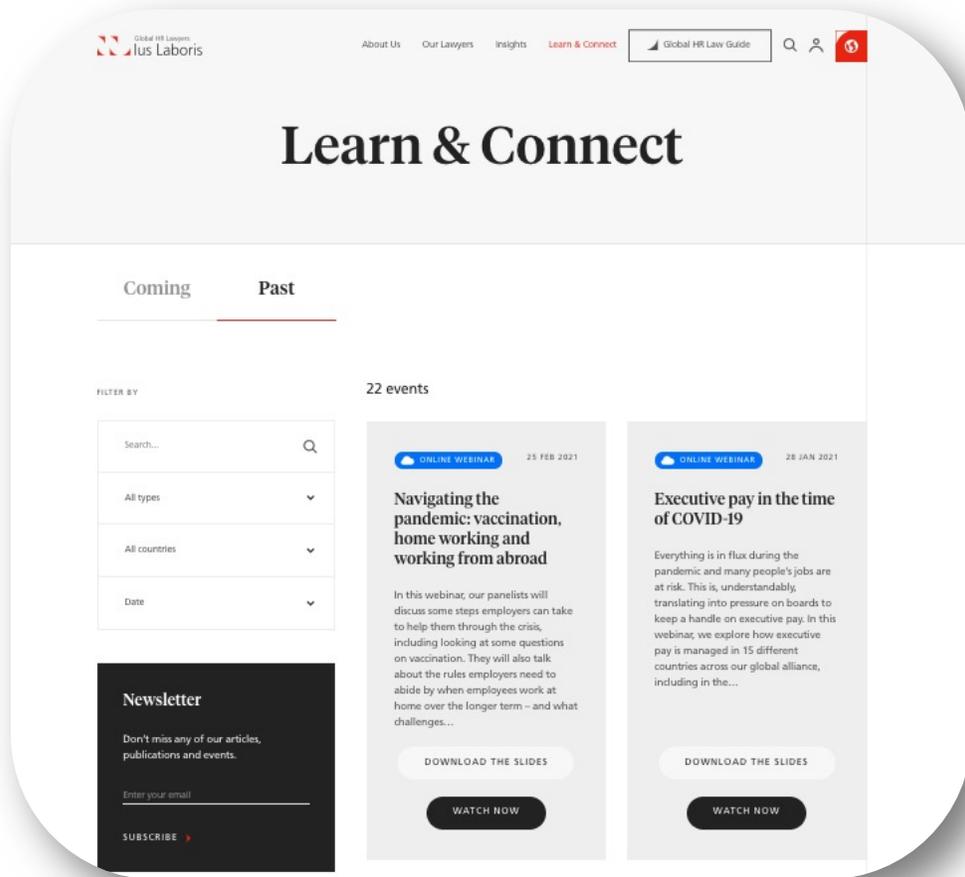
Insights: <https://iuslaboris.com/topic/data-privacy/>

The screenshot displays the Ius Laboris website interface. At the top left is the logo for 'Global HR Lawyers Ius Laboris'. The navigation menu includes 'About Us', 'Our Lawyers', 'Insights', and 'Learn & Connect'. A search bar contains the text 'Global HR Law Guide'. Below the navigation is a horizontal menu with categories: 'All', 'Data Privacy', 'Discrimination', 'Employment Rights', 'Immigration & Mobility', 'Health & Safety', 'Pay & Benefits', 'Pensions', and 'Restructuring & Labour Relations'. The main content area features a large heading 'Data Privacy' and a sub-heading: 'We look at data privacy from an employment perspective and consider how to navigate this increasingly complex area of law.' To the right, a grid of four article thumbnails is shown. Each thumbnail includes an image, a title, a location and date, and a duration icon.

Thumbnail Image	Title	Location	Date	Duration
	Video surveillance of employees in Germany: get ready for compliance checks!	GERMANY	11.03.21	5'
	Data and diversity - what kind of data can employers collect? A guide from Belgium	BELGIUM	16.02.21	4'
	The Brexit Agreement and data flows: a view from Finland	FINLAND	20.01.21	4'
	Brexit: what's the deal with data?	UNITED KINGDOM	11.01.21	4'

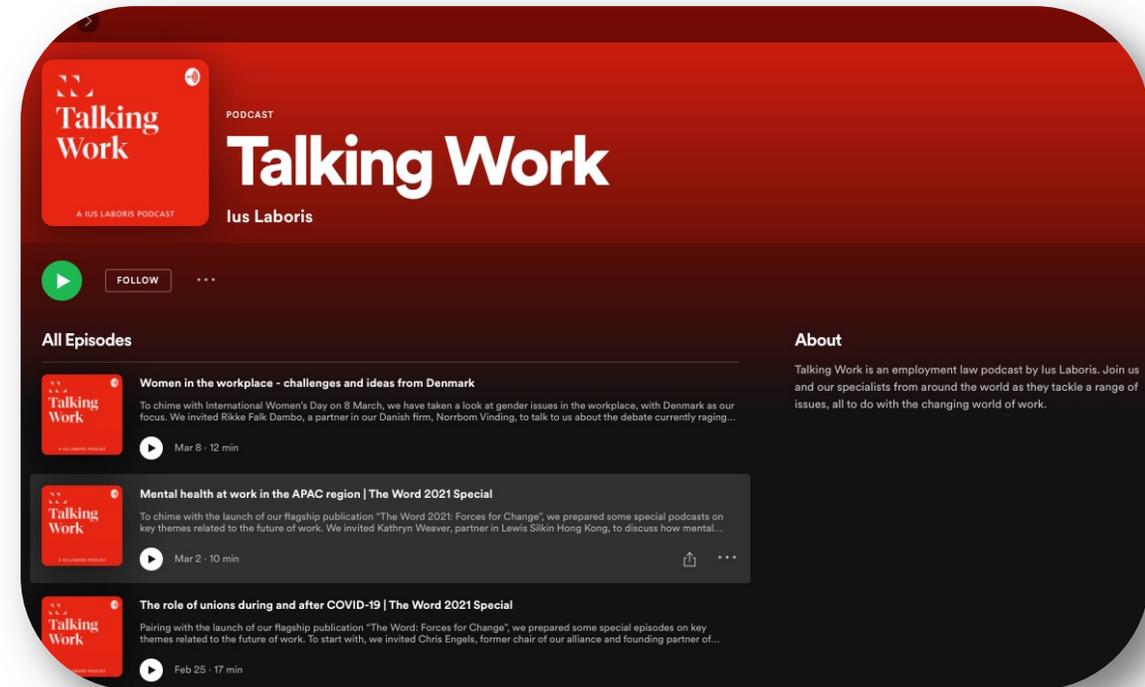
WEBINARS & PODCASTS

Webinars: <https://iuslaboris.com/learn-connect/>



Podcast series – Talking Work:

https://open.spotify.com/show/0NpiCVfvpZrjPiVJLeEXmv?si=Xe5nbn2hToWe9uR4pK_Jjg





North America: Canada - Mexico - United States

Central & South America: Argentina - Brazil - Chile - Colombia - Panama - Peru - Venezuela

Western Europe: Austria - Belgium - Cyprus - Denmark - Finland - France - Germany - Greece - Ireland - Italy
Luxembourg - Malta - Netherlands - Norway - Portugal - Spain - Sweden - Switzerland - United Kingdom

Eastern Europe: Belarus - Bulgaria - Croatia - Czech Republic - Estonia - Hungary - Latvia - Lithuania - Poland - Romania - Russia - Serbia - Slovakia - Slovenia -
Turkey - Ukraine

Middle East & Asia Pacific: Australia - Bahrain - China - Hong Kong - India - Israel - Japan - Kazakhstan - New Zealand - Papua New Guinea - Saudi Arabia -
Singapore - South Korea - Thailand - United Arab Emirates

www.iuslaboris.com