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Daniel Perez del Prado
Universidad Carlos III de Madrid, Spain
daniel.perez.delprado@uc3m.es
ORCID ID: https://orcid.org/0000–0001-7106–6769

The Challenges of Algorithm Management: The Spanish Perspective[1]

Abstract: This paper focuses on how Spain's labour and employment law is dealing with technological disruption and, particularly, with algorithm management, looking for a harmonious equilibrium between traditional structures and profound changes. It pays special attention to the different actors affected and the most recent normative changes.
Keywords: algorithm management, artificial intelligence, digitalization

Introduction: The challenge of AI regulation

Digitalization is changing the economy, our societies and our daily life, and it is having an especially significant impact on employment and working and social conditions. In fact, it is one of the major concerns and study targets in the framework of the initiative and activities promoted by the International Labour Organization regarding 'The Future of Work'. In this context, Spain shows important strengths, as it is dealing with the challenge of digitalization with very good data on some crucial points (European Commission, 2020), particularly according to the European Economy and Society Index (DESI). Hence the country ranks 11th out of 28 EU Member States, a position better than Germany, Austria or France, and above the European

1 This paper is part of the projects 'Cambio tecnológico y transformación de las fuentes laborales: Ley y convenio colectivo ante la disrupción digital' (RTI2018–094547-B-C21) and 'Gestión algorítmica e igualdad de oportunidades en la empresa (AlgoEquality)' (TED2021–130325A-I00).

average in most of the factors analysed. The country ranks second in the EU on digital public services thanks to its well-timed implementation of a 'digital-by-default' strategy throughout its central public administration. Additionally, it achieves fifth position in the area of connectivity because it is one of the top performers in the roll-out of very high-capacity networks as well as in the take-up of ultrafast broadband connections. Spain is one of the first countries to deploy a 5G network, which covered more than 80% of the population by the end of 2023 Finally, the country's score is in line with the EU average regarding digital integration. Whereas, generally speaking, Spanish businesses take advantage of the opportunities presented by digital technologies, SMEs have yet to fully unlock the potential of e-commerce.

One of the reasons which explains these good results is the determined position of different actors over time, which has meant not only the development of a strategy focused on digitalizing Spain before and faster than its neighbours, but creating valuable alliances with the private sector. The government is implementing its national artificial intelligence (AI) strategy and is currently working on a national strategy for digital skills to ensure that all citizens, with a special emphasis on workers, women and the elderly, reach the required level of digital skills needed to conduct their lives and work in today's society and labour market. Judges are dealing with digitalization by interpreting and adapting the current legal system to the emerging new reality. Finally, social partners are both negotiating with the government and considering new laws and collective agreements.

This paper focuses on how Spain's labour and employment law is dealing with the technological disruption and, particularly, with algorithm management, looking for a harmonious equilibrium between traditional structures and profound changes. It pays special attention to the different actors affected and the most recent normative changes. In order to achieve this aim, the article is organized as follows: after reviewing the first answers given by courts to the challenges derived from algorithm management, it analyses how the law is trying to give an appropriate legal framework. The paper finishes with some conclusions for future normative developments.

1. The 'prehistory' of AI regulation

As with other manifestations of digitalization, such as platform work, the first legal treatment of AI was delivered by the courts. The judgment from the Las Palmas court of 23 September 2019 received high media coverage (Cortés, 2020); it declared that the replacement of an employee by a bot should be considered unfair dismissal. The company justified the termination, among other reasons, on the basis of objective reasons of a technical nature. Since this software was capable of taking on the work of 2.45 persons, operating 24 hours per day, 7 days a week and 365 days per year, it became a business-opportunity tool.

In the court's opinion, this argument was not sufficient. The judgment controversially considered that dismissal for objective reasons (which means lower compensation) is a privileged and exceptional way to end an employment relationship, which is only justified when the company is experiencing prior difficulties or problems. Without the prior existence of an adverse situation, a dismissal for objective reasons cannot be justified as fair, since this would involve minimizing the right to work and employment law as a whole, making way for a prevailing right to freedom of enterprise – and competitiveness. As a consequence, the use of bots to increase competitiveness by reducing costs could produce a reduction in the workforce only if the maximum dismissal compensation is paid, which means it is considered as unfair dismissal. The judgment, which was not appealed, was rather controversial; even considering as acceptable its purpose of protecting employees against the impact of digitalization, some authors have wondered if this may be effective or, on the other hand, if this reasoning could 'stem the tide' (Mercader Uguina, 2019).[2]

However, this was not the first time that Spanish courts faced difficulties derived from a dismissal caused by a technological tool. In the judgment delivered by the Superior Court of Galicia on 19 July 2016, the court declared unfair dismissal because no connection was found between the technical cause – 'the implementation of the electronic clinical record' – and the decrease in activity that would determine a need to proceed with the dismissals, among other factors analysed. The reasoning is very similar to the one provided by the Superior Court of Castilla y León in its judgment of 23 March 2005, according to which it was not proven that the installation of a new computer system would produce an effect of sufficient importance to justify the dismissal. In spite of the fact that few judgments have been delivered in the lower levels of the judicial system, those that have emerged show the aim of trying to disincentivize dismissals produced by technological systems by imposing the maximum legal cost. As was mentioned before, some authors consider that this strategy cannot produce a sufficient effect to avoid this risk.

At the level of the Supreme Court, two cases must be highlighted. One is the so called 'Skill Competence Matrix' case (Judgment of 25 September 2018), in which the Supreme Court had the opportunity to analyse the suitability of an application that weighed three variables when selecting people to stay in the company (or being fired) in a case of collective dismissal: a polyvalence index (40%), the number of operations with aptitude (40%) and the number of certifications (20%). Despite the fact that 17 of the 25 workers affected by the dismissal were affiliated with the union CCOO, the court understood that there was no discrimination since the company not only gave credit to the existence of economic and productive causes (which would be sufficient by themselves), but also to objective, reasonable and non-arbitrary selection criteria, all of them guaranteed by the use of the algorithm.

2 'Poner puertas al campo' in Spanish.

On the other hand, in the *Ericsson* case (Judgment of the Supreme Court 2021), the Supreme Court declared the existence of a violation of the right to strike because, through an electronic tool located in Romania, the company assigned tasks to other workers as a way to cushion the effect of those who were on strike. According to the court's opinion: automation makes it more difficult to explain why tasks could be assigned to people other than those who, logically, were in the 'automated' assignment system. In addition, it is proved that, from the beginning of the strike, the work was dispatched to another unusual collaborative company, with the result that, in the three cases expressly indicated in the text of the appealed judgment, there was an assignment of tasks clearly different from the one that would have resulted if part of the workforce had not been on strike.

Therefore the main lesson that can be obtained from the Supreme Court is that, so far, AI tools are generally considered an objective managerial instrument, both in favour of or against companies' interests.

2. The beginning of history

The regulation of AI has been described as multilevel governance based on three main pillars: AI, platform work and data protection regulations (Baz Rodríguez, 2022). It is multilevel as the EU, national governments and even collective bargaining are involved. It is based on these three pillars because even though a comprehensive regulation of AI is now being discussed (the EU's AI Act is the prototypical example), previous experiences in the regulation of both platform work and personal data are not the only steps on the path of AI regulation, but are useful tools even when new standards emerge. The case of data (including personal data) is probably the clearest and most important example, as 'without data, the development of AI and other digital applications is not possible' (European Commission, 2020, p. 4).

2.1. AI regulation derived from platform work

Concerning platform work, the so-called Spanish 'Riders Law' (Ley 12/2021) focuses on two main issues.[3] On the one hand, it sets a rebuttable presumption of the existence of an employment relationship for delivery riders. It presumes, unless proven otherwise, the existence of an employment relationship between those who provide the services of delivering and distributing products in exchange for remuneration and employers who exercise the business powers of organization, direction and control indirectly or implicitly through a digital platform or through the algorithmic management of the service or the working conditions. This means the explicit translation of the general presumptions of Spanish employment law to this activity.

3 Analysed from a comparative perspective by Aloisi (2022, pp. 4–29).

On the other hand, it regulates the use of algorithms for all kinds of employees; this is another type of protection which emerges in the debate about platform work but which extends its influence to all employees. The Riders Law introduces a new article, article 64(4)(d) of the Workers' Statute (the Spanish Employment Law, WS), which states that employees' representatives have the right, among others, 'to be informed, by the company, of the parameters, rules and instructions on which the algorithms of artificial intelligence systems are based, [and] that affect decision-making that may involve working conditions, access and maintenance of employment, including profiling'.

Even though it is not explicitly mentioned, this is not only a right for workers' representatives, but an open call to social partners to regulate algorithms by collective bargaining, highlighting its importance in the governance of the AI phenomenon (Miranda Boto & Brameshuber, 2022). It is actually already possible to find an example that has taken up the challenge: the collective agreement for Takeaway Express Spain, SL (Just Eat) (SIMA-FSP, 2021) combines the classical content of this type of agreement, the adaptation of traditional rules to the particular circumstances of platform work (such as salary, working time, prevention of occupational risks, etc.) and new clauses concerning digitalization. Focusing on the latter, two areas must be highlighted: firstly, individual digital rights, which are a set of rights related to digitalization recognized for each individual worker, including the right to disconnect, the right to privacy when using company and personal devices, the right to privacy when using video surveillance and sound recording devices, the right to privacy when using geolocation, the right to human intervention and the right to be informed about working digital tools (and, particularly whether one is talking with a chatbot or a human).[4] Secondly, regarding collective digital rights, based on the above-mentioned article 64(4)(d) WS, the company guarantees the right of workers' representatives to be informed on the use of algorithms and AI systems when they are used to take decisions for human resources and industrial relations issues if they affect working conditions, job access and employment stability, including profiling. Specifically, the company is obliged to provide information on both the parameters and data and the rules and instructions that feed the algorithms and/or AI systems. In particular, and in relation to the activity of the delivery staff, the company shall facilitate relevant information used by the algorithm and/or AI systems concerning the organization of staff activity, such as the type of contract, number of working hours, time preferences and previous deliveries. The company shall not provide information regarding the algorithm and/or AI system that is protected by current regulations. The right of workers' representatives to be informed shall be conducted

4 All conversations will be recorded and accessible for a period of three months and will later be deleted. Those conversations conducted by a chatbot may not be used to sanction a person (article 68(f) *in fine*).

by the 'Algorithm Commission' ('Comisión Algoritmo'), which is formed of two members of each party.

Nevertheless, Spanish collective bargaining is not characterized by innovation, so the government is determined to encourage and help collective bargaining to develop these tasks. Recently, the Ministry of Labour has published a guideline on 'algorithmic information in the workplace' (Ministerio de Trabajo y Economía Social, 2022). Its content can be summarized as follows: firstly, it provides definitions for algorithms, automated decision-making systems and 'black boxes', and explains how these tools are being used in the workplace. This information is provided from a general and simplified perspective in order to make it more comprehensible for citizens. Secondly, it shows algorithmic information as being both an employees' right and a company's duty. This right/duty is divided into two types: on the one hand, the individual approach, which is based on article 22 GDPR,[5] includes the obligation to provide information in favour of workers who are subject to a decision based solely on automated processing, including profiling, without human intervention. It clarifies that the company shall provide information on 'the existence of automated decision-making, including profiling, referred to in article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject. (article 14(2)(g) GDPR)'. Besides the right/duty to be informed, article 22 GDPR sets the obligation of human intervention as a general rule. Concerning this issue, the guideline clarifies that 'human intervention must be significant, in the sense of being performed by a person with competence and authority over the decision and who values all available information. When human intervention is limited to replicating the decision made by the algorithm, it cannot be understood as a significant human intervention; this process should be treated as a fully automated decision process.'

On the other hand, the collective approach, which is based on article 64 WS, includes the obligation to provide information about the algorithms of artificial intelligence systems that affect decision-making and that may affect working conditions, access and maintenance of employment, including profiling. This obligation concerns all companies but can be different depending on the circumstances. Where the company has a workers' representative, both the individual and the collective approach is included; otherwise, it refers only to the individual duty.

Thirdly, the guideline includes the kind of information that must be provided, distinguishing the two approaches mentioned above. The individual approach takes into consideration the content of articles 13(2)(f), 14(2)(g) and 15(1)(h) GDPR, so information must refer to 'the existence of automated decision-making, including profiling, referred to in Article 22(1) and (4) and, at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged

5 Articles 13(2)(f), 14(2)(g) and 15(1)(h) are also mentioned.

consequences of such processing for the data subject'. The collective approach refers, again, to article 64 WS, so the information provided must include 'the parameters, rules and instructions on which the algorithms of artificial intelligence systems are based, [and] that affect decision-making that may affect working conditions, [and] access and maintenance of employment, including profiling'.

The guideline clarifies that, in any case, the information obligation derived from articles 13(2)(f), 14(2)(g) and 15(1)(h) GDPR and 64(4)(d) WS cannot be interpreted as a business obligation to facilitate the algorithm source code. Additionally, it also mentions that, whereas information delivered to the individual worker must be related to automated decision-making without human intervention, information provided to workers' representatives does not have any restrictions.

Despite these different approaches, the guideline states that information can be joined. As a consequence, companies are obliged to provide information in seven areas. Firstly, they must provide information on the use of algorithms or artificial intelligence systems to make automated decisions, including profiling, identifying the technology and the management decisions concerning persons with respect to whom such technology is used. This includes the use of algorithms or AI systems to make automated decisions concerning workers or job candidates; the use of algorithms or AI systems for profiling; human-resource management decisions taken by using algorithms or AI systems; the type of technology used by the algorithm, including black-box and machine-learning algorithms; the specific software or product used and, if applicable, if it has any type of certification, the supplier company and if the company has made any changes to the product; and the degree of human intervention in decisions taken by algorithms and automated decision systems, including profiling, and particularly the competence, qualification and status of the human who can deviate from the decision adopted by the algorithm.

Secondly, meaningful, clear and simple information about the logic and operation of the algorithm, including its variables and parameters, must be provided. Taking into consideration the interpretation delivered by the Spanish Data Protection Agency, this would include

a) In the case of profiling, the type of profiles produced by the algorithm (articles 13(2)(f) and 14(2)(g) GDPR).

b) The variables used by the algorithm in the information or factors it uses to make decisions or profiling, including whether any of these variables are personal data.

c) The parameters used by the algorithm for automated decision-making, including the relative weighting of each variable in the model for decision-making, as well as any change to these parameters that modifies the behaviour of the algorithm.

d) The rules and instructions used by the algorithm, that is, the programming rules (either those expressly programmed or derived by automatic learning of the algorithm itself) leading to decision-making.

e) Training data and, where appropriate, validation data and its characteristics; reference to information about the logic of the algorithm (articles 13(2)(f), 14(2)(g) and 15(1)(h) GDPR) and 'instructions' (article 64(4)(d) Workers' Statute must be interpreted in the sense that it also includes the training data and, where appropriate, validation data, since these also influence its logic or algorithm instructions. Therefore, the company must report on the training data and, where appropriate, validation data; the data's quality, in the sense of being adequate, pertinent and not excessive, according to the purpose for which it was obtained; and the type of patterns identified in the training data.

f) In the case of profiling, the accuracy or error metrics in automated tasks (classification, scoring, regression, ordering, etc.) of the people in the different profiles.

g) The audits or impact assessment carried out by the company or a third party regarding the algorithm or the automated decision system used.

Thirdly, information on the consequences that may arise from the decision adopted through the use of algorithms or automated decision systems must be provided. This includes the consequences that the decision adopted by the algorithms or automated decision systems can have on the person; that is, what the consequences of the decision in terms of access to employment, maintenance of employment or determination of working conditions could be. The legal representation of the workforce must also be provided with information regarding the impact that decisions taken by algorithms or automated decision systems have in terms of equality and non-discrimination between women and men.[6]

Fourthly, the guideline sets out that, according to the current regulation, there is no obligation to negotiate the algorithm. Nevertheless, it also highlights that there is also no restriction or limit; on the contrary, it considers the introduction of a clause that determines the obligation to negotiate, or a responsible-use test (as is suggested in the Joint Declaration on Artificial Intelligence by the European Social Partners in the Insurance Sector) to be an improvement, as is the right to ask for information from the person in charge of supervising the algorithm. Setting this as a general rule, the guideline considers one exception only: negotiation procedures legally guaran-

6 This is the interpretation derived from article 64(3) WS, which recognizes the right of workers' representatives to gain access to information regarding the application of the right to equality and non-discrimination between women and men, as well as from article 7 Royal Decree 901/2020, referring to the assessment in the context of elaboration of an equality plan.

teed, such as those related to collective redundancies, temporary layoffs, geographical mobility and substantial modification of working conditions. The reason is that if the algorithm (totally or partially) determines the result of these procedures, it will need to be included in the negotiations because, otherwise, they would be (totally or partially) emptied of content.[7]

Fifthly, the guideline suggests that there is an obligation to consult on the introduction of an algorithm for the purposes of human resources management. This obligation is based on article 64(5) WS, which sets out the right of representatives to be informed and consulted 'on all the decisions of the company that could cause relevant changes in terms of the organization of work and employment contracts'. Additionally, section (f) of this article establishes that representatives shall have the right to issue a report, prior to execution by the company, on the 'implementation and review of work organization and control systems, working time, establishment of bonuses and incentives and job evaluation'.[8]

Sixthly, the guideline considers that article 35(3) GDPR sets the obligation ofimpact assessment concerning the design and implementation of an algorithm in two circumstances: on the one hand, automated decision-making, and on the other, the use of new technologies or an innovative use of new technologies, including the use of technologies on a new scale, for a new purpose or in combination with others, in a way that involves new ways of collecting and using data with a risk to persons' rights and freedoms. An impact assessment is compulsory if processing is likely to result in a high risk to the rights and freedoms of natural persons. This obligation is not extended to algorithmic auditing, except for occupational risk prevention and gender auditing.

Finally, the guideline includes an algorithmic information tool, which is a set of questions to be answered when fulfilling business obligations on information.

2.2. AI regulation derived from data protection legislation

Finally, as was mentioned before and as can be clearly deducted from the previous analysis, data protection is a key area when regulating AI. In this sense, the so-called 'Mercadona Case' (Judgment of the Provincial Court of Barcelona 2021) is, without a doubt, an essential reference. The case refers to a supermarket's desire to establish a facial recognition system as a result of a criminal judgment that had

7 Nevertheless, in the *Ericsson* case, the Spanish Supreme Court set out that the only requirement is providing information about the existence of the algorithm and its use, not the negotiation of the algorithm itself.

8 This is based on article 4(2) Directive 2002/14/EC. Adams-Prassl (2022, p. 44) suggests the same strategy at European level: 'the introduction of algorithmic management should, in principle, be caught within the scope of Directive 2022/14, as such a move can be characterized as a "decision likely to lead to substantial changes in work organisation", thus requiring both information and consultation on this point'.

convicted two people as perpetrators of an attempted crime of robbery with violence and, as an accessory penalty, had prohibited them from accessing a shopping centre. The shopkeeper argued that such a system was necessary, given that it was practically impossible for the company to ensure compliance with the accessory penalty, as the workers could not be aware of all the people entering the supermarket. For these reasons, the company urged that it be allowed to use a facial recognition system to detect the entry of the two convicted persons into the supermarket's establishment.

The aforementioned judgment expressed serious doubts about the legality of the requested measures from the point of view of data protection regulations, given that these processing operations require special categories of data, as is the case for biometric data, for which consent must be explicitly obtained, which did not seem feasible. The judgment additionally stated that the Spanish Data Protection Agency (SDPA) had ruled, in response to a consultation by a private security company, that the regulatory framework dedicated to regulating this type of processing is insufficient and that the approval of a regulation with the status of law is necessary. Finally, it concluded that the Court cannot agree that the measure in question is protecting the public interest, but rather the private or particular interests of the company, since […] it would be violating the appropriate guarantees for the protection of the rights and freedoms of the interested parties, not only of those who have been convicted and whose prohibition of access is their responsibility, but of the rest of the people who access the aforementioned supermarket.

The judgment therefore dismissed the appeal lodged by the legal representation of the supermarket.

If we focus on the resolution issued by the SDPA (PS/00120/2021), which was the basis of the judgment, additional relevant information can be obtained. This SDPA procedure was initiated by its director in light of the news published in the media about the implementation of facial recognition by the supermarket. From their preliminary investigation, it was concluded that the supermarket company processed personal biometric data (article 4(14) GDPR) for the purpose of identifying a specific person solely from among several others, subject to the guarantees of article 9 GDPR. The processing not only occurred in relation to the identification of criminal convicts, as a consequence of the restraining order imposed on them in a criminal judgment, but also concerned any person entering one of the company's supermarkets (including minors) and its employees. The data processing included the collection, matching, storage and destruction, in the case of negative identification (after 0.3 seconds from data collection), of the biometric image captured of any person entering the supermarket.

From the SDPA's perspective, it could be concluded that this would be an indiscriminate and massive facial recognition system, since depending on the biometric data, other data of the subject could be derived, such as their race or gender (even from fingerprints), their emotional state, illnesses, genetic defects and characteris-

tics, substance consumption, etc. The following conclusions in particular could be obtained from the SDPA's resolution (Mercader Uguina, 2022, p. 98): (i) facial recognition systems are not mere video-surveillance systems, therefore require legitimate bases for processing that go beyond those established in article 6 GDPR, and therefore must be processed within the framework of the exceptional regime provided by article 9 GDPR; (ii) the characteristics of these systems and the kind of data impose a strict and reinforced compliance with the obligation to provide information as set by article 13 GDPR; and (iii) it is essential to consider the risks to workers' rights in the preparation of the impact assessment, as in article 35 GDPR.

The same interpretation was delivered in the recent resolution of 2 February 2022 (CNS 2/2022) of the Catalan Data Protection Authority (DPACAT). In its report, the DPACAT responded to a consultation raised by a local council on the possibility of installing a system in the workplace to control staff members' presence by means of facial recognition. This consultation concluded that: the consent of the staff concerned cannot be considered an adequate base for the implementation of a time and attendance control system using facial recognition. Such a monitoring system would need a specific legal or collective agreement provision, or where appropriate, a provision in a collective contract,[9] circumstances which do not appear to be present in the case analysed. In any event, prior to the implementation of such a system, it is necessary to carry out a data protection impact assessment in the light of the specific circumstances in which the processing is carried out to determine its lawfulness and proportionality, including an analysis of the existence of less intrusive alternatives, and to establish appropriate safeguards.

The metrics of people, biometrics, is one of the areas in which the present and future development of algorithmic systems as instruments of labour control can be most clearly seen. Facial recognition is a good example of the issues that this reality is beginning to produce in the world of work (Mercader Uguina, 2022, p. 99).

Conclusions: Some lessons from prehistory and the beginning of history

From this very short description, some lessons can be learnt. Firstly, the introduction of a new workers' right to be informed about AI devices used in their company that affects working conditions opens the possibility of its regulation by collective bargaining. Nevertheless, the poor results traditionally obtained by collective bargaining mean that additional tools are required to help social partners in the negotiations, such as the above-mentioned guidelines, and/or to extend regulation to other areas. Spain's experience shows that, despite classical rules being used, legal certainty requires the adaptation of consultation procedures, particularly in the case

9 Whereas the Supreme Court and SDPA mentioned the law as the only way to regulate facial recognition, DPACAT considers the possibility of including collective bargaining as well.

of collective redundancies, geographical and functional mobility, substantial modifications of working conditions and transfers of undertakings. Alternatively, the right of workers' representatives to be consulted when an AI device with effects on working conditions is introduced can be a useful way of covering this normative loophole. Additionally, this would strengthen the call for collective bargaining to regulate these issues. In any event, 'negotiating the algorithm' (De Stefano, 2019) the introduction of new technologies at the workplace and the future of work. This debate has concentrated, so far, on how many jobs will be lost as a consequence of technological innovation. This paper examines instead issues related to the quality of jobs in future labour markets. It addresses the detrimental effects on workers of awarding legal capacity and rights and obligation to robots. It examines the implications of practices such as People Analytics and the use of big data and artificial intelligence to manage the workforce. It stresses on an oft-neglected feature of the contract of employment, namely the fact that it vests the employer with authority and managerial prerogatives over workers. It points out that a vital function of labour law is to limit these authority and prerogatives to protect the human dignity of workers. In light of this, it argues that even if a Universal Basic Income were introduced, the existence of managerial prerogatives would still warrant the existence of labour regulation since this regulation is about much more than protecting workers' income. It then highlights the benefits of human-rights based approaches to labour regulation to protect workers' privacy against invasive electronic monitoring. It concludes by highlighting the crucial role of collective regulation and social partners in governing automation and the impact of technology at the workplace. It stresses that collective dismissal regulation and the involvement of workers' representatives in managing and preventing job losses is crucial and that collective actors should actively participate in the governance of technology-enhanced management systems, to ensure a vital "human-in-command" approach."","DOI":"10.2139/ssrn.3178233","event-place":"Rochester, NY","genre":"SSRN Scholarly Paper","language":"en","number":"3178233","publisher-place":"Rochester, NY","source":"Social Science Research Network","title":"'Negotiating the Algorithm': Automation, Artificial Intelligence and Labour Protection","title-short":"'Negotiating the Algorithm'","author":[{"literal":"De Stefano, V."}],"issued":{"date-parts":[["2018",5,16]]}}}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"} is a key aspect, but it requires legal and technical support, keeping in mind it is not a panacea.

From an individual perspective, it is necessary to extend the right to be informed to all kinds of AI interventions, not only those which are automated. This would provide this right the same scope as is recognized on the collective side. The individual right to be informed must be based not only on the data protection right, but on the principles of transparency, explicability and responsibility that should govern AI regulation in all areas (European Parliament, 2022). These principles permit an ex-

tension beyond the limits of data protection. Concerning limits from this particular perspective, who must be covered and how (workers, self-employed people or intermediate subjects) is still open to discussion (Prassl, 2018, pp. 129–131).

Finally, concerning data protection, recent cases show that additional regulation is needed for these kinds of high-risk intervention using AI. It is necessary to open the debate about whether collective bargaining is a good tool to solve high-risk cases or, otherwise, if they must be limited to the action of law. In all circumstances, in order to make collective bargaining a useful and effective tool to regulate algorithm management, it is necessary to provide technical support. It is true that parties must procure their own assistance, but public administration is in a good position to facilitate it by providing new electronic tools, publishing guidebooks or financing part of that technical help.

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