

## France

# Algorithmic management

<b>Phase</b>	Legal code of relations between the administration and the public Labour Code Transport Code
<b>Native name</b>	Code des relations entre le public et l'administration Code du travail Code du transport
<b>Type</b>	Algorithmic management
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## Article

Legal code of relations between the administration and the public, article L311-3-1 Labour Code, article L. 7342-1 Transport Code, article L. 1326-4

## Description

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Article L311-3-1 of the legal code of relations between the administration and the public states that any decision made using an algorithm must mention the fact that an algorithm was used. In addition, the rules defining the algorithm and what it does must be released upon request.

In June 2018, the French Supreme Court for administrative matters (Conseil d'Etat) stated that a decision based solely on an algorithmic system could only be legal if the algorithm and its inner workings could be explained entirely to the person affected by the decision. If this is not possible (because of national security concerns, for instance), then algorithmic decision-making cannot be used.

In addition, the algorithms used by the platforms may not penalise workers who disconnect or refuse rides by offering them less remunerative services: platforms with social responsibility (article L. 7342-1 of the Labour Code) may not restrict the freedom of workers to accept or refuse a proposed service (article L. 1326-4 of the Transport Code).

The Government has created the Employment Platforms Social Relations Authority (Autorité des relations sociales des plateformes d'emploi - ARPE) in 2021, an authority tasked with establishing the conditions and supporting social dialogue to rebalance employment relations between platforms and self-employed workers. As part of this, it has given workers' representatives the power to request an expert opinion, in accordance with Article L. 7343-56 of the Labour Code, on the elements required for negotiation, relating to economic, financial, social, environmental or technological issues, and financed by the ARPE. The professional platform organisation(s) concerned, if they are not the originators of the request for expertise, provide the expert with the information necessary to carry out his mission, and business secrecy is not, in this case, enforceable against the expert.

#### Role of the Social and economic committee (CSE)

The CSE is the staff representative body best placed to deal with issues of automated decision-making. The French Labour Code grants it information and consultation prerogatives, which are strengthened when the company exceeds 50 or even 300 employees.

- Under article L.2312-8 et seq., the CSE may carry out analyses of occupational risks, working conditions and automated personnel management processes.
- Article L.2312-17: the CSE must be consulted on the company's strategic orientations, economic situation and social policy. Algorithmic or automated decision-making is likely to be involved in each of these three areas. Consultations on the company's strategic orientations cover "activity, employment, changes in professions and skills, and work organisation". Algorithms are already having an impact on employment, by eliminating and replacing tasks with "machines", transforming many professions and creating new jobs requiring new skills.
- According to article L.2312-25, this consultation must cover the company's "research and technological development policy". Consultation on the company's economic and financial situation therefore also concerns artificial intelligence and algorithms. Finally, consultation of the CSE on "the company's social policy, working conditions and employment" also covers employment trends, qualifications and training initiatives. On this occasion, employee representatives can discuss the effects of technologies such as algorithms on work and working conditions in particular. The CSE must therefore be able to measure and verify the negative impact of an automated decision on the organisation of working time, or even on working hours, and assess the preventive health and safety measures put in place by the employer to deal with it. It should also highlight the positive effects of artificial intelligence on the quality of life at work.
- Under Article L.2312-8, the CSE must be "informed and consulted on matters concerning the organisation, management and general running of the company". In practical terms, it must be consulted whenever a major project has concrete or

foreseeable effects on the size and structure of the workforce or on employment and working conditions. As part of this consultation on the general operation of the company, the article stipulates that the EWC is to be informed and consulted on the introduction of new technologies and any major change affecting health and safety conditions or working conditions. The term "new technologies" should be broadly understood as referring to any system of automation, computerisation and robotisation, which unquestionably includes algorithms and artificial intelligence.

These subjects should therefore be at the heart of consultations on strategic orientations, as they enable us to anticipate developments likely to have an impact on the company.

## **Commentary**

In a report submitted in 2021, the Senate's fact-finding mission (see Sources) became convinced that algorithmic management was helping to determine workers' working conditions and pay, far beyond simply matching supply and demand. It points out that "pricing algorithms, incentive mechanisms and rating systems have a direct impact on the behaviour of platform workers, altering the way they organise their work and their working hours and leaving them with no visibility over their income or their career plans". This is why the mission recommends, on the one hand, initiating a review to adapt labour law to the specific features of algorithmic management and its consequences on working conditions. It also recommends that employment platforms be required to delete, at regular intervals, the history of ratings awarded by customers to the workers who use them.

The use of algorithms, which are at the heart of the platforms' business model, is protected by business secrecy. In order to facilitate the implementation of a social dialogue on the content of these algorithms, the mission proposes, in particular, to guarantee the right of platform workers' representatives to be provided with a comprehensible and up-to-date document detailing the operating logic of the algorithms, or to extend the remit of the Arpe (Autorité des relations sociales des plateformes d'emploi) so that it can support these representatives in discussions and negotiations relating to the operation of the algorithms and their consequences for workers. The report suggests that these representatives could be subject to the obligations of confidentiality and professional discretion incumbent on company staff representatives.

## **Additional metadata**

**Cost covered by**                      None

**Involved actors other than national government** Works council

**Involvement (others)** None

**Thresholds** Affected employees: No, applicable in all circumstances  
Company size: No, applicable in all circumstances  
Additional information: No, applicable in all circumstances

## Sources

- [Sénat, Rapport d'information n° 867 \(2020-2021\), Plateformisation du travail : agir contre la dépendance économique et sociale, 29 septembre 2021, ~~~~ Legal code of relations between the administration and the public ~~~~ CNIL ~~~~](#)

## Citation

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