Bulgaria

# Algorithmic management

| | |
|---|---|
| **Phase** | Law on amendments and supplements to the Labour Code |
| **Native name** | Закон за изменение и допълнение на Кодекса на труда |
| **Type** | Algorithmic management |
| **Added to database** | 19 April 2024 |
| **Access online** | Click here to access online |

## Article

Decree 81

## Description

Law on amendments and supplements to the Labour Code regulates the use of automated systems for the reporting of working time for remote workers. The regulation defines:

- "Information system for algorithmic management" as a system for making automated decisions in the assignment, reporting and control of the work of employees.
- "Automated system for reporting working time" as a system for automatic recording and storage of information for the purpose of reporting the time worked of employees.

Where an information system for algorithmic management of telework is used, the employer shall provide the employee with written information on how decisions are taken. At the written request of the worker or employee, the employer or an official designated by him shall be obliged to check the decision of the algorithmic control system and to notify the employee of the final decision.

## Commentary

No evaluation is yet available.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | Not available |
| **Involved actors other than national government** | None |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2024), Bulgaria: Algorithmic management, Restructuring legislation database, Dublin

Croatia

# Algorithmic management

| | |
|---|---|
| **Phase** | Labour law |
| **Native name** | Labour Act |
| **Type** | Algorithmic management |
| **Added to database** | 04 November 2023 |
| **Access online** | Click here to access online |

## Article

Labour Act OG 151/22 and 64/23 Article 221a-221p

## Description

The Labour Act in Article 221a-221p regulates work performed using digital labour platforms, defines the terms and prescribes special rights and obligations arising between the employer and the worker, prescribes a minimum level of rights and working conditions when such work is performed by other natural persons and the rights and responsibilities of digital labour platforms in order to ensure their transparent work. According to Article 221b, work performed using digital labour platforms is payable work performed by a natural person, on the basis of a contractual relationship, for a digital labour platform or for an aggregator using digital technology or remotely, using electronic means (website, mobile application, etc.) or directly at a specific location between participants in a particular job.

Digital labour platform is defined by Article 221c, as a natural or legal person who provides services provided at the request of the recipient of the service using digital technology, within the framework of the organization of work in which natural persons perform work remotely using electronic means or directly at a specific location. An aggregator is a natural or legal person who performs the activity of representation or intermediation for one or more digital labour platforms referred to in paragraph 1 of this Article. Article 221d stipulates that the digital labour platform is the employer to the worker who performs the work personally, using the digital labour platform. If the aggregator is an employer to the

worker, the digital labour platform is jointly and severally liable for the obligations which that aggregator, as its market intermediary, has towards the worker it employs to perform work for the digital labour platform. A digital labour platform may be released from joint and several liability if it proves that an aggregator registered under a special regulation and with which it has concluded a contract duly fulfils the obligation to register for workers' pension and health insurance, that it regularly covers the cost of workers' salaries and that it has no established tax debt.

The digital labour platform may, before concluding a contract with the aggregator, or once a month during the duration of that contract, request from the aggregator:

- a confirmation by the competent tax body of the absence of the tax debt of the aggregator
- a statement by the aggregator that he or she has registered for compulsory pension and health insurance for all workers in accordance with a special regulation
- proof that the aggregator regularly pays the total cost of workers' salaries.

A worker who performs work using a digital labour platform according to Article 221e is a natural person who, on the basis of an employment contract, performs work for a digital labour platform or for an aggregator in an employment relationship. Other persons who perform work using a digital labour platform are natural persons who, on the basis of a contractual relationship that did not arise from the conclusion of an employment contract, personally perform work for a digital labour platform or for an aggregator.

Rights and obligations of the employer are defined by Article 221g. Obligations include to a) acquaint the worker with the organization of the work of the digital labour platform and the manner of decision-making in the automated management system; b) ensure the availability and transparency of information on work performed using digital labour platforms; c) appoint an authorized person to supervise the safety and workload of workers who perform work using digital labour platforms; d) appoint an authorized person to conduct the procedure of reviewing decisions made in the automated management system and decide on them at the request of the worker. The employer among other obligations should also ensure the possibility of establishing professional communication with other workers and participants in the business process, as well as the employer and authorized persons of the employer and shall enable the worker to become acquainted with the manner in which he or she will assign work or work tasks, supervise the worker and evaluate his or her work.

Prior to the commencement of work performed using the digital labour platform, the employer referred to in Article 221d, paragraph 1 of this Act shall be obliged to enable the worker to get acquainted with all rights arising from the employment relationship, in

particular information related to access to work and work tasks, working time and working conditions, occupational health and safety, the possibility of promotion and training, and decisions related to the calculation and payment of salaries and compensation.

Obligation of human supervision in an automated management system to protect the health and safety of workers are specified by Article 221h. Thus, the employer shall assess the risks of work and their impact on the health and safety of workers who perform work using a digital labour platform and shall not allow work intensity that endangers the physical or mental health of workers who perform work using a digital labour platform. A worker who considers that his or her right to health and safety at work has been violated due to circumstances arising from the use of a digital labour platform shall be entitled to request from the employer the protection of his or her right, ie., a written explanation and review of a particular measure or decision.

Article 221i specifies the obligation of human supervision in monitoring work and decisions made in the automated management system. Consequently, a worker who considers that a decision made in an automated management system, in particular a decision regarding access to work tasks, working time, the possibility of promotion and training, and a decision regarding the calculation and payment of salary and compensations violates his or her right from employment relationship, shall be entitled to request from the employer the protection of his or her rights within the deadlines prescribed in Article 133 of the Labour Act.

Article 221j deals with protection of privacy and processing of personal data of workers working using a digital labour platform. Thus, the digital labour platform and aggregator shall not process data on private conversations, on the emotional or psychological state of the worker, on the health of workers, except in cases provided for by the regulation on the protection of personal data and collect personal data during the period in which the worker does not perform work or offer it.

Article 221k stipulates the Obligation to establish a channel for professional communication with other workers and employers and third parties in the business process, while Article 221l specifies mandatory content of a written employment contract for work through a digital labour platform.

Presumption of the existence of an employment relationship in work performed using a digital labour platform is defined by Article 221m. If a digital labour platform or aggregator enters into a contract with a natural person for the performance of work using a digital labour platform that, given the nature and type of work and the authority of the digital labour platform or aggregator, has the characteristics of the work for which the employment relationship is concluded, it is considered that such digital labour platform or

such aggregator, as an employer, entered into an employment contract with the worker, unless it is proven otherwise. The facts on the basis of which the existence of an employment relationship may be presumed is:

- personal performance of a payable work;
- giving orders and instructions for the performance of work to a natural person, within the framework of the organization of work and subordination of work;
- limiting the freedom to refuse to execute orders or making such freedom subject to sanctions or other measures,
- determining in detail the time, place and manner of performing the work of a natural person, regardless of whether he or she uses his or her own means of work ;
- supervising the performance of work and monitoring the effectiveness of a natural person, in order to evaluate his or her work and the possibility of promotion; and
- prohibiting the conclusion of transactions for one's own or someone else's account by using the services of other platforms.

The burden of proof is on that digital labour platform or on the aggregator that disputes the possible related legal presumption. A natural person who considers that he or she is not a worker within the meaning of this Act may challenge the legal presumption of the existence of a mentioned employment relationship, whereby the digital labour platform and/or the aggregator, is obliged to provide all the necessary information for the purpose of proving and for the proper resolution of the initiated procedure.

Article 221n determines that the presumption of the existence of an employment relationship does not apply to a natural person who has not achieved income in the amount of more than 60% of the gross amount of the three-monthly minimum wages determined by a special regulation through work through digital labour platforms in a single quarter of the calendar year. The digital labour platform or aggregator shall carry out a verification from the competent body which shall, through the E-Tax Administration, keep official records of all payers and of paid income in order to obtain evidence of the state of paid income from which the second income generated by the natural person to whom it assigns work through digital labour platforms is determined.

Rights and working conditions of other persons working on digital labour platforms are defined by Article 221o. It stipulates that the digital labour platform or aggregator shall contract accident insurance and liability insurance for the person if the contracted activities are performed by participating in traffic by a means which, in terms of road traffic safety regulations, are considered a vehicle and which is not subject to the obligation of registration. The mentioned person referred is entitled to the protection of rights in accordance with the established contractual relationship with the digital labour platform or aggregator.

Finally, Article 221p defines records of work performed using digital labour platforms.

## Commentary

Under the Act, platform work is defined as work performed by a natural person through digital technology (either on-site or remotely via electronic means, such as internet pages or mobile applications) for remuneration, and for a digital work platform or an aggregator. In this context, the Act recognizes both the situation where a platform worker is in a direct contractual relationship with a digital work platform and the situation where an aggregator acts as an intermediary between a digital work platform and a platform worker. The existence of aggregators in the market is not a novelty, as many platform workers are employed by companies established solely for the purpose of intermediating between workers and the platform. What is new, however, is that under the Act the digital work platform will be jointly liable with the aggregator for all obligations the aggregator has toward the employees who perform work for the digital work platform - unless the platform acquires, on a quarterly basis, pre-defined documents evidencing, among others, that the aggregator has no outstanding tax debts and that the aggregator regularly pays a salary to its employees.

One of the problems that the Act is also trying to solve is employee misclassification. It has been recognized that, in practice, platform workers are often engaged on the basis of a contract other than an employment agreement, although the nature and circumstances of their work are more akin to an employment relationship. To this end, the Act provides a non-exhaustive list of factors that are indicative of an existence of an employment relationship with either a digital work platform or an aggregator, regardless of the type of contract in place.

The list of such factors includes, for example, limiting the freedom of the worker to refuse performance, specifying the time, place, and manner for the performance of work, etc. By way of exception, a platform worker will not be considered an employee - even if all statutory factors indicative of the existence of an employment relationship are met - if the platform worker earns less than 60% of three monthly minimum gross salaries within each quarter by working through a digital work platform. To put it in perspective, this means that if a worker earns less than about EUR 1,300 within Q1 of 2024, they will not be considered to be an employee of the digital work platform or an aggregator, unless explicitly contracted otherwise. It will be interesting to see whether the platform algorithms will take this income criterion into account when allocating work to its platform workers.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | Not available |
| **Involved actors other than national government** | None |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Croatia: Algorithmic management, Restructuring legislation database, Dublin

Finland

# Algorithmic management

| | |
|---|---|
| **Phase** | The Employment Contracts Act (55/2001), Act on the Protection of Privacy in Working Life (759/2004), Occupational Safety and Health Act (738/2002), Co-operation Act (1333/2021) |
| **Native name** | Työsopimuslaki (55/2001), Laki yksityisyyden suojasta työelämässä (759/2004), Työturvallisuuslaki (738/2002), Yhteistoimintalaki (1333/2021) |
| **Type** | Algorithmic management |
| **Added to database** | 18 October 2023 |
| **Access online** | Click here to access online |

## Article

1333/2021: articles 1, 8, 12, 16 55/2001: Ch. 2, articles 1, 3, 4 759/2004: articles 3, 4, 16, 17, 21 738/2002: articles 8-9

## Description

Labour law in Finland has no mention specifically of 'algorithmic management'. However, personal data processing, surveillance, and employee influence over employer's decisions affecting the workplace, whether or not by automated means, are subject to regulation.

According to the Employment Contracts Act (55/2001) an employer must ensure, that an employee can do their job even when changes to work methods are made. The Act does not specifically regulate management related methods or forms.

The general obligations of an employer are to ensure a safe and healthy work and work environment for their employees, as stipulated in the Occupational Safety and Health Act (738/2002). An employer thus needs to consider all aspects related to the employees' work, working conditions, and work environment. The employer also must plan, select, scale, and implement necessary measures to improve working conditions. For this objective, the employer needs to have an Occupational safety and health action programme which also covers any factors affecting the work environment and working capacity of workers. The

programme is subject to discussions with employees or employee representatives and need to be considered during workplace development and planning.

Collection and processing of personal data

The processing of employees' personal data is mainly regulated through the Finnish Act on the Protection of Privacy in Working Life (759/2004). Personal data may only be processed if it is directly necessary for the exercising of rights and obligations of the employment relationship, or if the specific nature of an employee's job tasks require it. In the Act, technical surveillance includes for instance camera surveillance, access control, and tracking of the employee's location. E-mail and internet traffic surveillance is also allowed, under certain prerequisites. Monitoring of these needs to be necessary for the employment relationship.

According to the Act, employers may operate camera surveillance at workplaces for employee and property security and protection reasons, or for supervising the proper operation of production processes. The data collected through surveillance must also be necessary for the employment relationship.

The so called 'right to manage' gives the employer the right to decide who does what, where, when and how, during work hours. The right is however limited by employment agreements, collective agreements, and other labour legislation. According to the Occupational Safety and Health Act (738/2002), employers must constantly monitor the working environment, the state of the work community and the safety of working practices.

Employee influence

The aim of the Co-operation Act (1333/2021) is to promote interaction and cooperation between the employer and its employees. The aim is also to develop, among other things, employees' possibilities to influence decision-making in the company that concerns their work, working conditions, and their position in the company. According to the Act, an employer should inform its employees of the state of the company and its plans through an adequate and timely flow of information.

Regular dialogue between the employer and employee representative should be organised around questions of workplace related rules, practices, and policies, as well as on how the workforce is used.

According to the Act, cooperation negotiations between the employer and employee representative need to be held in the case an employer is planning on introducing new technology, or changing the organisation or arrangements of work, which in turn would

have a significant effect on the duties, working methods, or organisation of work of one or more employees.

The collection of personal data during recruitment and employment is also subject to regulation under the Co-operation Act (1333/2021), according to which it needs to be included in workplace dialogue. This includes the purpose and methods of surveillance by technical means of employees, the use data networks and the processing of employees' e-mail and other electronic communications.

Employers of entities not covered by co-operations also need to give employees the opportunity to be heard on technical surveillance related matters, before any decisions are taken by the employer. Any introduction and implementation of control methods need to be informed about and agreed upon.

## Commentary

Compliance with the law on Occupational Safety and Health Act is monitored by labour protection authorities, which is the relevant region's Regional State Administrative Agency.

Compliance with the Act on the Protection of Privacy in Working Life is supervised by the occupational safety and health authorities in accordance with their competence, together with the Data Protection Ombudsman.

Occupational health and safety authorities monitor compliance with The Employment Contracts Act. In their supervisory role and when monitoring the observance of general binding collective agreements, the labour protection authorities must work in close cooperation with the employers' and employees' organisations whose provisions of the general binding collective agreements entered into by the employers must be complied with according to Chapter 2, Section 7.

The Cooperation Ombudsman and the employers' and employees' associations whose national collective agreements apply at the employer, supervise the compliance with the Co-operation Act.

## Additional metadata

**Cost covered by** Not available

| | |
|---|---|
| **Involved actors other than national government** | Trade union Works council |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Finland: Algorithmic management, Restructuring legislation database, Dublin

France

# Algorithmic management

| | |
|---|---|
| **Phase** | Legal code of relations between the administration and the public Labour Code Transport Code |
| **Native name** | Code des relations entre le public et l'administration Code du travail Code du transport |
| **Type** | Algorithmic management |
| **Added to database** | 01 November 2023 |
| **Access online** | Click here to access online |

## 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

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<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), France: Algorithmic management, Restructuring legislation database, Dublin

Germany

# Algorithmic management

| | |
|---|---|
| **Phase** | Data processing for employment-related purpose |
| **Native name** | Datenverarbeitung für Zwecke des Beschäftigungsverhältnisse |
| **Type** | Algorithmic management |
| **Added to database** | 09 October 2023 |
| **Access online** | Click here to access online |

## Article

Section 26 - Data processing for employment-related purpose

## Description

According to the Federal Data Protection Act, the personal data of employees may be processed for employment-related purposes insofar this is necessary for hiring decisions or, after hiring, for carrying out or terminating the employment contract or to exercise rights and obligations of employees' representation laid down by law or by collective agreements or other agreements between the employer and staff council.

Employees' personal data may be processed to detect crimes only if there is a documented reason to believe the data subject has committed a crime while employed, the processing of such data is necessary to investigate the crime and is not outweighed by the data subject's legitimate interest in not processing the data, and in particular the type and extent are not disproportionate to the reason.

If personal data of employees are processed on the basis of consent, then the employee's level of dependence in the employment relationship and the circumstances under which consent was given shall be taken into account in assessing whether such consent was freely given.

## Commentary

From the perspective of the German Federation of Trade Unions (DGB), employers are increasingly using digital methods to monitor employees or collect personal data about them.

There is hardly any legal basis for this because of the general provisions in the Federal Data Protection Act. According to the DGB, binding regulations are needed to ensure that personal rights are protected in the workplace. That is why the DGB presented a draft law for an independent employee data protection law in 2022.

From the perspective of the Federal Association of German Employers' Associations (BDA), an independent employee data protection law is neither necessary nor would it make it easier to apply data protection in practice. The General Data Protection Regulation and the redesigned Federal Data Protection Act would rightly stipulate that proven instruments can continue to be used. They should not be unduly burdened by new requirements.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | Not available |
| **Involved actors other than national government** | Works council |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Germany: Algorithmic management, Restructuring legislation database, Dublin

Greece

# Algorithmic management

| | |
|---|---|
| **Phase** | Law 4961/2022 (Official Government Gazette A' 146/27.07.2022), "Emerging information and communication technologies, the reinforcing of digital governance and other provisions" |
| **Native name** | Νόμος 4961/2022 (ΦΕΚ Α' 146/27.07.2022), "Αναδυόμενες τεχνολογίες πληροφορικής και επικοινωνιών, ενίσχυση της ψηφιακής διακυβέρνησης και άλλες διατάξεις" |
| **Type** | Algorithmic management |
| **Added to database** | 25 October 2023 |
| **Access online** | Click here to access online |

## Article

-Law 4961/27.07.2022, Part A: 'Digital Upgrading of Public Administration', Chapter B: 'Regulations for the Development of Artificial Intelligence', Article 5: 'Algorithmic Impact Assessment'; Article 9: 'Obligation to inform on the use of artificial intelligence in the labour sector'

## Description

The new national law 4961/2022 aims to create an institutional background for the development and use of Artificial Intelligence in the public and private sector, establishing regulations for the formation of appropriate guarantees in terms of: safeguarding the rights of natural and legal persons; strengthening the accountability and transparency in the use of artificial intelligence systems; and complementing the existing institutional framework for cybersecurity.

By virtue of art. 5, any public sector entity using artificial intelligence system (for the process of making or supporting the process of making a decision or issuing an act), before the system starts operating, should prepare an algorithmic impact assessment. During this preparation, the following information shall be taken into account, in particular:

- the intended purpose, including the public interest served by using AI;
- the capabilities, technical characteristics and operating parameters of the system;
- the type and categories of decisions taken, or acts issued with the participation of,or supported by the AI system;
- the categories of data collected, processed or entered into the system or generated by it;
- the risks that may arise for the rights, freedoms and legal interests of natural or legal persons, concerned or affected by the decision and
- the expected benefit derived for society, as a whole, in relation to potential risks and effects that the use of the system may bring, in particular for racial, ethnic, social or age groups and categories of the population such as people with disabilities or chronic diseases. The obligation to prepare an algorithmic impact assessment, does not replace the obligation to conduct an impact assessment regarding data protection, in accordance with the provisions of the General Data Protection Regulation.

By virtue of art. 9, any private sector enterprise, as long as it uses an artificial intelligence system, which affects any decision-making process concerning employees or prospective employees and has an impact on their working conditions, selection, recruitment, or evaluation, prior to its first application, is obliged to provide sufficient and clear information to each employee or prospective employee, including at least the parameters on which the decision is based, without prejudice to the cases that require prior information and consultation, and ensure compliance with the principle of equal treatment and anti-discrimination in employment and work on grounds of sex, race, colour, national or ethnic origin, descent, religious or other beliefs, disability or chronic illness, age, family or social status, sexual orientation, gender identity or characteristics.

## Commentary

The new national law foresees a number of regulations for the safe use of IT, while focusing on the digital upgrade of the public administration. Both public and private entities that put IT systems into operation should prove the legality of their use, otherwise they are faced with the imposition of administrative and criminal sanctions, as well as with consequences related to the submission of complaints against them before the National Transparency Authority. It is reported that, the passing and implementation of the New Regulation on Artificial Intelligence is expected to expose public bodies and companies to potential sanctions of up to €30,000,000 -or up to 6%- of the total global annual turnover. The sanctions will be imposed by the national competent authority, which – according to the joint proposal of the European Supervisor and the European Council for Personal Data (EDPS and ESPD) – is expected to be the Personal Data Protection Authority for Greece, which has already experience in imposing and measuring such fines under the General

Data Protection Regulation.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | Companies Employer |
| **Involved actors other than national government** | None |
| **Involvement (others)** | National Transparency Authority, Personal Data Protection Authority |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Greece: Algorithmic management, Restructuring legislation database, Dublin

Italy

# Algorithmic management

| | |
|---|---|
| **Phase** | Legislative Decree 104 of 2022, Implementation of Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union; Legislative Decree 48 of 2023 Urgent measures for social inclusion and access to employment |
| **Native name** | Decreto Legislativo 104 del 2022, "Attuazione della direttiva (UE) 2019/1152 del Parlamento europeo e del Consiglio del 20 giugno 2019, relativa a condizioni di lavoro trasparenti e prevedibili nell'Unione europea" Decreto Legislativo 48 del 2023 "Misure urgenti per l'inclusione sociale e l'accesso al lavoro". |
| **Type** | Algorithmic management |
| **Added to database** | 29 January 2024 |
| **Access online** | Click here to access online |

## Article

Legislative Decree of 27 June 2022, n.104 Legislative Decree 48 of 2023

## Description

The Legislative Decree No. 104 of June 27, 2022, aligns Italian law with the EU directive on transparent and predictable working conditions. This decree broadly addresses various employment conditions, including its implications for automated decision-making and algorithmic management. The decree mandates that employers must be transparent about the use of automated systems and algorithms that affect workers' roles and decisions concerning their employment. This includes ensuring that employees understand how such technologies might influence their work environment and the terms of their employment.

Before employment begins, employers should detail:

- Which job aspects these systems affect.

- The systems' purpose, logic, and function.
- Data used, including performance evaluation mechanisms.
- Automated decision measures, data security, and EU Regulation 2016/679 compliance measures.

Workers can access and request more information on this data, with a 30-day response time from employers. Any changes impacting work conditions based on this data must be communicated to workers 24 hours in advance. Information should be transparently and digitally shared with workers and union representatives. The Ministry of Labor and other relevant bodies can request this information.

Subsequently, Legislative Decree 48 of 2023, brought some changes to the decree 104/2022, especially with regard to automated systems and algorithmic management: the employer's obligation to inform applies only when these systems are entirely automated and are significant in making decisions regarding employment matters.

## Commentary

The CGIL (Italian General Confederation of Labour) has voiced strong opposition to recent amendments in the labor decree concerning transparency in the use of automated decision-making systems. The union criticizes the revisions for narrowing the scope of mandatory employer disclosures to only fully automated systems, excluding systems protected by industrial or commercial secrets. This change, according to the CGIL, is a significant step back from the advancements made by the transparency decree and the European Directive on transparent and predictable working conditions. The union believes that these revisions weaken the workers' right to transparency in algorithmic systems, potentially leaving workers and their representatives without essential tools to enforce their rights, especially in a landscape where the use of algorithmic systems is becoming increasingly prevalent.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | Employer |
| **Involved actors other than national government** | None |
| **Involvement (others)** | None |

| | |
|---|---|
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2024), Italy: Algorithmic management, Restructuring legislation database, Dublin

Malta

# Algorithmic management

| | |
|---|---|
| **Phase** | Digital Platform Delivery Wages Council Wage Regulation Order, 2022 |
| **Native name** | Ordni tal-2022 tal-Kunsill tal-Pagi tal-Pjattaforma Diġitali għall-Konsenja |
| **Type** | Algorithmic management |
| **Added to database** | 11 October 2023 |
| **Access online** | Click here to access online |

## Article

L.N. 268 of 2022 - Digital Platform Delivery Wages Council Wage Regulation Order, 2022

## Description

L.N. 268 of 2022 introduced new laws to regulate digital platform work and provided more safeguards for digital platform workers' employment status and rights.

The Legal Notice aims to promote fairness, transparency, and accountability in algorithmic management (Article 1). The Legal Notice establishes the presumption of an employment relationship (Article 4) between the digital platform worker and the digital labour platform or work agency, and ensures the application of employment law and rights to digital platform workers, including overtime rates and sick leave. The Legal Notice makes reference to the application of, inter alia, the Employment and Industrial Relations Act; the Social Security Act; the Occupational Health and Safety Authority Act; the Transparent and Predictable Working Conditions Regulations; and the Employee (Information and Consultation) Regulations. An employer under this L.N. is required to give the worker a letter of engagement or a signed declaration within seven days from the commencement of the employment relationship (Article 15).

Transparency includes informing platform workers about the automated monitoring and decision-making systems used by the platform, and protecting the employees' personal data against any processing not intrinsically related and necessary to their work (Article

17). Employers are also required to make such information available to the Director General for Employment and Industrial Relations and to platform workers' official representatives (that is, a lawyer representing the worker, a trade union representative, or an information and consultation representative who has been appointed in accordance with the Employee (Information and Consultation) Regulations), if they so request.

## Commentary

While the legislation makes reference to trade union representatives, it is worth noting that unionisation is low among workers on 'atypical' contracts (Debono, 2018). It is the author's understanding that measures related to access to algorithmic measures are yet to be used by the Director General for Employment and Industrial Relations and platform workers' official representatives.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | National government |
| **Involved actors other than national government** | Employer organisation National government Trade union |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Malta: Algorithmic management, Restructuring legislation database, Dublin

Netherlands

# Algorithmic management

| | |
|---|---|
| **Phase** | Algorithm register |
| **Native name** | Algoritmeregister |
| **Type** | Algorithmic management |
| **Added to database** | 18 October 2023 |
| **Access online** | Click here to access online |

## Article

-

## Description

The Dutch government has launched an algorithm register for all government agencies to enter information about their algorithms in one place. The register is accessible to everyone, and is meant to supply transparency about whether or not government algorithms stick to the rules.

The Dutch Digitalisation strategy highlights the importance of safeguarding constitutional rights and public values in cases where automated decision-making (ADM) is applied. The introduction of the Algorithm Register signifies a commitment to transparency and accountability in the governments' use of algorithms.

The government wants the use of algorithms to be responsible. The idea is that people should be able to trust that algorithms adhere to the values and norms of society and that there should be an explanation of how algorithms work. The government aims to achieve this by inspecting how algorithms function and any potential discrimination and arbitrariness in their use. Again, the idea is that when the government is transparent about algorithms and their application, citizens, organisations, and the media can critically monitor and ensure that this complies with the law and regulations.

The Algorithm register in the Netherlands is not yet complete. More and more government organisations are publishing their algorithms in the algorithm register. The goal is to have

all government organisations connected to relevant algorithms. More information on which organisations these are and which algorithms they publish can be found in the algorithm register guide. Currently, governmental institutions are encouraged, but not obliged to add algorithms they have used in the registry. Ultimately, registration of impactful algorithms will become legally mandatory. The Dutch government is still working on a legal framework for algorithms. By 2025, the Dutch register will become mandatory once the preparatory work around the EU's AI act is finalised.

The following processes, among others, currently contribute to responsible algorithm use: - The Algorithm Register helps to make algorithms findable, better explainable and their application and results understandable. - The Algorithm Supervisor (the Dutch Data Protection Authority) coordinates the control of algorithms: do the government algorithms comply with all applicable rules? - The Ministry of the Interior and Kingdom Relations is working on the Implementation Framework 'Use of Algorithms'. This makes it clear to governments what requirements apply to algorithms and how they can ensure that their algorithms can meet those requirements.

The first version of the Algorithm Register was launched in December 2022. This forms the basis for further development. The government develops the register openly, together with experts, (potential) users and stakeholders. The Ministry of the Interior and Kingdom Relations is also continuing to develop the Algorithm Register website.

## Commentary

Back in 2018, an evaluation by the Dutch Council of State underscored the increasing significance of Algorithmic decision making (ADM), while also highlighting potential risks where citizens cannot verify the rules that are being employed. Citizens are at risk of being profiled and confronted with decisions based on information of which the source is unknown. Citizen’s ought to have confidence that algorithms adhere to public values, legal requirements and standards, as well as being able to comprehend the rationale behind their outcomes.

As per 1 January 2023 a new regulator for algorithms has been introduced in the Netherlands, it has been housed within the Dutch Data Protection Authority (Autoriteit Persoonsgegevens, Dutch DPA).

On 31 August 2023, the Dutch Data protection Authority (AP) published a report on Algorithm Risks in the Netherlands, concerning systems and apps that use algorithms and artificial intelligence (AI), and the risks posed to individuals, groups and society. Furthermore, it demonstrated: - Bias and subsequent discrimination in law enforcement - Oversight of financial transaction, particularly in cases where a ‘false positive’ regarding a

suspected illegal transaction has become evident. - The application of algorithms for municipal social benefits to estimate the potential risk for fraudulent activities related to the distribution of social benefits.

The report further recommended the necessity of committing to improve algorithm risk management such as through an algorithm impact assessment, highlighting the need for: - Implementing review mechanisms and frameworks in a manner that aligns with proportional requirements - Risk-oriented phasing in by organisations.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | National government Companies |
| **Involved actors other than national government** | National government |
| **Involvement (others)** | - |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Netherlands: Algorithmic management, Restructuring legislation database, Dublin

Norway

# Algorithmic management

| | |
|---|---|
| **Phase** | Control measures in the undertaking |
| **Native name** | Kontrolltiltak i virksomheten |
| **Type** | Algorithmic management |
| **Added to database** | 28 October 2023 |
| **Access online** | Click here to access online |

## Article

Working Environment Act 2005, chapter 9

## Description

This chapter contains regulations setting limits and procedures for the application of control measures in undertakings. The employer may only implement control measures in relation to employees when such measures are objectively justified by circumstances relating to the undertaking and it does not involve undue strain on the employees (section 9-1). Such measures should be discussed with the employees' elected representatives as early as possible. The obligation to discuss covers both the needs, design, implementation and major changes (section 9-2).

Before a measure is implemented, the employer has a duty to inform the employees affected of the purpose of the control measure, practical consequences and duration. The measure should further be evaluated regularly (section 9-2).

Further, the chapter gives more detailed regulations in some areas. The employer is not allowed to request health information from persons applying for a position, exceeding information necessary for performing the job

## Commentary

The regulations are supplemented by the the EU regulation 2016/679 GDPR, and the regulations are partly overlapping. WEA chapter 9 mainly give regulations concerning what control measures that can be implemented, while the GDPR gives regulations on how data collected as part of these measures should be handled.

Research into the application of the regulations indicates problems when it comes to compliance with the regulations (Bråten et al. 2023). Among the companies that have safety delegates or union reps, 36 per cent indicate that safety delegates were involved in the decision-making phase in the procurement of new digital technology, while 34 per cent report that union reps were involved. Many of the businesses that involved union reps or safety delegates in the decision-making also involved them in the implementation. Meanwhile, almost half of the businesses indicate that they have not involved union reps or safety delegates in the process. Businesses' reported practices in terms of involvement seem to differ considerably from the statutory provisions regarding the introduction of new technology.

There is broad agreement among the business leaders covered by this research that it is important to protect employees' privacy when introducing digital technology. However, only 58 per cent have told employees what data is collected, and only 46 per cent have discussed the ramifications for privacy with safety delegates or union reps

## Additional metadata

| | |
|---|---|
| **Cost covered by** | None |
| **Involved actors other than national government** | National government Trade union |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Norway: Algorithmic management, Restructuring legislation database, Dublin

Portugal

# Algorithmic management

| | |
|---|---|
| **Phase** | Labour Code (Law 7/2009 of 12 February) amended by Law 13/2023 of 3 April |
| **Native name** | Código do Trabalho (Lei 7/2009 de 12 de Fevereiro) |
| **Type** | Algorithmic management |
| **Added to database** | 29 October 2023 |
| **Access online** | Click here to access online |

## Article

Labour Code - article 3 (3); article 12-A (1c); article 24 (3); article 106; article 424 and article 466

## Description

In the framework of the Decent Work Agenda (entered into force with Law 13/2023, of 3 April), the Labour Code (Law 7/2009 of 12 February) has changed, including specific information regarding Algorithms and Artificial Intelligence:

- Collective Bargaining Agreements can only regulate the use of algorithms, artificial intelligence, and associated technologies in a way that is more advantageous to employees (article 3 (3)).
- Legal rules on equality and non-discrimination are now applicable to decision-making based on algorithms or other artificial intelligence systems (article 24(3)).
- Employers must inform job applicants about the use of algorithms and artificial intelligence (article 106).

In regards to the platform operators, the Labour Code establishes that an employment agreement presumption can be established between self-employed activity providers and digital platform operators if certain indicators are present, notably if the platform operator controls the activity provided, particularly through electronic means or algorithmic management (article 12-A 1c))

Workers representatives have the right to be informed regarding the parameters, criteria, rules and instructions on which algorithms or other artificial intelligence systems are based that affect decision-making on access and maintenance of employment, as well as working conditions, including the creation of profiles and control of professional activity (article 424) as well as the trade union, in case or medium or large companies (article 466).

## Commentary

No information available

## Additional metadata

| | |
|---|---|
| **Cost covered by** | None |
| **Involved actors other than national government** | Employer organisation Trade union Works council |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Portugal: Algorithmic management, Restructuring legislation database, Dublin

Spain

# Algorithmic management

| | |
|---|---|
| **Phase** | Royal Decree-Law 9/2021, of 11 May (amending the revised text of the Workers' Statute Law, approved by Royal Legislative Decree 2/2015, of 23 October, to guarantee the labour rights of persons dedicated to delivery in the field of digital platforms); |
| **Native name** | Real Decreto-ley 9/2021, de 11 de mayo (por el que se modifica el texto refundido de la Ley del Estatuto de los Trabajadores, aprobado por el Real Decreto Legislativo 2/2015, de 23 de octubre, para garantizar los derechos laborales de las personas dedicadas al reparto en el ámbito de plataformas digitales); |
| **Type** | Algorithmic management |
| **Added to database** | 13 October 2023 |
| **Access online** | Click here to access online |

## Article

Royal Decree-Law 9/2021, of 11 May

## Description

In Spanish, a 'rider' is a delivery person who works for digital platforms. The so-called Rider Law was expected to affect between 18,000 and 30,000 people in Spain when it came into force in August 2021.

The main novelty is that delivery workers will be salaried and not self-employed. In other words, it is based on the premise that the workers who carry out their tasks on digital platforms are workers and have all the rights set out in the Workers' Statute regarding organisation, unionisation, social protection, contributions and salary. In fact, the Rider Law introduces a new additional provision on the presumption of employment in the activities of delivery or distribution of any type of product or merchandise, when the company exercises its powers of organisation, management and control, by means of algorithmic management of the service or working conditions, through a digital platform.

Furthermore, this is the first legislation that incorporates access to information on parameters, rules and instructions of the algorithms of artificial intelligence systems that affect labour decision-making. Specifically, it amends Article 64 of the Workers' Statute, on the rights of information and consultation of the legal representation of workers. Thus, the new Rider Act adds a new paragraph to section 4, which recognises the right of the works council to be informed by the company of the parameters, rules and instructions on which the algorithms or artificial intelligence systems are based that affect decision-making that may have an impact on working conditions, access to and maintenance of employment, including profiling.

## Commentary

Before Royal Decree-Law 9/2021 was passed, companies such as Glovo, Deliveroo and Uber Eats did not employ couriers. They were self-employed, which meant a saving in labour costs for the multinationals and a reduction in Social Security income in social security contributions. After the law came into force, some of these companies, such as Deliveroo, left Spain, others adapted to the new rules of the game and others defied the government and the law.

According to data from a report by the Esade Forum for Technological Humanism, in collaboration with Just Eat, the number of workers with employment contracts in the home delivery sector through digital platforms has doubled in one year. Despite this progress, large platforms such as Glovo and Uber Eats continue to hire freelancers to carry out their deliveries. Many agents consider that progress should be made towards the negotiation of a sectoral collective bargaining agreement that would standardise sufficient wage and employment conditions in the sector.

## Additional metadata

| | |
|---|---|
| **Cost covered by** | Not available |
| **Involved actors other than national government** | National government Trade union Employer organisation |
| **Involvement (others)** | None |
| **Thresholds** | Affected employees: No, applicable in all circumstances<br>Company size: No, applicable in all circumstances<br>Additional information: No, applicable in all circumstances |

## Sources

# Citation

Eurofound (2023), Spain: Algorithmic management, Restructuring legislation database, Dublin