Labour rights & the digital transition
ETUI/ELW event on 28 October 2021

PREVENTING NON-DISCRIMINATION IN ALGORITHMIC DECISION-MAKING

Miriam Kullmann

@MiriamKullmann
software can have an impact on future career prospects and the livelihoods of persons

WHAT IS THE ROLE OF NON-DISCRIMINATION LAW?
OVERVIEW

1. AUTOMATING RECRUITMENT AND SELECTION PROCESSES
2. RISKS
3. REGULATORY CHALLENGES
1 AUTOMATING RECRUITMENT AND SELECTION PROCESSES
phases of the recruitment process

- planning, identifying
- attracting, interviewing
- selecting, hiring
RECRUITMENT SOFTWARE LANDSCAPE

solutions for different problems

- Applicant Tracking System
- CV parsing
- recruitment CRMs
- assessment
- video interviewing
2 RISKS
promise:
increased efficiency, higher accuracy and speed

MAIN SOURCES OF BIASED OR DISCRIMINATORY OUTCOMES

- quality of training data
- system design
- complex interactions
European Commission proposal of 21 April 2021 on a ‘Regulation Laying Down Harmonised Rules on Artificial Intelligence’

- primary aim: proper functioning of internal market
- harmonising rules on the development, placing on the Union market and the use of products and services making use of AI technologies or stand-alone AI systems
RISK CLASSIFICATION

- unacceptable risk
  - high-risk (per se)
  - limited risk
  - minimal risk

Art 5: prohibition of particular AI systems

Employment: Art 6, with reference to Annex III: AI systems that are allowed for as long as certain requirements are met

Art 52: for certain AI systems transparency obligations apply (eg, chatbots)
3 REGULATORY CHALLENGES
profiling: abstract nature & drawing of inferences

TO WHAT EXTENT DO (A COMBINATION OF DIFFERENT) ATTRIBUTES BELONG TO THE PROTECTED GROUNDS?

not all biased decisions are discriminatory within a legal sense
CHALLENGES IN THE CONTEXT OF NON-DISCRIMINATION LAW

- Data of other job applicants
- Personal data and identifying individuals
- Proxy discrimination
**AI ACT: REQUIREMENTS HIGH-RISK SYSTEMS**

**provider**, ie company developing recruiting software (Art 16):

- requirements set out in Art 8-15
- quality management system (Art 17)
- technical documentation
- automatically keeping logs
- assessment procedure, prior to its placing on the market or putting into service
- registration (Art 51, 60)
- corrective actions if not in conformity with Art 8-15

**user**, ie any natural or legal person, public authority, agency or other body using an AI system under its authority (Art 29):

- use high-risk AI systems in accordance with provider’s instructions
- ensure that input data is relevant in view of purpose of high-risk AI system
- monitor operation of system on basis of instructions
- keep the logs automatically generated
- use information provided under Art 13 to comply with obligation to carry out data protection impact assessment under Art 35 GDPR
THANK YOU