Legislation and collective bargaining on algorithmic management in Spain.

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Current situation in Spain
- We have 10,500 startups or emerging companies. The startup ecosystem in Spain is worth 46,000 M€.
- 11 unicorns Spanish companies worth +1 B€ (Glovo, Cabify, etc.)
- 18.5% of the Spanish population works on platforms (Bank of Spain)
- 50.6% of Spanish companies allowed teleworking by 2020

*Fuente: Informe de Agenda Pública de Adigital*
Delivery has seen significant growth during and after the pandemic. It is the place where we have found the most bogus self-employed.
This work is carried out by women who have a special relationship as domestic workers and their salary is the legal minimum wage. Moreover, they do not pay contributions in the same way as other workers.
MORE EXAMPLES OF PLATFORMS

Any job can be turned into an activity that is carried out through a platform.
THE NEW CHALLENGES OF COLLECTIVE BARGAINING:

1. The disappearance of the traditional workplace.
   a) The home as a workplace
   b) The city as a workplace.

2. Establishing the main activity of the platform. They are not intermediaries. All companies and workers must be included in the sectoral agreements.

3. Those platforms that have really created a new activity must create new agreements.

4. Do not allow the escape from the employment relationship with false self-employment or with other forms that are not part of the employment relationship.

5. Extend labour and trade union rights. Right to information, participation and the right to strike.

6. Tackling frauds other than bogus self-employment such as "illegal assignment of workers" where the platform organises the work to different front companies to avoid the direct relationship with the workers.
WHAT DO COMPANIES USE ALGORITHMIC MANAGEMENT FOR?

• the selection of workers
• the organisation of working time
• the application of the disciplinary regime, through a system of constant appraisal based on a point system
• the determination of remuneration
• the assessment of dismissal
LAW RIDER:
• Law 12/2021 clearly established the presumption of employment for people who deliver on digital platforms.
• It establishes a before and after in the situation of digital platforms in Spain.
• The fundamental precedent is the Supreme Court Ruling of 25 September 2020.
• Social Dialogue Agreement.
• Although the platforms have claimed that this law will scare off financial investment, the opposite has been the case: in three months, 4 new companies have arrived. Legal security for investment.
• In addition, this law extends the right to information on how the algorithms that organise a company’s activity are used.
JUST EAT'S LABOUR AGREEMENT

- The company must inform employees of all the artificial intelligence that exists around them and whether the data generated by our work activity is used.
- Eliminate the profiling of workers so as not to promote a competitiveness that can lead to serious health problems.
- Establish a communication channel between workers and trade unions within the platforms themselves that cannot be monitored by companies. This appears in the draft text of the European Directive.
- A Commission on algorithms is set up between several members of the Legal Representation of Workers and the people in the company who manage the algorithms.
WHAT IS THE INFORMATION ON ALGORITHMIC MANAGEMENT TO BE PROVIDED TO TRADE UNIONS?

In the case of the use of any automated or quasi-automated decision-making system, the company shall provide workers and their representatives or trade unions with written information regarding algorithmic management, containing at least the following:

• the program developer and implementer of the system (and their legal roles of controller or processor),
• description of the type of system (recommendation, risk assessment, supervised/unsupervised system),
• description of the objectives of the system
• details of the training data used,
• details of the variables used,
• information on the completion of the required impact study and/or independent external audit (and access to its outcome),
• assessment of the percentage of false positives and false negatives expected or identified by the developer,
• information on the outcome complaint measures available to the persons concerned.
STAGES OF COLLECTIVE BARGAINING ON WORKERS' DATA RIGHTS

1 - Parties negotiate the need, purpose and proportionality of the project.
2 - Agree on the tools and applications to be used (software and hardware).
3 - Agree on the design of the implementation.
4 - Data Protection Impact Assessment (DPA)
5 - Co-implementation of the plan
6 - Monitoring of the implementation and readjustments

Once the algorithmic management tool has been implemented, and its optimal functioning has been verified, the parties will undertake the negotiation of the "productive dividend" or "data capital gain".

*Del estudio LAS DECISIONES ALGORÍTMICAS EN LAS RELACIONES LABORALES SEC-UGT
In addition, from UGT we also propose:

- **LAW OF ALGORITHMIC JUSTICE IN LABOUR RELATIONSHIPS**, which guarantees its transparency and simple and accessible information. Its functioning must have a clear purpose.
- Classify AI and algorithms applied to the world of work as a high-risk activity.
- Create a Register of Labour Algorithms (RAL). We want this idea to be regulated within the European Directive on platform work. The existence and activity of these algorithms will be registered to ensure the traceability of their results.
- The data feeding the algorithmic system must be of high quality, avoiding bias and discriminatory results.
- The European directive should regulate the work of all companies working on this system of digital platforms. The European Union must not make the mistake of creating a third figure that would create a situation of inequality.
Change the world, my friend Sancho, which is not madness, nor utopia, but justice.

Miguel de Cervantes

Thank you very much