
AI IN THE WORKPLACE – CHALLENGES AND OPPORTUNITIES

Kristian Thormann
EU-Adviser

LDDK: | april 2024

In sight of the green and digital futures!



AI in the workplace - a contested concept

The blanket definition

- All use of AI in the workplace, including by management, employees, self-employed persons, in the platform economy

Algorithmic management

- “using AI to either support or automate management decisions ... or managerial tasks” *

Problem: Does “algorithmic management” include “my” use of AI and intra-organizational cooperation around the use of AI?

A regulatory wild west?



AI is tech and tech (in the workplace) is regulated

- GDPR: Organizations shall appropriately protect personal data of persons, including algorithmic management systems that are built on or process workers' personal data in the workplace
 - Organizations are required to perform **to perform data protection impact assessments**, in particular for new technologies and when the data processing is likely to result in a high risk to the rights and freedoms of natural persons (article 35)
 - GDPR requires **transparency about which personal data are processed by AI** systems and **limits the ability to process sensitive personal data** such as data revealing ethnic origin, political opinions or religious beliefs (article 9, paragraph 2)
 - Data protection specifically targeted in the employment context, giving **member states the ability to enact more specific rules to protect employees' personal data** and which leaves room for collective bargaining (article 88)
 - GDPR provides individuals with a right to **meaningful human input on important decisions** that affect them, which enables them to **opt-out of fully automated decision-making** in the workplace (article 15, paragraph 1(h))
- AI Act -Most use in workplace likely "high risk"
 - High risk obligations:
 - Risk management (article 9)
 - Data quality and governance (article 10)
 - Documentation and recording-keeping (articles 11-12),
 - Transparency and provision of information to users (article 13)
 - Human oversight (article 14) – **a de facto ban on fully automated decision making**
 - Robustness, accuracy, and security (article 15).
 - Uncertainty concerning filter criteria (art 6 and rec. 32a). Profiling exempted = invariably high risk.
 - Emotion recognition system ban
- Platform work directive
 - Only applies to digital platforms but broad definition of platform.
 - Extensive rules on information and consultation, reporting duties, transparency clauses etc. See chapters 3-5
- Directive on information and consultation + Directive on European Works Councils
 - If technology is deemed "new" existing information and consultation obligations apply

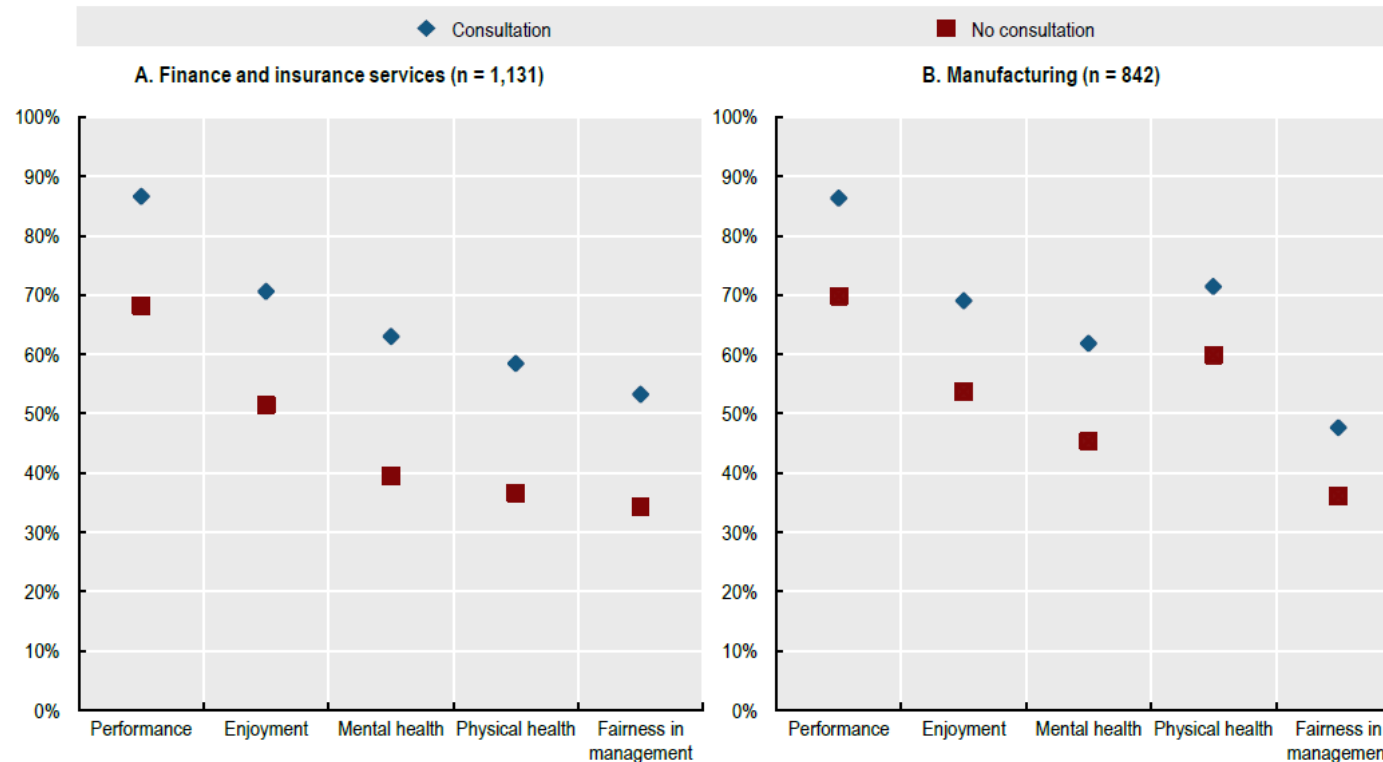
A regulatory wild west?

- GDPR: Organizations shall appropriately protect personal data of persons, including algorithmic management systems that are built on or process workers' personal data in the workplace
 - Organizations are required to perform to **perform data protection impact assessments**, in particular for new technologies and when the data processing is likely to result in a high risk to the rights and freedoms of natural persons (article 35)
 - GDPR requires **transparency about which personal data are processed by AI systems** and **limits the ability to process sensitive personal data** such as data revealing ethnic origin, political opinions or religious beliefs (article 9, paragraph 2)
 - Data protection specifically targeted in the employment context, giving **member states the ability to enact more specific rules to protect employees' personal data** and which leaves room for collective bargaining (article 88)
 - GDPR provides individuals with a right to **meaningful human input on important decisions** that affect them, which enables them to **opt-out of fully automated decision-making** in the workplace (article 15, paragraph 1(h))
- AI Act - Most use in workplace likely "high risk"
 - High risk obligations:
 - Risk management (article 9)
 - Data quality and governance (article 10)
 - Documentation and recording-keeping (articles 11-12),
 - Transparency and provision of information to users (article 13)
 - Human oversight (article 14) – **a de facto ban on fully automated decision making**
 - Robustness, accuracy, and security (article 15).
 - Uncertainty concerning filter criteria (art 6 and rec. 32a). Profiling exempted = invariably high risk.
 - Emotion recognition system ban
- Platform work directive
 - Only applies to digital platforms but broad definition of platform.
 - Extensive rules on information and consultation, reporting duties, transparency clauses etc. See chapters 3-5
- Directive on information and consultation + Directive on European Works Councils
 - If technology is deemed "new" existing information and consultation obligations apply

Social dialogue is alpha omega

Figure 2.11 Where workers are consulted, they are even more likely to report positive impacts of AI on performance and working conditions

% of AI users



Note: Workers who use AI were asked, "In your experience, does your employer consult workers or worker representatives regarding the use of new technologies in the workplace?" They were also asked, "How do you think AI has changed your own performance (performance) / how much you enjoy your job (enjoyment) / your mental health and well-being in the workplace (mental health) / your physical health and safety in the workplace (physical health) / how fairly your manager or supervisor treats you (fairness in management)?"

Source: OECD worker survey on the impact of AI on the labour market (2022)

Biases

Baseline: Discriminatory treatment is unlawful and unethical

Challenge:

- AI reflect the data it is build upon and the data can be biased, i.e.
 - Data misrepresent the world. For example, using internet sources which are predominantly made by young, white, American males with college degrees (common issue in GenAI applications)
 - Data correctly represents a biased world. People are naturally imperfect and hold subconscious (unethical) believes
 - For example: (Scrapped) Amazon recruitment tools which penalized applicant who went to "women's colleges" or chaired the "female debate team"*

Potential:

- AI brings discrimination into the light
- Is it easier to learn AI-applications or people not to discriminate?



Pillars in responsible AI use in the labour market

- "Human-centered AI" takes into account how people interact with AI-systems
- "Human in the loop"/"human in control"
- Data quality awareness i.e. bias prevention
- Social dialogue should be front and centre
- Data ownership structures are key
- Management accountability (a given)

”

“For me, the next step would be to deal with the role of algorithms in the economy at large, especially in the world of work, especially in the way how people are managed, controlled ... how the surveillance is operated (...) it should be clear what “guarantees” workers have, in terms of protection against the use of algorithms.”

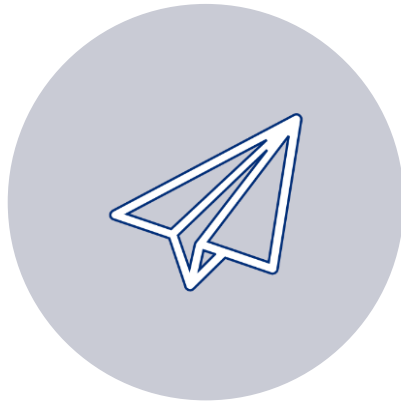
Nicolas Schmit – March 2023 in Politico



The short term common agenda

1. Make extensive existing regulatory framework manageable for SMEs
 - Implementation guidance rather than new legislation
 - Competitiveness slack to be addressed. AI plays a role
2. Conceptual clarifications
 - Industrial relations (wrongfully) ignored in debate on algorithmic management
3. Social dialogue is key
 - Companies' realization of AI-potential is contingent on end-user cooperation
 - New "social" data ownership structures to counter counter-productive power imbalances?
4. Unleash AI against biases

Get in touch



KBT@DA.DK



+45 27575312



WWW.DA.DK

Further reading

National report on Denmark 2022: Stage 4 Industry 4.0 - Artificial intelligence, algorithms, software. I-rel project: <https://irel.fmb.unimore.it/about-the-project/>

All national reports: <https://irel.fmb.unimore.it/archive/research-output/national-reports/>

Technological developments and industrial relations in Denmark (vedhæftet)

Munkholm, N. V., dec. 2023, *The Cambridge Handbook of Technological Disruption in Labour and Employment Law*. De Vos, M. & Verhulp, E. (red.). Cambridge University Press, s. 156-181 26 s. (Cambridge Handbooks in Law)

OECD Employment Outlook 2022 and 2023 highly recommended