

Submission to the Report of the United Nations Special Rapporteur on extreme poverty and human rights

/ Why automated decision-making instead of Artificial Intelligence?

Algorithmically controlled, automated decision-making or decision support systems are procedures in which decisions are initially – partially or completely – delegated to another person or corporate entity, who then in turn use automatically executed decision-making models to perform an action. By saying systems instead of technologies we point to the fact that an ADM system, in an increasingly common use of the term, is a socio-technological framework that encompasses a decision-making model, an algorithm that translates this model into computable code, the data this code uses as an input—either to ‘learn’ from it or to analyse it by applying the model—the interpretation of the output and the entire political and economic environment surrounding its use.

/ General Findings in previous research

AlgorithmWatch's ***Atlas of Automation*** provides an overview of automated decision-making (ADM) systems used in Germany and is addressing the question of how these systems affect access to public goods and services as well as exert civil liberties, especially for people who can be considered disadvantaged or marginalized. The ***Atlas*** refers not only to the potential for discrimination that results from the automation of processes and decisions, as well as from pre-defined and human-made data bases and models, but also to opportunities and advantages that are made possible or conceivable through the use of automated decisions. In our report on ***Automating Society in the EU***, we further identified more than 60 examples of ADM systems already used, of which most were deployed in the public sector of the different countries.

The examples in our reports include systems identifying children vulnerable to neglect in Denmark, detecting learning problems in primary and secondary schools to help teachers find "problematic" pupils in Slovenia, and initiatives on municipality level to detect child abuse and/or domestic violence in the Netherlands. Systems already decide which patients get treatment in the public health system in Italy, assign, process and control social benefits in Sweden, Finland and Denmark and calculate personalized budgets for social care in the United Kingdom, among many others. You can find credit scoring systems and predictive policing mechanism in many EU countries – the range of applications of ADM systems has broadened to almost all aspects of daily life. (Please see Annex 3 for an extracted list of examples)

The number of scoring and risk assessment systems in public administration and government practice is increasing – although differing significantly between regions and levels – and used for purposes like identification and categorization of citizens, allocation of services and predicting behaviour.

Based on those research findings, we see a strong need to debate the deployment of ADM systems in the public sector and social security institutions as well as their impact on the state-citizen relationship.

The mere existence of the monopoly of force and the inevitability of public social security services for those in need make clear that the involvement of public entities in the data collection and processing is a decisive aspect. At the same time the implementation of ADM systems is embedded in developments like datafication and systems interoperability efforts – from EU level to local councils – who are struggling with austerity measures and aim to tackle these challenges with integrated data warehouses. Research and discussion is furthermore needed on the often-neglected dimensions of potential collective and societal harms.

Taking into account the interrelation and (and often not explicitly regulated) shared ownership of public and private actors in this field, this urges an even closer look, as the existing potential of ADM systems to contribute to a better needs assessment and problem solving, efficient use of resources, and more transparent and accountable decisions depends on the transparency and accountability of the use of these systems (see also EPRS 2019).

[/ PLEASE SEE ANNEX 4 – CASE STUDY GERMANY]

/ Contribution to the schemes to the surveillance, control, and exclusion of the poor?

It can be observed that ADM systems often focus on risk assessment and risk prediction. Some scholars identify the predominant security discourse of the past two decades as source of the ‘risk management’ focus of many ADM systems (Coaffee & Murakami Wood, 2006; Aradou & Blanke, 2015, quoted in Dencik et al 2018). It is said that the context the applications are embedded in influences the design and use of the systems:

ADM as part of reforms & policy agendas

In Germany newly introduced “predictive policing” systems are accompanied by a public debate along security and terrorism, although crime statistics don’t show any increase in the respective regions and states (netzpolitik.org).

In Poland a controversial scoring system profiling the unemployed, deciding on the support unemployed can apply for and training they can receive, showed how a lack of transparency of the algorithmic basis and safeguards against errors of the system creates tension with the human and social rights of the unemployed. Initially intended to be an advisory tool, some early statistics indicate that clerks were deciding to override the result in 1 in 100 cases. They stated time constraints as one reason, but also feared repercussions from supervisors if a decision was later called into question.

So at the same time the use of the very same system varies along factors like organizational culture, individual preferences and the local constraints – in addition to the design of the tool or technology itself. The claim and stated purpose of the responsible institutions to create more centralized, “more objective categorizing machines” is not met in practice.

/ Business and human rights – Involvement of corporations

Our findings on the German market for public administration software – in this case software covering unemployment services, social and youth welfare – show supporting evidence for the observation of increasing market dominance by some companies in the respective national markets.¹ In the field of predictive policing a worrying example from Hestia showed how in some cases private companies not only develop and provide the software, but are responsible for its operation itself.

/ Human rights perspective on digital technologies in social protection systems

Uncertainty about use

ADM systems are used to make life-changing decisions. Secrecy of the current status quo of the deployment of such ADM systems in the public sector, however, the lack of systematic information on where and how these are used, is the rule in Germany and other European countries.

As evidenced by the diverse responses to parliamentary inquiries, freedom of information requests of civil society actors and interviews we convened during summer and autumn 2018, there seem to be no guidelines in place for disclosing details on the uses of ADM systems to the public (see also EPRS 2019).

Uncertainties about collective impacts

We found – and this is also emphasized by organizations with a more focused human rights perspective on the topic – that there are strong collective and societal effects of these systems. Compared to individual harms, the collective and societal harms are in many cases not sufficiently addressed by a human rights based approach. This adds to the factors that make it difficult to expose and challenge human rights violations. It would be therefore crucial to find the right frame to address these effects and dimensions.

¹ PROSOZ Herten GmbH, prosozial GmbH, Lämmerzahl GmbH, AKDN-sozial as well as AKDB are according to an interview partner the only providers left when it comes to municipal administration and welfare software.

The right to social security and an adequate standard of living

In addition to potential infringements of privacy and data protection rights, ADM systems deployed in the public sector affect social and economical rights not only of individuals but groups of society as “collective subjects” to these systems. The potential harms caused by automated decision-making range from loss of opportunity (ADM in insurances and social benefits, employment), economic exclusion (credit scoring, HR analytics), social detriment (reinforcement of biases and structural discrimination in ADM) and loss of liberty (predictive policing, ADM in judicial systems). (see also EPRS 2019)

Impact on vulnerable groups – Is the impact on people living in poverty different from people not living in poverty?

The manifestation of poverty in multiple vulnerabilities leads to people living in poverty finding themselves more often dependent to the various support systems of social welfare. Vulnerable and marginalized communities are less able to escape data accumulation about them when these services are provided by the public sector. The increasing interoperability of support systems and social benefit mechanisms – and the underlying data collection – affects them more than those using public services only for administrative matters, like renewing an ID card.

Various systems we found in our report on *Automating Society* in Europe are directed towards the well being of vulnerable groups. Only in some we found indicators for the purpose of its deployment, and often the implementation of the ADM systems in the public sector could be connected to a policy agenda and embedded in a political context. A decisive aspect to take into account is therefore the motivation and the objectives behind the introduction and application of such systems.

One further concern is the risk of stigma and stereotyping of particular groups with the labelling of ‘risk’ and targeting based on false calculations. Others are the lack of transparency and consent.

Regulation beyond rights to privacy and data protection?

Right to effective remedy

Demands on ADM systems must be distinguished from demands on bureaucracies themselves. Technology can reinforce the injustices of a system already in place, but often the problems and risks of discrimination have been there before. To discuss the question of the allocation of responsibility is crucial, but one must take into account structural and systematic implications that existed before the application of ADM systems.

What is needed is a review and adjustment of procedures for challenging bureaucratic decisions (automated or not): Whether a case worker or administrator makes a decision based on instructions or on the output of a computer system should not matter as long as s*he does not have any possibility to challenge or adjust the decision. The question of responsibility has to be dealt with on a different level. However, citizens have to have the right to access qualified contact persons who know how systems work and have the resources to intervene. Citizens as

well as clerks must not face any negative consequences for requesting or providing this information.

GDPR

Critics and rights advocates are questioning the scope and effectiveness of the application of the GDPR to ADM systems and see little room for manoeuvre when it comes to explicit, well-defined and effectual rights, especially against **group-related and societal risks** and the impact of automated decision-making systems. It further does not reflect the diversity of ADM systems already implemented, including various scenarios in which people are involved, who consciously or unconsciously implement ADM or follow the recommendations unquestioningly. It remains a matter of controversy among experts regarding what the GDPR defines as a “decision” or what circumstances and which “legal effects” have to occur for the prohibition of automated decision-making to apply. (Art. 22)

/ Recommendations

Strengthen administration and introduce a public register

Our research for the *Atlas of Automation* has made us acutely aware of a universe of different software systems in all kinds of branches of administration and other service sectors that are relevant to participation. So far, a register of such systems that allows for an evaluation in regard to the degree of automation and its effect on participation, and on society, does not exist. In order to ensure democratic debate and control, municipalities, federal states and the national government in Germany need to create such a register. The purpose for which an ADM system is deployed, who was involved in its design, development and training, which decision model is underlying and how the quality and effectiveness of the system was verified would be published in that register.

Such a survey of the current state of affairs in Germany would also strengthen the administration because it could keep an overview on its ability to act. On the one hand, employees should be trained to see more clearly to which extent software (subtly) prepares decisions or already effectively takes them. If applicable, existing software based processes should be reviewed to detect bias and discrimination. On the other hand, staff should also be able to voice recommendations and to develop procedures for implementing ADM where it is appropriate. Furthermore, mechanisms for the evaluation of the respective software systems, as well as methods to conceptualise ADM, need to be established within the administration.

Findings from German labour rights

The complexity of algorithms leads to problems of providing evidence when it comes to breaches of law and (human) rights violations: In Germany, if a discriminatory differentiation is made by the algorithm, this will be attributed to the employer. However, in order to be liable for a discriminatory decision, “knowledge” of the fact it took place needs to be established. Whether this can be done in the case of an algorithmically driven system whose inner workings are not

known to the company employing it is currently unclear. This can be counteracted by documentation obligations, similar e.g. to the regulation of the financial market.

Labour rights, which also apply when the collection and processing of data is outsourced to a third party, can be a strong lever to restrict incomplete, non-transparent and illegitimate decisions based on ADM systems. If, however, only anonymous data is collected or only the performance of an entire department or group is evaluated, workers councils usually have no say. It is therefore essential to consciously tailor oversight mechanisms and governance structures to the collective effects of ADM systems.

What if the mere violation of data protection law may be unlawful, but may not lead to verifiable damage? Who must be responsible for proving and providing the evidence? Often this responsibility still lies with those affected and they are “rationally apathetic”, i.e. they do not pursue their claims because it is not worth the effort.

Regulation in other sectors already includes emergency precautions for unforeseen disruptions or the limitation of the application of fully automated decisions to certain fields. A limitation to procedures that have no irreversible consequences for humans could be one option, at least for systems with self-learning algorithms.

/ References

Please also see [direct links in the texts](#)

AlgorithmWatch (2019) [Atlas of Automation: Automated decision-making and participation in Germany](#), 1. edition, Berlin.

AlgorithmWatch (2019) Automated Society – Taking Stock of Automated Decision-Making in the EU <https://algorithmwatch.org/en/automating-society/>, Berlin.

Dencik, L., Hintz, A., Redden, J. and Warne, H. (2018) [Data Scores as Governance: Investigating uses of citizen scoring in public services](#). Research Report. Cardiff University.

European Parliamentary Research Service (EPRS) - Scientific Foresight Unit (STOA) (2019) [Understanding algorithmic decision-making: Opportunities and challenges](#).