



EL DERECHO DEL TRABAJO EN UN CONTEXTO GLOBALIZADO

LABOR MARKET DIGITALIZATION IN THE NEW SPANISH EMPLOYMENT LAW

TOPIC: *Digitalization, AI and employment*

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Proyecto PID2022-139488OB-100,



Cofinanciado por la Unión Europea

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CONTEXT

DIGITALIZATION AND WORK: OPPORTUNITIES AND RISKS

OECD (2023) “Employment Outlook 2023: Artificial Intelligence and the labour market”

OECD, “A new dawn for public employment services. Service delivery in the age of artificial intelligence”; Artificial Intelligence Papers, 19/2024

PUBLIC EMPLOYMENT SERVICIES

General problems

- ☐ Low **quality** of job offers
- ☐ User **profile** (**vulnerable** groups, **benefit** recipients,...)
- ☐ Limited knowledge of the **business environment**

Spain: weaknesses

- **Uncoordinated** decentralised structure
- **Workforce and operators** in the labour market
- **Underfunding**, lack of innovation and **disconnection**

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DIGITALIZATION AND EMPLOYMENT POLICIES IN SPAIN. PRTR: from myth to logos?

Recovery, Transformation and Resilience Plan (PRTR)

LEVER VIII (New care economy and employment policies)

C23 (New public policies for a *dynamic, resilient and inclusive* labor market)

LEVER IV (An Administration for the 21st century)

- C11 (Modernization of the Public Administration):
Spanish Employment Agency (**AEE**)

**LEVER VII (Education and knowledge, lifelong learning
and capacity building)**

- C19 (National Digital Skills Plan)

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DIGITALIZATION AND EMPLOYMENT POLICIES IN SPAIN. PRTR: from mith...

PRTR [P. VIII (C23) → L. IV (C11) / L. VII (C19)]

EMPLOYMENT LAW 3/2023

- ☐ **Spanish Employment Agency (AEE):** “coordinator-supervisor” (T. II, c. I Empl. Act)
- ☐ **Integrated Public Employment Services Information System (SPIISE)**
(arts. 15 y 16 EA)
- ☐ Expansion concept **INTERMEDIATION** (art. 3 EA / Cap. III, Tít. III)
[prospecting + match + recruitment (+ support-work placement)]

Digitalization as an opportunity

- 1) Virtual and digital tools**
- 2) Evaluation** employment policie
- 3) Labour market data**
- 4) Simplification and speeding up** of formalities and procedures
- 5) Fight against fraud** and illegality

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1) DIGITAL AND VIRTUAL TOOLS (Preamble Employment Act)

a) Tools (*Artificial Intelligence Strategy 2024*)

- ❑ SPIISE / Portal Único de Empleo (“**Empléate**”, DF 11ª LE) → *chatbots*
- ❑ IA-LLM (labour profiling / orientation) / *e-learning* (art. 13., b, 2º EA)

b) Digital training → *Annual Sustainable Growth Survey*

- ❑ **National Digital Skills Plan** → **Digital Spain Agenda 2026**
- ❑ PRTR: *Digital skills for employment (C19.I3)*
 - **USERS** (arts. 38 y 33.2 EA)
 - **Basic digital skills** (*vulnerable* groups/territories)
 - **Technical support** (RD 438/2024, *Common portfolio of services SNE*)

➤ **S.P.E. Digital Training Program for Public Administrations**
(*Public Administration Digitalization Plan 2021-2025*)

OECD (2022), “*Harnessing digitalisation in Public Employment Services to connect people with jobs*”

2) EVALUATION EMPLOYMENT POLICIES (*in advance*)

OECD (2020), *Impact evaluation of labour market policies through the use of linked administrative data*

SEPE, “Evaluation ex post PAPE 2021”; 2023

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DIGITALIZATION AND EMPLOYMENT POLICIES IN SPAIN. PRTR: from mith...

3) AVAILABLE LABOUR MARKET DATA → EIA 2024

- ❑ *New realities*: employment, services y recipients (arts. 4 y 9 EA)
- ❑ Information / data (element +) → **SPIISE** (art. 15 y ss. EA) → **THREATS**
 - Vacancies ... “*duty to inform*” (art. 59 EA)
 - Private collaboration (... y **GDPR (UE) 2016/679**)
 - AI (...High risk system in employment, **AIA (UE) 2024/1689**)

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Research project **RE-INCLUYE**

WEAKNESSES

OECD (2024), “Modernizing Latvia’s Public Employment Service through Digitalization”

Benedict Evansc (2024) *The AI summer*

5) FIGHT AGAINST FRAUD AND ILLEGALITY: AI (ENIA 2020)

- Job offers quality (discriminatory / ilegal / vacancies)
- Benefit and incentives-bonusses (arts. 4, *m* y 56.1, *i-j* EA)

DIGITALIZATION AND EMPLOYMENT POLICIES IN SPAIN. PRTR: ... ¿to logos?

SOFT LOW

(Strategies, Plans, Principles, Policies...) vs EIA 2024

RISKS

- Processing of **personal data** / **bias** (discrimination / rights +)
- “Automated” intermediation (**Prof. BINI**)
- **Digital gap** and *vulnerable groups*

WEAKNESSES

- ❑ **Basic digital skills** (→ 43%)
- ❑ **Operation** of telematic systems (→ COVID)
- ❑ AI / algorithm **mistakes and bias** (→ *Bosco system*)
- ❑ **Ex post control** (→ CJEU’18 Cakarevic... SSTS / *Ombudsman’s office*)
- ❑ **Personal attention** (→ *Ombudsman’s office*)

Digitalization **pro bring** (EIA 2024): STS (C-A) 1953/2023

- ✓ Digital channel: **complementary** / alternative / non-preferential
- ✓ **Face-to-face** service **guarantee** EA (arts. 5.d, 7, 56.g, 61)

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LABOUR INTERMEDIATION FOR DECENT WORK

THE NEW APPROACH OF THE SPANISH EMPLOYMENT LAW

KEY-POINTS

- Re-location: a key dimensión in the light of fair occupational transitions
- Active labour market policies: essential pillar in the PRTR vision
- **On the digitalization of labour intermediation: critiques and proposals**

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LABOUR INTERMEDIATION FOR DECENT WORK

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KEY-POINTS

➤ On the digitalization of labour intermediation: critiques and proposals

- Digitalization: a possible key for the modernisation of the labour intermediation system
- «El objetivo del componente 23 es avanzar precisamente hacia un mercado de trabajo dinámico, resiliente e inclusivo, con reformas para modernizar las políticas activas de empleo, la negociación colectiva, reforzar el reskilling y upskilling de trabajadores y promover el empleo juvenil» (PRTR, 76-77)
- «La Agencia Española de Empleo impulsará las actuaciones pertinentes para modernizar el Portal Único de Empleo, así como la mejora de la coordinación y cooperación con otras plataformas e instrumentos de empleo y formación existentes, convirtiéndolo en un espacio de intercambio de información y colaboración eficaz entre todos los actores del mercado de trabajo. Además, prestará especial atención a sus necesidades de digitalización, incorporando herramientas tecnológicas que podrán especificarse en cada momento mediante desarrollos reglamentarios» (Final Disposition n. 11, Law 3/2023)
- Holistic labour intermediation infrastructure

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➤ On the digitalization of labour intermediation: critiques and proposals

- Last part of the article 3 c), Law 3/2023: interpretative issue
 - «En cualquier caso, para que se considere intermediación o colocación laboral, el conjunto de acciones descritas no debe llevarse a cabo exclusivamente por medios automatizados»
 - Labour intermediation activities, must be carried out at least partially by a human being, thus excluding the possibility of a fully and exclusively automated labour intermediation
 - What about exclusively automated labour intermediation activities?
 - The Legislator stresses the intrinsic human nature of labour intermediation
 - Fully consistent with the regulatory general approach that finds its most emblematic reference in the article 22, Regulation (EU) 2016/679 – GDPR, General Data Protection Regulation)
 - **BUT** it is essential to interpret the rule in a teleologically oriented dimensión , so that it is read as substantially aimed at extending the scope of labour intermediation (and no, instead, to reduce it, leaving out the entities which carry out activities of fully automated intermediation)

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LABOUR INTERMEDIATION FOR DECENT WORK

THE NEW APPROACH OF THE SPANISH EMPLOYMENT LAW

KEY-POINTS

- **On the digitalization of labour intermediation: critiques and proposals**
 - Last part of the article 3 c), Law 3/2023: interpretative issue
 - Clear ban on total automation of brokering activities
 - Digital intermediation as an emerging cause of discrimination
 - Need to neutralise specific profiles of discriminatory risk
- And... what about the practical concrete experiences?
 - substantial relativization of the role of intermediaries
 - difficulty of redirecting many portals and “virtual spaces” to the legal concept of “intermediaries” in the strict legal sense

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Research project

“Legal reforms on inclusión and employment in the
Recovery, Transformation and Resilience Plan”

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