

AI in Talent Acquisition: Legal Considerations for Modern Recruitment in EU

Introduction

One area where Artificial Intelligence (hereinafter referred to as “AI”) has made a substantial difference is Human Resources (hereinafter referred to as “HR”). The implementation of e-recruitment information systems and AI tools has revolutionized the way companies attract and recruit talented individuals. These technologies optimize the recruitment process, making it more efficient and effective.

This article will provide an overview of how AI-based e-recruitment systems work and their benefits for a company, including real examples. Additionally, it explores legal and compliance aspects associated with these technologies and particularly with AI, providing a legal understanding of their implications in the HR domain.

A. The AI-based e-recruitment system and its benefits for a company

An AI e-recruitment system collects data from job applications and analyzes it to assess hard and soft skills, previous experience and personality traits. It screens applications to match them with job descriptions, rejecting those that do not fit and ranking successful candidates for further human-based screening. Data can be collected through CV submissions, interview with pre-recorded questions, LinkedIn profiles, online questionnaires, games (memory, reaction, decision-making and problem-solving games)¹ or chatbots on the company’s page. This automated pre-screening and ranking process is more effective and targeted, reducing the number of candidates to be interviewed by human and saving significant time and resources for Human Resources managers².

Another form of e-recruitment uses AI tools that search the web and social media for talent, analyze the data and predict the likelihood of candidates leaving their current job. This helps companies target and attract talent for specific roles at a lower cost³.

For instance, *Under Armour* and *Red Bull* are prominent companies that receive thousands of resumes each month. To efficiently manage this volume, they utilize an AI-based hiring platform called *HireVue*. This platform facilitates rapid and structured video screening

¹ See *Pyrametrics Gamified soft skills assessments Platform*, based on neuroscience, cognitive research and big data and predictive analytics: [Soft Skills Assessment Testing – pymetrics](#).

² Faliagka, E., Iliadis, L., Karydis, I., Rigou, M., Sioutas, S., Tsakalidis, A., & Tzimas, G. (2013). On-line consistent ranking on e-recruitment: seeking the truth behind a well-formed CV. *Springer Science and Business Media*. doi:10.1007/s10462-013-9414-y

³ Faiyaz Md. Iqbal (2018). Can Artificial Intelligence Change the Way in Which Companies Recruit, Train, Develop and Manage Human Resources in Workplace? *Asian Journal of Social Sciences and Management Studies*, 5(3): 102-104.

ROKAS

interviews with pre-recorded questions, employing facial recognition, voice pattern analysis and word choice analysis to evaluate a candidate's suitability. If a candidate meets the criteria based on *HireVue's* assessment, a human-conducted interview follows⁴.

Another interesting example is *Pymetrics*, a gamified soft skills assessment platform used by large companies including JP Morgan, BCG, Morgan Stanley, and AstraZeneca⁵. It uses AI-based games to assess cognitive, social and behavioral traits of candidates, such as attention, decision-making, effort, emotion, fairness, focus, generosity, learning and risk tolerance. One of them called "*Digits Memory Game*" assessing the memory skills of candidates by challenging them to memorize a sequence of given digits quickly flashing on their screen. Once candidates finish the games, the platform creates measurable data on their skills, analyzes them and provides data-driven profiles based on top candidates' performance to find the best-suited job candidates according to the job description.

In summary, the key benefits of using an AI-based e-recruitment system include increasing the chances of finding the right candidate with the requested skills and targeting top talents in the market with specific competencies, saving time and money. This allows HR teams to focus more on crucial duties such as training and developing employees, enhancing employee experience and bolstering a positive employer brand reputation⁶. Additionally, the AI-based gamification of the recruitment process provides a less anxious, more enjoyable, engaging, and fair experience for candidates, leading to more comprehensive and well-informed hiring decisions for the company.

However, even though an AI-based recruitment system ensures efficiency and speed in recruiting top candidates, a legal review to ensure compliance with EU and national legal frameworks is mandatory when introducing such system in the EU recruitment market.

B. The legal and compliance aspects of AI-based recruitment

The notion that automated decision-making through AI algorithms ensures objective employer judgments, thereby enhancing fairness and equality in the workplace, is widely supported. However, this perspective is problematic, as AI systems inherently suffer from significant weaknesses. These weaknesses can arise from incorrect programming, which incorporates human biases and errors into the AI algorithms and from improper implementation that may infringe on fundamental human rights⁷. Consequently,

⁴ Mohd Fakhri Mat Saad , Ari Wibisono Listyo Nugro, Rajermani Thinakaran, & Mohammad Baijed. (n.d.). A Review of Artificial Intelligence Based Platform in Human Resource Recruitment Process. *6th IEEE International Conference on Recent Advances and Innovations in Engineering-ICRAIE 2021*.

⁵ See [The Pymetrics Games – Overview and Practice Guidelines | Oxford University Careers Service](#).

⁶ IBM Education. (n.d.). AI in recruitment. Retrieved from <https://www.ibm.com/think/topics/ai-in-recruitment>.

⁷ Rolf Wank, «*Algorithmic Management and the Individual Employment Contract*», *Labour Law Review*, volume 82, issue 6, 2023, p. 676.

ROKAS

legislative regulation of these systems, especially within the realm of employment relationships, has become an urgent necessity.

The General Data Protection Regulation (GDPR) and in particular Article 22 thereof - Including a reference to Article 50 of the Artificial Intelligence ACT (Regulation EU 2024/1689)

A fundamental aspect of the principles of lawfulness and transparency under Article 5 par. 1 (a) of the GDPR is also the employer's obligation to inform employees about the AI systems and algorithms in use. This information is crucial for employees to exercise their data subject rights under Articles 15-22 of the GDPR. Employers must disclose the existence of automated decision-making processes, including profiling, and provide comprehensive details on the underlying logic, significance, and potential consequences of these systems, as required by Articles 13 par. 2 (f) and 14 par. 2 (g) of the GDPR⁸.

Furthermore, under Article 50 of the AI ACT, providers (in this context, employers) are required to ensure that these AI systems are designed and developed in a manner that guarantees transparency and explainability, thereby bolstering trust and accountability in AI-driven processes.

Automated Decision-Making and Profiling

Of paramount importance is the Article 22, par. 1 of the GDPR., which stipulates that data subjects have the right not to be subject to decisions based solely on automated processing, including profiling, which produces legal effects or significantly affects them. A teleological interpretation of this provision indicates that it imposes a prohibition on data controllers, rather than granting an explicit right to data subjects, from making fully automated decisions⁹. For GDPR compliance, it is essential to differentiate between automated and non-automated processing. Automated processing occurs entirely or partially through automated means, while non-automated processing, also known as "manual processing," is carried out without automated tools. In cases of entirely automated processing, human intervention is not excluded but must be insignificant enough that the human does not have a direct and considerable impact on the outcome. Conversely, partially automated processing requires meaningful human intervention with the potential to influence the result. Article 22 of the GDPR deals with decisions made solely through automated processing. Due to the complexity of automated systems, it is

⁸ V. Sp. Douka, «Algorithmic administration, protection of employees' personal data, employer's civil liability: statutory law, weaknesses and gaps - EU Legislation subject to vote», Labour Law Review, volume 82, issue 6, 2023, p. 784 (in Greek).

⁹ This view has been supported by the Article 29 Working Party in its document titled "Guidelines on Automated Individual Decision-Making and Profiling for the Purposes of Regulation 2016/679" from 2018. It is also supported by the preamble of the GDPR, which includes the concept of prohibition.

ROKAS

not always clear which category applies to a particular case according to this distinction. In cases of uncertainty, it is preferable to assume that the processing is fully automated, thereby ensuring that Article 22 of the GDPR is applied with its widest possible protective scope.

Profiling, as defined by Article 4 par. 4 of the GDPR, involves automated processing of personal data to evaluate various personal aspects of an individual. If profiling is conducted solely through automated means, it is subject to the restrictions of Article 22 of the GDPR, otherwise, only the general data protection provisions apply. The concerning aspect is that profiling entails gathering and combining various data points to create a detailed and unified profile. This process analyzes and synthesizes scattered information to generate actionable insights about an individual, such as predicting future behavior and performance outcomes, essentially producing "new knowledge."

Exceptions to Automated Decision-Making Restrictions

Article 22 par. 2 of the GDPR outlines exceptions to the restriction on automated decision-making of par. 1. These exceptions apply when the decision is necessary for entering into or performing a contract, when it is authorized by Union or Member State law with appropriate safeguards for the individual's rights or when it is based on the explicit consent of the data subject. However, the use of explicit consent as a legal basis, particularly in employment contexts, is viewed with skepticism due to potential power imbalances. Thus, consent is only a valid legal basis in exceptional circumstances, making the other two exceptions more significant in determining the permissibility of automated processing¹⁰.

Rights and Measures for Data Subjects

Article 22 par. 3 of the GDPR requires data controllers to implement measures to protect data subjects' rights when automated decisions are based on contractual necessity or explicit consent. These measures include ensuring the right to human intervention, providing an opportunity to express their views, and enabling individuals to contest decisions. A pertinent question is whether this right also encompasses a "right to explanation." It is argued that the "right to explanation" is inherently supported by these requirements, as understanding the decision is a fundamental prerequisite for effectively exercising the expressly guaranteed rights¹¹.

¹⁰ Hellenic Data Protection Authority, «Right to Non-Automated Individual Decision-Making, Including Profiling». Retrieved from: https://www.dpa.gr/el/polites/gkpd/dikaiwma_lipsis_apofasewn (in Greek).

¹¹ V. Sp. Douka, «The Employer's Adoption of "Fully Automated Decisions": Article 22 of the General Data Protection Regulation (Regulation 2016/679 - GDPR)», *Labour Law Review*, volume 79, issue 3, 2020, p. 370 seq.

ROKAS

Sanctions for Violations

A violation of lawful processing under the above constitutes a breach of both the rights of employees recognized under the GDPR (Article 82 of the GDPR, "Right to compensation and liability") and the employment contract, offering dual protection for employees as both data subjects and employees.

Legal Requirements Under Greek Law

Article 9 of Greek Law 4961/2022 («Obligation to Inform About the Use of AI in the Workplace») mandates that employers using AI system in recruitment and hiring must, prior to the initial use of the system, provide comprehensive and clear information to each prospective employee. This information must include, at a minimum, the parameters that underpin the decision-making process and ensure compliance with the principles of equal treatment and the prevention of discrimination in employment.

In particular, employers must inform employees about:

- The specific criteria or parameters that the AI system uses to evaluate candidates. This includes details on the types of data collected, such as qualifications, experience, skills, and any other relevant metrics.
- How the AI system processes this data to make decisions. This involves describing the algorithms and models used and how they contribute to the overall decision-making process.
- Where the data used by the AI system comes from, whether it is directly from the candidate's application, public databases, social media, or other sources¹².

Sanctions for Violations

Employers that violate these obligations are subject to administrative penalties imposed by the relevant labour inspection authority. Since the law does not specify provisions for civil liability, employee claims for damages are pursued based on Article 914 of the Civil Code, in conjunction with Articles 915-938, 57-59 of the Civil Code. This approach ensures that employees have legal avenues for seeking compensation for breaches related to AI-based recruitment practices.

Concluding Insights

In conclusion, while AI-based systems offer significant efficiencies and enhancements in the recruitment process as well as to talent acquisition, they also introduce significant legal and ethical concerns. To guarantee employees' rights and uphold core principles such

¹² Circular ES-114742-2023/10031/7.3.2023 of the Labor Inspectorate: Digital Media and Personal Data Protection Issues, Included in the Labour Law Review, volume 83, issue 2, 2024, p. 239-240.

ROKAS

as fairness, equality, and transparency, it is imperative to implement robust legislative measures and safeguards.

Moreover, companies seeking to integrate such systems should carefully consider these concerns, implement appropriate technical and organizational measures and develop corporate policies to ensure compliance with relevant legislation and the guidelines set by the competent authorities. Companies should also invest in training their HR professionals to be aware of ethical considerations and legal obligations. By fostering a culture of responsibility and continuous improvement, companies can ensure that the integration of AI in recruitment not only drives efficiency but also upholds the highest standards of ethical conduct and fully complies with legal requirements.



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