

The platform labour directive and the protection of personal data within the scope of worker's legal sphere

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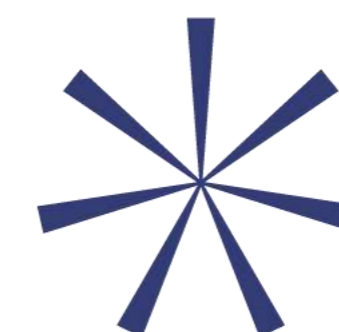


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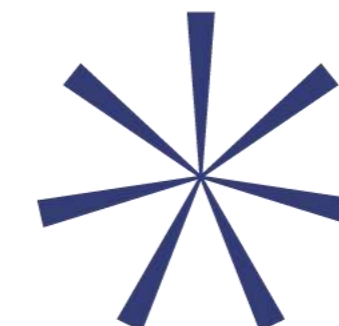


The digital labour platforms directive and the protection of personal data within the scope of worker's legal sphere

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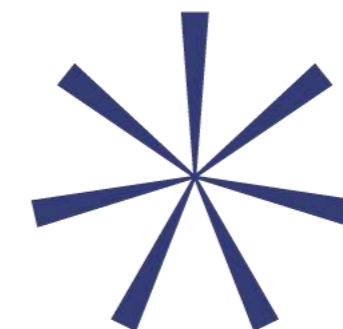
Platform economy and digital labour platforms

“The emergence of the gig or platform economy is one of the most important new transformations in the world of work.” (ILO)

Today, over 28 million people in the EU work through digital labour platforms. In 2025, their number is expected to reach 43 million.

The perspective of International Labour Organization

- The excessive power and control over data by companies needs to be counterbalanced by policies preventing anticompetitive behavior and misuse of data.
- The right to data privacy is often violated:
 - The data is often property of the digital platform
 - The illicit processing and collection of highly sensitive data;
 - The illicit individual decision-making systems;



The General Regulation Data Protection (Regulation 2016/679, adopted on 27 April 2016)

Several individual rights:

The right to be informed;

The right to access data;

The right to data portability;

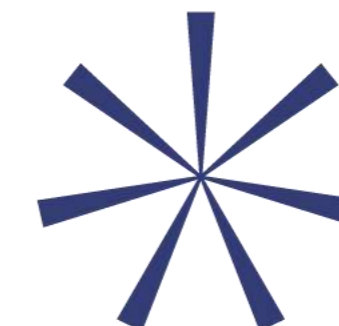
The right to data erasure; and

The right not to be subject to a decision based solely on automated systems

The Proposal of a Platform Workers Directive (COM/2021/762 final)

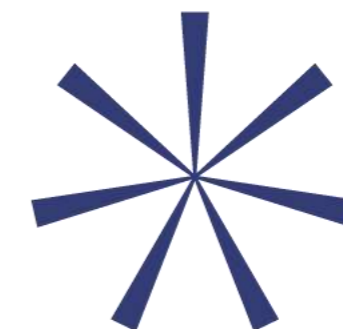
and

Council of the European Union: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work - General approach



Among others:

- Article 8 of the **Charter of Fundamental Rights of the European Union** ensure the **right to protection of personal data**
- **General Data Protection Regulation**
- **The proposed Artificial Intelligence Act**



Transparency and use of automated monitoring and decision-making systems (art. 5a and 6)

The necessity of written, tempestive, transparent, intelligible and easy access format information about:

- Automated monitoring systems
- Automated decision-making systems:

THE INFORMATION HAS TO BE PROVIDED TO PLATFORM WORKERS AND TO PLATFORM WORKERS REPRESENTATIVES.

Limitations on processing of personal data

- The Directive prohibits the **processing** of personal data (art 5a):
 - on the emotional or psychological state of the platform worker;
 - relating to the health of the platform worker, except in cases referred by GDPR;
 - relating to private conversations, including with platform workers' representatives;
 - collect any personal data while the platform worker is not offering or performing platform work.
- The minimization of data processing
- Privacy rights enforcement

Human monitoring of automated systems (art. 7)

- Member States shall ensure that digital labour platforms:
 - **regularly monitor and evaluate the impact of individual decisions** taken or supported by automated monitoring and decision-making system on persons performing platform work;
 - This information shall be available for the workers and their representatives
 - ensure sufficient **human resources for monitoring the impact of individual decisions** taken or supported by automated monitoring and decision-making systems.

Human review of significant decisions (art. 8)

Member States shall ensure:

- the right of platform workers to obtain a written **explanation of decisions that significantly affect the platform worker's rights**
- that the digital labour platform designates a contact person in this matter
- the right to contradictory, the obligation of review and the right to a substantiated reply.

- decisions that **restrict, suspend or terminate the employment contract** based on an automated decision-making system, that imply a reduction/refuse on remuneration/payment or the production of similar effects

- **Art. 8a – Safety and Health**

- In matters of OSH and despite the Council Directive 89/391/EEC and related directives, digital platforms shall:
 - evaluate the risks of automated monitoring or decision-making systems to their safety and health, as regards possible risks of work-related accidents, psychosocial and ergonomic risks
 - assess whether the safeguards of those systems are appropriate for the risks identified attending to the specific characteristics of the work environment
 - introduce appropriate preventive and protective measures
- **Prohibition of monitoring and decision –making systems that put in risk physical and mental health**

Information and consultation art. 9.

- The “obligation” of Member- States to ensure:
 - Information to **platform workers representatives** or, in case of their inexistence, the **platform worker involved** regarding **decisions that introduce substantial changes in the use of automated monitoring or decision-making systems.**

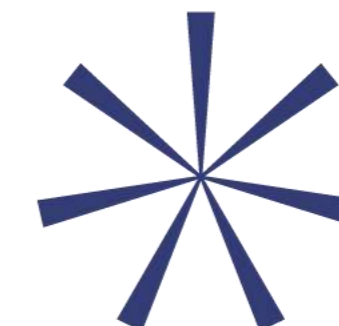


Conclusions

- **The Proposal is a big step towards a regulation of digital labour platforms:**
 - Reenforces the respect over rights related to data protection
 - Reenforces data transparency and fairness
 - Addresses the risk of algorithmic management
 - Addresses the psychosocial hazards
 - Establishes the right to information and consultation

However:

- Art. 5a – prohibits the processing of sensitive data. **Collection of that data?**
- Art. 7. – Definition of **systems**, including the policies adopted by managerial technologies?
 - The express reference of algorithmic discrimination?



- Art. 8a –OSH
 - Definition of psychosocial risks and respective obligations?
 - The term “measures” and its incapability with monitoring and psychosocial risks
 - urgency to prevent the risks of AI systems

Art. 9: Information and consultation

decisions likely to lead to the introduction of or substantial changes

the exclusion of self-employed

A comparative view

- **Bills:**
 - **BRAZIL:** Brazilian General Data Protection Law 2018 – The processing of personal data must be non-discriminatory
 - **France:** the amendment of *Code du Travail* - Art. L7342-7 (self-employed)
 - **ITALY, Bologna:** Chapter of Fundamental Rights of Digital Workers in the Urban Context (Riders Union Bologna collective) – art. 7.º

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