



**OPENING THE BLACK BOX
TO CHALLENGE
ALGORITHMIC MANAGEMENT:
Proposed amendments to the
Directive on Working Conditions and
Platform Work**



ABOUT PRIVACY INTERNATIONAL

Privacy International (PI) is a global, not-for-profit organization that campaigns against companies and governments who exploit our data and technologies. We do not accept any funding from industry, and we have a strict policy about the circumstances under which we accept grants in order to ensure our independence from state actors and private organizations. Given our leading and respected status as a voice on issues of data and privacy, we are frequently called upon to give expert evidence to parliamentary and government committees. Among others, we have advised and reported to the Council of Europe, the European Parliament, the Organisation for Economic Co-operation and Development and the UN Office of the High Commissioner for Human Rights.

INTRODUCTION

Privacy International welcomes the Platform Directive as a mechanism to protect workers' rights in response to transformations in the workplace. This includes the growing adoption of algorithmic management systems and the risks that accompany it. In particular, we welcome the efforts to ensure that workers are provided with information regarding such systems' conditions of operation and the transparency obligations on employers. Nevertheless, we note that the proposal put forward by the European Commission contains certain shortcomings with regard to general principles relating to the fundamental right to privacy, including privacy by design and by default, transparency and decisions affecting platform workers' working conditions, which are all detailed below. It is crucial that these are effectively addressed by the European Parliament through the introduction of specific amendments to ensure that the aim of the Directive is not undermined, and that workers' rights remain protected.

Algorithmic management fundamentally relies on the availability of data to make decisions. The impact such decisions have on workers' can be financially and emotionally devastating. PI has previously exposed this issue through campaign titled [Managed by](#)

Bots. We have previously called for the conditions under which data is collected and processed to be subjected to effective and robust scrutiny. To address the threat to privacy and prevent the ascent of inscrutable black box algorithms, employers must be accountable and transparent in relation to their data collection and processing practices. Platform workers must have access to mechanisms which enable security and provide them with information in way that empowers them and ensures that their rights are protected at least as much as employees and workers working under ‘traditional’ employment contracts.

In our view, the threats to workers’ rights can materialise at **three key stages**: First, when personal data is collected. While personal data can, and is often, required for automated decision-making systems to function, clear limits must be imposed on the scope of this collection to preserve workers’ privacy. Similar to workers leaving an office, privacy by design and by default should be deployed so that only necessary data is collected, and only during periods agreed by workers. Activities, communications, and relations of workers should never be used as parameters by platforms in decision-making systems. And personal data required by such systems for work allocation (such as geolocation) must only be collected if such collection is subjected to strict safeguards, only when necessary and with workers’ clear and informed consent.

Once this data is collected, the decision making process must be as transparent as possible, enabling workers to understand why a decision has been made, the parameters on which a decision is based, and guaranteeing the right to challenge it. Opaque decision-making systems enable discrimination, loss of autonomy, unpredictable outcomes, exacerbate power imbalances and leave workers with limited means to challenge decisions and defend their interests.

Finally, algorithmic decision-making systems must not be solely responsible for important decisions affecting individuals’ working conditions, such as termination of contract.

The potential consequences of such decisions on workers’ ability to live and work with dignity are so serious that a human should always be involved in these decisions. Adequate processes must also be put in place to ensure that human reviewers are properly trained and the workers are fully informed in order to allow them to challenge decisions made about them through another human being.

The remainder of this submission offers suggested amendment to address the concerns we have summarised in this section. It also includes a short section supporting the extension of key articles related to transparency, privacy, and significant decisions about any worker by automated or semi-automated decision-making systems.

SUGGESTED AMENDMENTS

PRIVACY BY DESIGN AND DEFAULT: DATA COLLECTION MUST BE LIMITED TO WHAT IS NECESSARY TO PROTECT WORKERS' PRIVACY

The data produced by workers' devices can be extremely revealing. Accessing this data is intrusive and threatens their enjoyment of their fundamental rights. To limit threats to workers' privacy, only data which is necessary for the performance or attribution of work should be collected and only during periods of time agreed by workers.

Amendments 1 - Article 6.5c.

Original	PI suggested amendment
Digital labour platforms shall not... 6.5c. process any personal data in relation to private conversations, including exchanges with platform workers' representatives;	Digital labour platforms shall not... 6.5c. access, collect or process any personal data which is <i>not necessary for the evaluation or attribution of work.</i> <i>This includes but is not limited to employees' contacts, activities outside the platform, device usage,</i> private conversations, including exchanges with platform workers', workers' representatives <i>and other workers, within or outside of any platform provided communication system;</i>

Explanation

In the case of *Barbulescu v Romania* (Application no. 61496/08), the European Court of Human Rights held that the right to privacy extended to the workplace. As a result, we submit that worker's fundamental right to privacy will also extend to using work networks, equipment, emails and private conversations with platform workers, workers representatives, and other workers within or outside any platform provided communication system.

In *Barbulescu v Romania* the employee had not been informed of the extent of monitoring undertaken by the employer and was not aware that the content of work emails would be accessible. He was fired after his employer discovered he used his work email for personal messages. The European Court of Human Rights held that a fair balance between employee's right to privacy and his employer's interests had not been struck. It held that the right to privacy applied to the workplace and should only be overridden when there is a compelling reason to do so.

Amendments 2 - Article 6.5d.

Original	PI suggested amendment
Article 6.5d. collect any personal data while the platform worker is not offering or performing platform work.	Article 6.5d. access, collect or process any personal data, <i>necessary for the performance of work or not</i> , while the platform worker is not offering or performing platform work.
	Suggested addition: Article 6.5db: If a platform worker gives consent to use the app for work this should not be deemed to include or cover consent to the collection of personal data when the worker is not working or available for work.

Explanation

Personal data collection for the purpose of algorithmic management represents an interference with the right to privacy that can only be acceptable if it is proportionate and subject to strict safeguards. Workplace surveillance is a growing concern, in particular with the shift to remote work, and access to workers' data has become the key to monitoring workers and employees. The majority of businesses that operate through online platforms require workers to use their own devices. The specific applications that workers have to use allow personal data collection for platforms' decision-making systems to function. This places platforms in a unique position to obtain huge amounts of personal data with little opportunities given to workers to control or limit such data collection.

There are most notably two safeguards that should be respected. First, only data which is strictly necessary for the decision-making system should be collected. Smartphones apps in particular have demonstrated their tendencies to require access to unnecessary data in order function, either with malicious intent or for secondary purposes unrelated to the application's main purpose. Data collected in this manner is likely to be used without clear user consent or knowledge and can be harmful as demonstrated by PI's work on Surveillance Advertising.

Second, with regards to data necessary for the functioning of a system, such data, in particular location data, can be highly invasive and reveal a lot about workers' lives if collected outside of periods of work. An employer would not follow an employee home after work; therefore, no data should be collected outside of periods of time where a worker has signalled that they are available for work.

In short, to limit threats to workers' privacy, only data that is necessary for the performance or attribution of work should be collected and only during periods of time agreed by workers.

PI interviewed gig economy workers who said they were concerned that their data was still being collected about them even after the they have logged out of the platform. Further, a gig economy platform has previously violated Apple's privacy policy by tagging and identifying iPhones even after the App has been deleted from these phones. This not only highlights gig economy workers' concerns with protecting their privacy, but also shows the level of monitoring that some gig economy platforms may implement. As a result, it is crucial to ensure that workers are not monitored by the platforms outside of their working hours.

ACCOUNTABILITY AND TRANSPARENCY

Decision-making systems are complex and fallible systems with which real human beings interact and depend on. To ensure that workers, users, researchers, and the general public can assess, understand, and challenge these systems, transparency about the parameters considered by these systems and their functionality is key, in particular when such systems are relied on to make significant decisions such as account termination.

Amendments 3 - Article 6.4.

Original	PI suggested amendment
<p>Digital labour platforms shall make the information referred to in paragraph 2 available to platform workers' representatives and national labour authorities upon their request.</p>	<p>Digital labour platforms shall make the information referred to in paragraph 2 available to platform workers' representative and national labour authorities, <i>or any member of the general public</i> upon their request <i>and without unreasonable delay.</i></p>

Explanation

To ensure that current workers, future workers, users, and the general public can assess, understand, challenge and subject the platforms to scrutiny, information about these systems must be made available to the public. It is also crucial for workers to understand the conditions under which they interact with the platforms, in particular in relation to significant decisions such as terminating an account. This information must be provided without unreasonable delay to permit proper examination by a requesting party.

Providing this information to users, future workers and the general public empowers consumers by providing them with the means to assess the service they use and make informed decisions.

Amendments 4 - Article 6.4b.

Additional suggest article
6.4b. Digital labour platforms shall make available means of testing the automated and semi-automated decision-making systems to referred to in paragraph 1 to academics, researchers, and public interest bodies;

Explanation

Transparency on decision-making systems' parameters is particularly important for significant decisions such as account suspension or termination.

While a general level of transparency on the parameters used by a decision-making system might be sufficient for the general public, it is in the interest of government and civil societies that a greater lever of insight (excluding access to workers' personal data) be provided to academics and researchers. For example, Meta offers Automated Programming Interfaces to researchers for its ad library. Platforms should make available means of testing their decision-making systems. Such means include, for example, Application Programming Interfaces (APIs), neural network models, and training datasets.

Availability of such tools enable in-depth assessment of the systems to reveal discrimination, flaws, and biases. Transparency, through systematic disclosure of information about the use of technologies is key to ensuring accountability.

Amendments 5 - Article 8.1.

Original	PI suggested amendment
[...] Digital labour platforms shall provide the platform worker with a written statement of the reasons for any decision taken or supported by an automated decision-making system to restrict, suspend or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects.	[...] Digital labour platforms shall provide the platform worker with a written statement of the reasons for any decision taken or supported by an automated decision-making system to restrict, suspend or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects. <i>Such written statement must include supporting evidence,</i>

	<p><i>including data used in the decision-making process, date of reviews undertaken by human reviewers and reasons for approval of decision by reviewer. Further, such written statement should include information explaining the means through which workers may challenge any decision taken or supported by an automated decision-making system to restrict, suspend, or terminate the platform worker's account, any decision to refuse the remuneration for work performed by the platform worker, any decision on the platform worker's contractual status or any decision with similar effects.</i></p>
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Explanation

PI has spoken to numerous gig economy workers who had concerns over the lack of information provided by the notices of suspension or termination issued by gig economy platforms.

One particular gig economy worker, Driver X, stated that he received a notice of suspension but the notice did not provide any information as to why he had been suspended. He was only told that the investigation was ongoing and was instructed not to call the gig economy platform or to come to their offices. He did try to speak to customer service representatives, but at every point he was told that information about his suspension was not available. Whilst his account was reinstated nearly seven weeks later, he was not informed why he was initially suspended or what the investigation was about.

Further, another gig economy driver, Alexandru sees the persistent lack of transparency by Platforms as the key problem. “You never know when they are going to deactivate you or to suspend you. Nobody dares to ask why.”

As a result, it is crucial that written statements are provided for decisions, that they contain sufficient information and supporting evidence for these decisions.

A key means by which the Platform Directive can guarantee that platform workers’ rights are protected will be to ensure that platform workers are able to exercise all rights guaranteed under the General Data Protection Regulations in relation to their employer.

These rights include, for example, the rights to be informed and the rights to access, rectification, erasure, data portability and the right to object. Our position is that beyond merely referring to the existence of these rights, platforms should be obliged to put in place effective procedures which enable workers to make use of these rights, as well as clear consequences for failures to implement.

Finally, a fundamental means by which platform workers can protect their interests against algorithmic management and automated or semi-automated decision-making is by having a clear, accessible, effective, and fair means to challenge a decision made about them or their work. This is a fundamental right in the context of labour law and employment rights. Guaranteeing this right recognises the persistent power imbalance between workers and employers in the context of access to information.

DECISIONS AFFECTING INDIVIDUALS' WORKING CONDITIONS MUST NOT BE TAKEN WITHOUT HUMAN REVIEW

Given the fallible nature of decision-making algorithms, decisions affecting platform workers' working conditions should never be taken without human review. The aim of human review is to ensure that both the parameters and logic deployed are correct.

Amendments 6 - Article 8.1

Original	PI suggested amendment
<p>Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system that significantly affects the platform worker's working conditions, as referred to in Article 6(1), point (b). In particular, Member States shall ensure that digital labour platforms provide platform workers with access to a contact person designated by the digital labour platform to discuss and to clarify the facts, circumstances and reasons having led to the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.</p>	<p>Member States shall ensure that platform workers have the right to obtain an explanation from the digital labour platform for any decision taken or supported by an automated decision-making system or a semi-automated decision making system that significantly affects the platform worker's working conditions, as referred to in Article 6(1), point (b). Member states shall ensure that no decision affecting platform workers' working conditions is made without a prior human review. In particular, Member States shall ensure that digital labour platforms provide platform workers with access to a contact person designated by the digital labour platform within a reasonable period of time and without undue delay to discuss and to clarify the facts, circumstances and reasons having led to</p>

	the decision. Digital labour platforms shall ensure that such contact persons have the necessary competence, training and authority to exercise that function.
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Explanation

While PI acknowledges the potential efficiency and effectiveness of automated and semi-automated decision-making systems, we also recognise that no such system is or can be perfect and that errors, discrimination, failures and vulnerabilities are inherently part of their functioning. With these considerations in mind, it would be unfair to subject workers' ability to work to these systems without appropriate safeguards in the form of human review.

During our Managed by Bots campaign, we heard concerns from platform workers emphasising that the relevant contact persons do not have the information they are seeking, are treating them as if they are guilty and do not have the understanding of the implications that the platform software can have on their job allocation.

Requiring human review for such decisions also creates the conditions for the platform to provide a clear written statement, including the amendments suggested in the previous section. It would act as an additional layer of security for the workers and limit errors with potentially devastating consequences.

RIGHTS OF WORKERS WHO ARE SUBJECTED TO AUTOMATED OR SEMI-AUTOMATED DECISION-MAKING SYSTEMS

Amendments 7 - Article 10.1

Original	Amendment proposed by the EU Committee on Employment and Social Affairs and supported by PI
<p>Article 10.1 Article 6, Article 7(1) and (3) and Article 8 shall also apply to persons performing platform work who do not have an employment contract or employment relationship.</p>	<p>Article 10a Workers subject to automated or semi-automated monitoring and decision-making systems Articles 6, 7, 8 and 9 shall also apply to any worker, irrespective of status, subject to automated or semi-automated monitoring and decision-making systems and to any undertaking that uses automated or semi-automated monitoring and decision-making systems...</p>

Explanation

Having regard to the points outlined above and considering the growing adoption of automated and semi-automated decision-making systems as well as the potential evolution of relations between workers and platforms, PI supports the European Union EU Committee's on Employment and Social Affairs suggested amendments to article 10.1 to broaden the applicability of Article 6,7,8 and 9 to any worker subject to automated or semi-automated monitoring and decision-making systems.

Flexibility and freedom of self-employed workers may be touted by platforms as the reason why their responsibilities towards them should be limited. However, these opportunities shouldn't come at the cost of 'contracting away' your rights. The rights covered in Articles 6, 7, 8 and 9 of the Directive relate to the most fundamental rights, including the right to be informed and the right to challenge unfair decisions in the workplace. This also includes opportunities to obtain a human review of automated or

semi-automated decisions, the availability of human monitoring of automated decisions and the right to be consulted and informed of decisions likely to lead to substantial changes in the use of monitoring and decision-making systems.

For example, if a platform adopted the decision to introduce facial recognition technology to monitor their workers, both self-employed workers and workers that are deemed to be employed by the platform, could be negatively impacted by this decision. It should not follow that the platform should only inform its 'employed' workers of this and allow them to challenge these decisions and obtain human review. All workers negatively impacted by this should have access to the same information, be consulted, and have the opportunity to understand, assess and challenge such decisions.