



# NAVIGATING TRANSPARENCY IN DATA-ENABLED WORKPLACES

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# **DATA COLLECTION AND EMERGING REGULATIONS: WHERE SHOULD WE BEGIN?**

In today's digital era, the rapid proliferation of digital technology and the extensive collection of personal data have rendered conversations about the collection and utilization of our data more imperative than ever. Significant data breaches and privacy controversies have considerably diminished public trust in organisations responsible for safeguarding our personal information. Furthermore, the introduction of so-called "algorithmic management" has raised concerns about impersonal decision-making in the workplace. Consequently, there is a growing demand for transparency in data practices to ensure that personal information is treated with the utmost regard for privacy, security, and ethics. This demand is particularly pressing as the accumulation of data continues to accelerate (Marr, 2018).

The vast collection of data in the workplace has raised concerns among employees, scholars, and lawmakers alike (Bayamlioglu, 2018; Hendrickx, 2022; Hendrickx, 2019). Data now plays an expanding role in determining compensation, shaping hiring practices, and evaluating job performance. However, this practice can lead to biases, discriminatory hiring and promotion decisions, and potential privacy breaches. Seeking clarity about the types and uses of collected data in decision-making is entirely logical. Data transparency not only holds individuals and organizations accountable but also facilitates a detailed analysis of the processes leading to significant decisions, such as layoffs or promotions.

Efforts are underway to address transparency concerns through legislative measures in various countries. Many have introduced or strengthened data regulations, such as the General Data Protection Regulation (GDPR) in the European Union and the California Consumer Privacy Act (CCPA) in the United States. Nevertheless, these regulations are not without limitations and shortcomings, which include compliance challenges, scope issues, varying enforcement mechanisms, data portability obstacles, consent complexities, algorithmic transparency gaps, and evolving legal landscapes.



While both GDPR and CCPA focus on affording individuals rights over their personal data, they do not explicitly address the crucial aspect of algorithmic transparency. As algorithms play an increasingly prominent role in decision-making, this omission represents a notable gap in the data transparency regulatory framework. Furthermore, although both regulations promote data portability, they lack standardised formats and mechanisms for ensuring seamless data transfer among different services and platforms. This can impede the transparency of data usage and individuals' control over their data.

GDPR and CCPA impose substantial penalties for non-compliance, but their enforcement mechanisms and penalty consistency vary (Andjelkovic & Sasic, 2022). Some scholars argue that GDPR places excessive emphasis on individual enforcement rather than organisational responsibility. Although, the forthcoming Platform Work Directive (PWD) in the EU marks a significant regulatory development, the challenge of ensuring verifiability within complex data ecosystems remains to be addressed, highlighting the need to bridge gaps in understanding among platforms, workers, and data science experts.

Building upon current debates, this guide explores how we can leverage data responsibly, and shape effective transparency policies.

By addressing this question, the guide aims to inform and stimulate the debate, especially in the context of the upcoming regulations on AI deployment in workplaces. According to media reports (Bertuzzi, 2023), the outgoing European Commission announced the necessity of binding an EU-wide legislative act on addressing AI at work. This guide represents an outcome of a multistakeholder exchange. Over the course of two months, companies, trade unions, researchers, international organisations, and other stakeholders, engaged in task force discussions organised within the framework of Reshaping Work Dialogue. This inclusive initiative offered concerned parties the opportunity to express their views and negotiate perspectives thereby enhancing the discourse on these important topics.

# WHAT'S THE ROLE OF DATA AT THE WORKPLACE?



The complexities associated with data extend beyond mere definitions. In the contemporary work landscape, issues related to data transcend theoretical considerations and manifest as tangible concerns. Sensor data, for instance, raises questions about the ethical use of data generated by physical sensors and devices. Surveillance systems, particularly in the context of workplace monitoring, introduce issues of privacy, consent, and the potential for invasive surveillance practices, and for accelerating work intensity or productivity to levels that have negative effects on workers' health and safety. Additionally, the profusion of data traces produced by personal devices such as smartphones and wearables (e.g., smartwatches), adds a layer of complexity to the data landscape as these data traces can be harnessed to gain insights into individuals' behaviour and habits.

Defining the nature of data in the workplace is not a straightforward task, as different stakeholders have pointed out. For example, the Ethical Data Science Association (EDSA), an organisation associated with the Erasmus University Rotterdam, sees data as a tool for streamlining and enhancing management processes, whereas the Public Policy Research Center, a Belgrade-based think tank exploring the future of work, highlights the notion of data as a facilitator of control and objectivity within the workplace. This challenge of defining a seemingly clear phenomenon stems from the vast array of data types, sources, and their inherent variability. Data, in its diverse forms, encompasses everything from structured and unstructured information to quantitative and qualitative datasets.

## TEXT BOX 1. AI AUGMENTING GENDER INEQUALITY

The intertwined gender issues within AI's impact on various work aspects are of paramount concern. As an illustration, the International Transport Workers' Federation (ITF) sheds light on the gender implications of AI in warehousing where, traditionally, productivity rates have been based on male workers' performance, consequently affecting women's career progression and access to fundamental rights. Moreover, the repercussions of AI-driven outcomes are evident, notably in gender disparities in wages within ride-hailing platforms like Uber, leading to unintended gendered consequences (Cook et al., 2021).

These examples vividly demonstrate how AI has disrupted conventional notions of equal pay for equal work. Stakeholders that participated in the Reshaping Work Dialogue have raised pertinent questions about AI's focus on individualised performance and remuneration, which potentially erodes the fundamental rights of workers. They emphasise the influence of pricing systems that incentivize late-night work, adding another layer to the intricate dynamics of gender and AI in the workplace.





The challenge lies not only in defining data but also in striking a balance between the legitimate interests of companies and the privacy and fundamental rights of workers. If this balance is not achieved, extensive data integration at work can lead to the intensification and automation of labour, which can put pressure on workers and impact their mental and physical well-being, points the European Confederation of Independent Trade Unions (CESI).

Within the workplace, especially in the context of the burgeoning platform economy, data acquires its greatest value and significance when aggregated, compared, and collectively analysed. In these circumstances, such data is mostly produced by the workers and it is often produced using the workers' own devices, underlines the International Transport Workers' Federation (ITF) calling for a new legal category of "worker data". Unlike personal data, the concept of worker data, encompassing workplace data, holds particular relevance in terms of how it is employed to directly impact individual and collective exercise of rights, notably the Fundamental Rights and Principles articulated by the International Labour Organization (ILO), and how it changes the socio-economic relationship at the heart of work.

The ITF also raises the question of labour compensation when companies are deriving profit from workers' data, selling it to third parties, or using worker data to nudge them to work more (for more on this issue, see Mathew, 2020). A recent report on Glovo's usage of data (Bellio, 2023) underscores this concern, highlighting the imperative for, at the very least, workers to be informed when such occurrences take place.

Moreover, in the context of platform work, Novi Sindikat, a trade union from Croatia that has started organising platform workers, shared that workers have felt increased anxiety over the deployment of algorithmic management. Echoing these concerns, the Public Policy Research Center points out to challenges posed by dynamic pricing models of food delivery platforms, which are often opaque, making it difficult to judge the fairness of compensation. When these platforms began their operations, there were a couple of parameters going into earnings calculation; however, nowadays, complexity has increased, making it difficult for workers to understand how their earnings are being calculated. The complexities of data-dependent payment systems make workers more vulnerable and precarious, according to this think tank.

# TROUBLE WITH TRANSPARENCY: HOW CAN WE GRASP IT?

In considering another multifaceted concept, EDSA stressed that transparency should not be viewed solely as an issue of providing information. Instead, they emphasised the necessity of accountability mechanisms to ensure its effectiveness. EDSA points to the concept of “relational transparency”, emphasising that the information shared should be tailored to the specific needs of stakeholders. Embracing this approach requires a clear definition of transparency’s objectives and highlights the active role of explainability. For this to happen, we need collaboration between data experts and other concerned actors.

Despite the increasing trend of companies embracing transparency through actions like the publication of transparency reports, a critical concern that resonated among the task force participants is the need for enhanced verifiability. The stakeholders highlighted the imperative nature of third-party verification to substantiate and validate the claims of transparency made by organisations. This verification process ensures that the disclosed information is accurate and provides an independent layer of accountability. The ITF underscored the issues of explainability and accountability, especially regarding the long-term implications of AI usage in the workplace, stressing the need for risk and impact assessments, and suggesting that labour inspectorates should play a stronger role (along with data protection authorities).

Other critiques of existing transparency approaches included touching upon challenges like information overload, the limitations of transparency in empowering workers over their conditions, and instances where regulations might fall short of truly benefiting workers. For instance, the discussion highlighted how GDPR, particularly Article 20, which mandates explanations for automated decisions, has certain limitations that may not fully protect workers. There are cases of incomplete explanations leaving individuals with a sense of ambiguity regarding the level of meaningful human involvement in decision-making processes.





Although a significant starting point, GDPR may not adequately safeguard workers in the workplace, argues the ITF. They highlighted the challenges of individual data access without a comprehensive understanding of data usage in a work context and the continued importance of collective representation. Building on these insights, Fairwork shared that GDPR has not been a quick or effective solution for workers seeking data access, stressing the need for faster processes to help workers reactivate accounts swiftly, especially when facing financial insecurity.

Last but not least, the stakeholders agree that the forthcoming Platform Work Directive and its reporting requirements are a step in the right direction. The PWD includes a chapter specifically addressing algorithmic management in platform work which encompasses transparency rights for platform workers and their representatives and imposes limitations on how platforms can use data. The PWD sets red lines, such as prohibiting platforms from collecting data when individuals are not actively offering or performing work, while also prohibiting the collection of data related to workers' emotional states.

The European Parliament is currently considering further prohibitions, including the use of predictive AI to assess whether individuals are likely to exercise certain rights, such as collective rights. There is also a requirement for proactive monitoring when automated systems make significant decisions or support such decisions. Workers should enjoy the right to have human contact to discuss these significant decisions and request a review of these decisions. If the proposal is approved next year (e.g., 2024), the PWD would be integrated into their national legislation within a two-year period.





# WHAT ARE GOOD LEGISLATIVE PRACTICES?

As the modern workforce's boundaries increasingly blur, the demand for carefully designed legislative measures guaranteeing a fair, transparent, and equitable environment for workers grows more apparent. The Spanish Riders Law, a landmark in the platform economy, exemplifies this. This law empowers trade unions to participate in collective bargaining with platform companies, providing a route to access critical data that can be instrumental in negotiating improved working conditions. Practical applications and enforcement of this law still remain a challenge, however.

Moreover, Spain has taken a comprehensive approach to this issue by publishing guidelines on collective bargaining and algorithmic management and establishing the Agency for the Supervision of Artificial Intelligence. These guidelines are instrumental in providing a framework for effective negotiations between trade unions and platform companies, offering a structured pathway for addressing risks and ensuring that the data accessible to worker representatives can be practically utilised in the context of appeals procedures. The newly formed agency is in charge of overseeing, raising awareness and providing training for responsible and ethical development and application of AI.

The conversation extended beyond Spanish borders, acknowledging legislative developments across the pond. In California, a notable development in this regard is the introduction of the Amazon Warehouse Bill, which imposes mandatory disclosure requirements on companies utilising AI management systems in warehouses. This legislation underscores the critical need for transparency concerning how productivity quotas are determined, with a primary focus on safeguarding the fundamental health and safety of workers. Another perspective emerges from the CCPA, which shares similarities with GDPR but lacks a private right of action. This means that individuals cannot independently sue companies for non-compliance; instead, it requires state enforcement action opening the question of effectiveness.



## TEXT BOX 2. MAKING SENSE OF DATA AT WORK

The stakeholders who took part in the Reshaping Work Dialogue also delved into the challenge of receiving substantial volumes of data without the necessary tools to effectively process and analyse it. Insights from James Farrar’s work with the Worker Info Exchange highlight the limitations in capacity to navigate and comprehend this data. The lack of explainability and the inability to effectively analyse the data raise legitimate concerns about data transparency and its practical implications for workers. While tools like Digipower Academy can empower workers to make sense of collected data, a structural approach is needed.

On a global level, the International Labour Organization (ILO) is actively working to establish platform work standards by 2025. In its assessment report, the ILO has noted that there is a current absence of legislation concerning the portability of workers’ data between different platforms and the responsible and transparent use of algorithms. These concerns emphasise the need for a standardised and comprehensive approach to data transparency within the platform economy.



# POLICY

## RECOMMENDATIONS

Data transparency should be a fundamental principle within every organisation, as it serves as a cornerstone for building trust. By openly and honestly communicating data practices, organisations can foster trust with their customers, workers, and partners. Conversely, mishandling data or maintaining opacity regarding data practices can lead to severe reputational damage. Being transparent about data usage and security measures is vital for safeguarding an organisation's image and ensuring that personal information is handled with care and respect. In particular, it is important to:

### Equal Access to Workplace Data

01

Implement policies that mandate equal access to relevant workplace data for both organisations and workers (and their representatives). This should encompass various aspects of work-related activities, including but not limited to compensation, performance evaluations, and decision-making processes.

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### Empower Trade Unions

02

Recognize and support the active role of trade unions in programming algorithms to ensure alignment with collective bargaining goals. It is important to understand the programmers' intent and pursue a balanced approach rooted in the interest of both employers and workers when developing algorithmic tools.

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### Set Clear Boundaries to Algorithmic Usage

03

Set clear boundaries when it comes to algorithmic use, particularly when they are used for psychological manipulation, such as encouraging workers to exceed their working time or earnings calculation, which could have serious safety and overall well-being implications.



### **Introduce Preemptive Measures**

**04**

Introduce preemptive measures to uphold data quality and transparency through mechanisms like data processing agreements, data statements, and binding corporate rules. These mechanisms in managing data transfers hold importance both externally and within organisations and could be leveraged to mitigate risks as well as to ensure transparency within the GDPR framework.

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### **Privacy-By-Design Protections**

**05**

With a global client base, understanding regional and local regulations is essential to ensure transparency and compliance. Many legislations worldwide have roots in GDPR, but there is no uniformity in how these regulations are scoped. Therefore, simplification is required, especially to facilitate access to rights among diverse (non-standard) workers.

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### **Adopt A Comprehensive Approach**

**06**

Enhance AI regulation by defining clear boundaries, establishing fundamental standards, and introducing collective rights. This approach ensures effective and accountable AI systems in diverse sectors. It also creates a framework guiding the development, deployment, and use of AI, preventing potential misuse and harm and building public trust in the systems.

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### **Advocate for Data Sovereignty**

**07**

Institute worker data as a legal category, outlining pre-conditions for implementation of data sovereignty in the world of work that includes rights to access to personal data, collective rights for negotiating data parameters affecting workers' rights and aspects of the work process, guarantee of accountability and compensation for the benefits derived from using workers' data, including profits, income, and intangible benefits.



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