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The confirmed, indeed reinforced, Centrality of the GDPR for the Protection of Workers' Personal Rights in the light of subsequent EU Legislative Acts

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1. Preliminary remarks and research objective. 2. The key role of the GDPR. 3. The GDPR and the sequel in the EU Law. 4. GDPR and EU AI Act. 5. GDPR and EU platform work Directive. 6. Conclusions.

Abstract

The aim of this research is to demonstrate that the centrality of Regulation (EU) 2016/679 (General Data Protection Regulation – GDPR), in its protective function of workers' personal rights within the Member States of the European Union, is confirmed by the subsequent EU legislative acts (Regulations and Directives) of interest to Labour Law. Such as: at a general level, the EU Regulations of the "European strategy for data", adopted in 2022-2023 (Data Governance Act – DGA, Digital Markets Act – DMA, Digital Services Act – DSA, Data Act – DA), as well as the previous EU "Directive Open Data" 2019/1024; among EU acts specifically concerning the labour area, for example, Directive (EU) 2019/1937 on whistleblowing and Directive (EU) 2023/970 on equal pay for equal work between men and women through pay transparency. Special attention will be paid, in this perspective, to the Regulation (EU) 2024/1689 (Artificial Intelligence Act) and to the Directive (EU) 2024/2831 on platform work.

Keywords: Workers' data protection; Whistleblowing; Gender equal pay; Artificial Intelligence; Platform work.

1. Preliminary remarks and research objective.

As is well known, the principles and rules introduced by the EU General Data Protection Regulation 2016/679 of 27 April 2016 (GDPR)[1], and their implementation within the

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[1] Kuner C., Jerker D., Svantesson B., Cate F.H., Lynskey O., Millard C., Ni Loideain N., *The GDPR as a chance to break down borders*, in *International Data Privacy Law*, 7, 4, 2017, 231. *See* also, Cuffaro V., D'Orazio R., Ricciuto V. (eds.), *I dati personali nel diritto europeo,* Giappichelli, Turin, 2019; D'Orazio R., Finocchiaro G., Pollicino O., Resta G. (eds.), *Codice della privacy e data protection,* Giuffrè Francis Lefebvre, Milan, 2021; Krzysztofek M., *GDPR: Personal Data Protection in the European Union*, Wolters Kluwer, Alphen aan den Rijn, 2021; Kuner C., Bygrave

Member States of the European Union, have increased and empowered the protection of workers' personal rights, especially in the workplace relationships, but also in the pre-employment and recruitment phase.

Research objective is to demonstrate and to show that the centrality of the GDPR for the private and public labour sector is confirmed by the subsequent EU legislative acts (Regulations and Directives) of interest to Labour Law.

2. The key role of the GDPR.

In fact, most of these more recent EU legislative acts – almost all of them – stipulate that they are without prejudice to GDPR. They don't seek to affect the application of existing European Union Law governing the processing of personal data, in the sense that no provision of them should be applied or interpreted in such a way as to diminish or limit the fundamental right to the protection of personal data, that is still safeguarded, in particular by GDPR. So, rights and obligations of GDPR continue to apply when personal data are collected or processed pursuant to (or in connection with) these later EU Acts, and any processing of personal data or information under them should comply (and be carried out accordingly) with GDPR.

Recent EU Acts complement the GDPR, as they aim to enhance its enforcement in specific areas where there may be breaches. While GDPR establishes the general framework for the protection of natural persons, these EU Acts lay down rights addressing the concerns that are specific in the processing of personal data. They provides for more specific rules in each context, including to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data within the meaning of Article 88 GDPR.[2] But, in the event of a conflict between the new Acts and Union data protection law (or national legislation adopted in accordance), the relevant Union or national law on the protection of personal data or privacy shall prevail.[3]

Consequently, the role of the European Data Protection Board (see its Guidelines) and of the respective (corresponding) independent Supervisory Authorities of the Member States is important in this matter.[4] Their competencies are extended to the responsibility for monitoring the application of new EU Regulations and Directives and their compliance with the GDPR.

L.A., Docksey C. (eds.), *The EU General Data Protection Regulation (GDPR). A Commentary*, Oxford University Press, Oxford, 2020.

[2] Abraha H.H., *A pragmatic compromise? The role of Article 88 GDPR in upholding privacy in the workplace,* in *International Data Privacy Law*, 12, 4, 2022, 276.

[3] On this subject, in general, *see* Rodotà S. (eds.), *Tecnologie e diritti*, Il Mulino, Bologna, 2021.

[4] Schmitz-Berndt S., *The Complex Interplay of AI and Data Protection: Emerging Guidance from Data Protection Authorities in Europe and the Examples of Germany and France*, in *European Data Protection Law Review,* 10, 3, 2024, 294.

3. The GDPR and the sequel in the EU Law.

In this one and in the following paragraphs 4 and 5, you will find the main regulations (Articles, Annexes and Recitals) of the most recent EU legislative Acts relevant to the area of labour, which refer to the GDPR.

Firstly, in the aforementioned wake of GDPR are the more general EU Regulations of the "European strategy for data",[5] namely:

- Regulation (EU) 2022/868 of 30 May 2022 (Data Governance Act – DGA), based on the new legal concept of "data altruism" [esp. Article 1(3); Recitals 4, 35, 50];[6]
- Regulation (EU) 2022/1925 of 14 September 2022 (Digital Markets Act – DMA) [esp. Articles 8(1), 13(5); Recitals 12, 37, 64, 72];[7]
- Regulation (EU) 2022/2065 of 19 October 2022 (Digital Services Act – DSA) [esp. Articles 2(4), point (g), 26(3), 38, 40(13); Recitals 10, 68, 69, 71, 94];[8]
- Regulation (EU) 2023/2854 of 13 December 2023, on harmonised rules on fair access to and use of data (Data Act – DA) [esp. Articles 1(5), 4(12), 5(7) and (8), 6(1) and (2), point (b), 37(3) and (5), point (g), 38(3), 40(4); Recitals 7, 8, 20, 24, 31, 34, 35, 39, 42, 45, 69].[9]

But this is also the case with the previous Directive (EU) 2019/1024 of 20 June 2019 ("Directive Open Data" and on the re-use of public sector information) [esp. Articles 1(4), 4(4); Recitals 52, 53].[10]

More specifically with reference to the labour sector, so it is, for example, with: Directive (EU) 2019/1937 of 23 October 2019 on the protection of persons who report breaches of Union law (so-called whistleblowers);[11] as well as, Directive (EU) 2023/970 of 10 May 2023 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency (and enforcement mechanisms).

According to its Article 2(1) (*Material scope*), the Directive (EU) 2019/1937 lays down common minimum standards for the protection of persons reporting the following breaches of Union law: (a) breaches falling within the scope of the Union acts set out in the Annex that concern the following areas: (x) *protection of privacy and personal data*, and security of

[5] Nanni R., Bizzaro P.G., Napolitano M., *The false promise of individual digital sovereignty in Europe: Comparing artificial intelligence and data regulations in China and the European Union,* in *Policy & Internet,* 16, 4, 2024, 1-16; Pathak M., *Data Governance Redefined: The Evolution of EU Data Regulations from the GDPR to the DMA, DSA, DGA, Data Act and AI Act*, in *European Data Protection Law Review,* 10, 1, 2024, 43; Zanfir-Fortuna G., *Follow the (personal) data: Positioning data protection law as the cornerstone of EU's 'Fit for the Digital Age' legislative package*, Working Paper – Forthcoming in EDPS at 20 Anniversary Volume, June 2024, available at https://ssrn.com/abstract=4794182.

[6] *See* also, Article 2, points (3), (5), (7), (9), (12) and (20), Article 5(6), Article 9(2), Article 10, point (b), Article 25(3); Recitals 6, 7, 8, 15, 26, 30, 31, 44, 46, 51. *See* Trojsi A., *Sull'impatto giuslavoristico del Data Governance Act. Riflessioni sistemiche a prima lettura del Regolamento (UE) 2022/868*, in *Federalismi.it*, 4, 2023, 285-286.

[7] *See* also, Article 2, points (25), (31) and (32), Article 5(2), Article 7(8), Article 36(3); Recitals 36, 48, 59, 60, 65, 68.

[8] *See* also, Articles 25(2), 28(2), 40(8), point (g); Recitals 34, 67, 98.

[9] *See* also, Articles 2, points (3), (11) and (20), 17(2), point (i); Recitals 22, 40, 77, 94.

[10] *See* also, Article 2, point (12); Recitals 4, 42.

[11] On which, *see* Corso S.M., *Segnalazione di illeciti e organizzazioni di lavoro. Pubblico e privato nella disciplina del Whistleblowing,* Giappichelli, Turin, 2020, 329.

network and information systems [Annex, part I, point (J): as regulated by (ii) *Regulation (EU) 2016/679*].

Article 17 (*Processing of personal data*) (as well as Recital 83) further specifies that any processing of personal data carried out pursuant to this EU whistleblowing Directive, including the exchange or transmission of personal data by the competent authorities, shall be carried out in accordance with *Regulation (EU) 2016/679* and Directive (EU) 2016/680.[12] Any exchange or transmission of information by Union institutions, bodies, offices or agencies shall be undertaken in accordance with Regulation (EU) 2018/1725. Personal data which are manifestly not relevant for the handling of a specific report shall not be collected or, if accidentally collected, shall be deleted without undue delay. On the subject, Recital 84 explains that the procedures provided for in this Directive and related to follow-up on reports of breaches of Union law in the areas falling within its scope serve an important objective of general public interest of the Union and of the Member States, within the meaning of point (e) of Article 23(1) of GDPR, as they aim to enhance the enforcement of Union law and policies in specific areas where breaches can cause serious harm to the public interest. The effective protection of the confidentiality of the identity of reporting persons (pursuant to Article 16) is necessary for the protection of the rights and freedoms of others, in particular those of the reporting persons, provided for under point (i) of Article 23(1) of GDPR. Member States should ensure that this Directive is effective, including, where necessary, by restricting, by legislative measures, the exercise of certain data protection rights of persons concerned in line with points (e) and (i) of Article 23(1) and Article 23(2) of GDPR to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of the reporting persons.

Article 12 (*Data protection*) of the Directive (EU) 2023/970, precisely on the principle of equal pay for equal work between men and women through pay transparency, contextualises some profiles of the personal data protection regulation, such as the principle of purpose of processing and the limits to the disclosure of salary data of workers, with a role for workers' representatives, labour inspectorate or equality bodies. It stipulates that, to the extent that any information provided pursuant to measures taken under Articles 7, 9 and 10 involves the processing of personal data, it shall be provided in accordance with GDPR (paragraph 1). Any personal data processed pursuant to Articles 7, 9 or 10 of this Directive shall not be used for any purpose other than for the application of the principle of equal pay (paragraph 2). According to paragraph 3, then, Member States may decide that, where the disclosure of information pursuant to Articles 7, 9 and 10 would lead to the disclosure, either directly or indirectly, of the pay of an identifiable worker, only the workers' representatives, the labour inspectorate or the equality body shall have access to that information. The workers' representatives or the equality body shall advise workers regarding a possible claim under this Directive without disclosing actual pay levels of individual workers performing the same

[12] According to Recital 83, particular regard should be had to the principles relating to processing of personal data set out in Article 5 of GDPR, […] and to the principle of data protection by design and by default laid down in Article 25 of GDPR. On this, *see* also Article 13, point (d), of the Directive (EU) 2019/1937.

work or work of equal value. For the purposes of monitoring pursuant to Article 29, the information shall be made available without restriction.

Also Recital 44 of the Directive (EU) 2023/970 points out that: any processing or publication of information under this Directive should comply with GDPR; specific safeguards should be added to prevent the direct or indirect disclosure of information of an identifiable worker; workers should not be prevented from voluntarily disclosing their pay for the purpose of the enforcement of the principle of equal pay.

Finally, only the Directive (EU) 2019/1152 of 20 June 2019, on transparent and predictable working conditions in the European Union, doesn't mention the GDPR. It is an exception, at first glance surprising, to be investigated.

4. GDPR and EU AI Act.

But above all, the discipline of the most recent Regulation (EU) 2024/1689 of 13 June 2024, laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) (AI Act), is important in this respect.[13]

Article 6(2) of AI Act classifies, among others, AI systems referred to in Annex III, point (4), as "high-risk AI systems", namely the AI systems listed in the area of "Employment, workers' management and access to self-employment":

(a) AI systems intended to be used for the recruitment or selection of natural persons, in particular to place targeted job advertisements, to analyse and filter job applications, and to evaluate candidates;

(b) AI systems intended to be used to make decisions affecting terms of work-related relationships, the promotion or termination of work-related contractual relationships, to allocate tasks based on individual behaviour or personal traits or characteristics or to monitor and evaluate the performance and behaviour of persons in such relationships.

[13] Cristofolini C., *Navigating the impact of AI systems in the workplace: strengths and loopholes of the EU AI Act from a labour perspective,* in *Italian Labour Law e-Journal,* 17, 1, 2024, 82; Lamberti F., *La proposta di regolamento UE sull'Intelligenza Artificiale alla prova della privacy,* in *Federalismi.it,* 29 June 2022; Peruzzi M., *Intelligenza artificiale e lavoro. Uno studio su poteri datoriali e tecniche di tutela*, Giappichelli, Turin, 2023, 64; Ponte F.V., *Intelligenza artificiale e lavoro. Organizzazione algoritmica, profili gestionali, effetti sostitutivi,* Giappichelli, Turin, 2024. At a general level, *see* Butt J.S., *The General Data Protection Regulation of 2016 (GDPR) Meets its Sibling the Artificial Intelligence Act of 2024: A Power Couple, or a Clash of Titans?*, in *Acta Universitatis Danubius Juridica,* 20, 2, 2024, 7; Cerrina Feroni G., Fontana C., Raffiotta E.C. (eds.), *AI Anthology. Profili giuridici, economici e sociali dell'intelligenza artificiale,* il Mulino, Bologna, 2022; Frosini T.E., *L'orizzonte giuridico dell'intelligenza artificiale,* in *Il Diritto dell'Informazione e dell'Informatica,* 1, 2022, 14-17; Frosini T.E., *La privacy nell'era dell'intelligenza artificiale,* in Aru S., Betzu M., Cecchini S., Cherchi R., Chieffi L., Coinu G., D'Aloia A., Deffenu A., Demuro G., Ferraiuolo G., Pastore F., Ruggiu I., Staiano S. (eds.), *Scritti in onore di Pietro Ciarlo,* Edizioni Scientifiche Italiane, Naples, II, 2022, 1038-1040; Nanni R., Bizzaro P.G., Napolitano M., nt. (5); Zanfir-Fortuna G., nt. (5). *See* also, Colapietro C., Moretti A., *L'Intelligenza Artificiale nel dettato costituzionale: opportunità, incertezze e tutela dei dati personali,* in *BioLaw Journal,* 3, 2020, 359; Faro S., Frosini T.E., Peruginelli G. (eds.), *Dati e algoritmi. Diritto e diritti nella società digitale,* il Mulino, Bologna, 2020; Lettieri N., Donà S., *Critical data studies e tecno-regolazione. Paradigmi emergenti di ricerca e tutela nell'era del lavoro* data-driven, in *Dirittifondamentali.it,* 2, 2020, 1007; Mobilio G., *L'intelligenza artificiale e le regole giuridiche alla prova: il caso paradigmatico del GDPR,* in *Federalismi.it,* 16, 2020, 266; Pizzetti F. (ed.), *Intelligenza artificiale, protezione dei dati personali e regolazione,* Giappichelli, Turin, 2018.

So, the rules of Chapter III of the AI Act apply to these high-risk AI systems in the area of work, especially those of Sections 2 and 3 (Articles 8-27), concerning: requirements for high-risk AI systems; obligations of providers and deployers of high-risk AI systems and other parties.

About GDPR, see especially Article 2(7) (*Scope*) of AI Act: *Union law on the protection of personal data*, privacy and the confidentiality of communications applies to personal data processed in connection with the rights and obligations laid down in this Regulation. This Regulation shall not affect *Regulation (EU) 2016/679* or (EU) 2018/1725, or Directive 2002/58/EC or (EU) 2016/680, without prejudice to Article 10(5) and Article 59 of this Regulation.[14]

Furthermore, according to Annex V, point (5), of AI Act, the EU declaration of conformity referred to in Article 47, shall contain all of the following information: […] "5. Where an AI system involves the processing of personal data, a statement that that AI system complies with *Regulations (EU) 2016/679* and (EU) 2018/1725 and Directive (EU) 2016/680".

Recital 10 of AI Act then states that the fundamental right to the protection of personal data is safeguarded in particular by *Regulations (EU) 2016/679* and (EU) 2018/1725 and Directive (EU) 2016/680. Directive 2002/58/EC additionally protects private life and the confidentiality of communications, including by way of providing conditions for any storing of personal and non-personal data in, and access from, terminal equipment. Those Union legal acts provide the basis for sustainable and responsible data processing[15], including where data sets include a mix of personal and non-personal data. This Regulation does not seek to affect the application of existing Union law governing the processing of personal data, including the tasks and powers of the independent supervisory authorities competent to monitor compliance with those instruments. It also does not affect the obligations of providers and deployers of AI systems in their role as data controllers or processors stemming from Union or national law on the protection of personal data in so far as the design, the development or the use of AI systems involves the processing of personal data. It is also appropriate to clarify that data subjects continue to enjoy all the rights and guarantees awarded to them by such Union law, including the rights related to solely automated individual decision-making, including profiling. Harmonised rules for the placing on the market, the putting into service and the use of AI systems established under this AI Act should facilitate the effective implementation and enable the exercise of the data subjects' rights and other remedies guaranteed under Union law on the protection of personal data and of other fundamental rights.

In addition, Recital 67 of AI Act specifies that high-quality data and access to high-quality data plays a vital role in providing structure and in ensuring the performance of many AI

[14] Schmitz-Berndt S., nt. (4).

[15] Already, Ufert F., *AI Regulation Through the Lens of Fundamental Rights: How Well Does the GDPR Address the Challenges Posed by AI?*, in *European Papers,* 5, 2, 2020, 1087. *See* also, Adams-Prassl J., Rakshita S., Abraha H., Silberman M.S., *Towards an international standard for regulating algorithmic management: a blueprint,* and Gyulavàri T., *Digitalisation of work: challenges and legislative answers*, in Mocella M., Sychenko E. (eds.), *The quest for labour rights and social justice. Work in a changing world*, FrancoAngeli, Milan, 2024, respectively 240-241 and 278.

systems, especially when techniques involving the training of models are used, with a view to ensure that the high-risk AI system performs as intended and safely and it does not become a source of discrimination prohibited by Union law. High-quality data sets for training, validation and testing require the implementation of appropriate data governance and management practices. Data sets for training, validation and testing, including the labels, should be relevant, sufficiently representative, and to the best extent possible free of errors and complete in view of the intended purpose of the system. In order to facilitate compliance with *Union data protection law*, such as *Regulation (EU) 2016/679*, data governance and management practices should include, in the case of personal data, transparency about the original purpose of the data collection. […] The requirement for the data sets to be to the best extent possible complete and free of errors should not affect the use of privacy-preserving techniques in the context of the development and testing of AI systems.[16]

But already the Explanatory Memorandum of the related European Commission's Proposal for a Regulation on artificial intelligence (AI Act) [COM(2021) 206 final of 21 April 2021] specified (par. 1.2 – *Consistency with existing policy provisions in the policy area*) that consistency is also ensured with the EU Charter of Fundamental Rights and the existing *secondary Union legislation on data protection*, consumer protection, non-discrimination and gender equality. The proposal is without prejudice and complements the *General Data Protection Regulation [Regulation (EU) 2016/679]* and the Law Enforcement Directive [Directive (EU) 2016/680] with a set of harmonised rules applicable to the design, development and use of certain high-risk AI systems and restrictions on certain uses of remote biometric identification systems.

Just two significant examples of virtuous interaction between the GDPR and the AI Act.[17]

The first one concerns the regulation of "profiling". Translated into data protection language, the basis of all actions/activities of the AI systems consists of "profiling" operations, in the context of automated individual decision-making processes,[18] as stated by AI Act. According to its Recital 53, "AI systems used in high-risk use-cases listed in an Annex to this Regulation should be considered to pose significant risks of harm to the health, safety or fundamental rights if the AI system implies *profiling* within the meaning of Article 4, point (4), of *Regulation (EU) 2016/679* or Article 3, point (4), of Directive (EU) 2016/680 or Article 3, point (5), of Regulation (EU) 2018/1725".[19] In fact, "profiling" is any form of automated processing of personal data consisting of the use of personal data "to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's *performance at work*, economic situation, health, personal

[16] In the AI Act, with reference to GDPR, *see* also: Articles 3, points (37), (50), (51) and (52), 5(1), 10(5), 26(9) and (10), 27(4), 50(3), 59(1), point (c), 74(8), 77; Annex VIII, section (C), point (5); Recitals 14, 39, 53, 54, 70, 95, 140.

[17] Butt J.S., nt. (13). On this topic, *see* also Contaldi G., *Intelligenza artificiale e dati personali*, in *Ordine Internazionale e Diritti Umani,* 5, 2021, 1201-1211.

[18] Brkan M., *Do algorithms rule the world? Algorithmic decision-making and data protection in the framework of the GDPR and beyond*, in *International Journal of Law and Information Technology,* 27, 2, 2019, 91. On this aspect, *see* also, Dagnino E., *Dalla fisica all'algoritmo: una prospettiva di analisi giuslavoristica,* ADAPT University Press, Bergamo, 2019, 188-200.

[19] *See* also Article 3 (*Definitions*), point (52), AI Act: "profiling" means profiling as defined in Article 4, point (4), of *Regulation (EU) 2016/679*.

preferences, interests, reliability, behaviour, location or movements" [Article 4, point (4), GDPR].

Consequently, profiling by AI systems must be subject to the special rules laid down in Article 22 GDPR (*Automated individual decision-making, including profiling*)[20] and to the other specific obligations, rights and administrative fines of GDPR. Article 22 GDPR states the right of the data subject not to be subjected to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her (paragraph 1), unless such a decision: (a) is necessary for entering into, or performance of, a contract between the data subject and a data controller; (b) is authorised by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or (c) is based on the data subject's explicit consent (paragraph 2). In the cases referred to in points (a) and (c) of paragraph 2, the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision (paragraph 3). Decisions referred to in paragraph 2 shall not be based on special categories of personal data referred to in Article 9(1), unless point (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place (paragraph 4).

The GDPR, in this case, also provides for: specific obligations to inform the data subject [Article 13(2), point (f); Article 14(2), point (g)];[21] the data subject's rights of access [Article 15(1), point (h)][22] and to object [Article 21(1)] to data processing; the data protection impact assessment [Article 35(3), point (a)]; and administrative fines [Article 83(5), point (b)].

The second example concerns the link between the fundamental rights impact assessment (FRIA) for high-risk AI systems (Article 27, AI Act) and the data protection impact assessment (DPIA) (Article 35, GDPR).[23] According to Article 27(4) (*Fundamental rights impact assessment for high-risk AI systems*) of AI Act, if any of the obligations laid down in this Article is already met through the data protection impact assessment conducted pursuant to Article 35 of GDPR or Article 27 of Directive (EU) 2016/680, the fundamental rights impact assessment referred to in paragraph 1 of this Article shall complement that data protection impact assessment.

[20] Ingrao A., *La protezione dei dati personali dei lavoratori nel diritto vivente al tempo degli algoritmi,* in Bellavista A., Santucci R. (eds.), *Tecnologie digitali, poteri datoriali e diritti dei lavoratori,* Giappichelli, Turin, 2022, 133-134; Kuner C., Jerker D., Svantesson B., Cate F.H., Lynskey O., Millard C., *Machine learning with personal data: is data protection law smart enough to meet the challenge?,* in *International Data Privacy Law*, 7, 1, 2017, 1.

[21] Brkan M., nt. (18); Malgieri G., Comandé G., *Why a Right to Legibility of Automated Decision-Making Exists in the General Data Protection Regulation,* in *International Data Privacy Law,* 7, 4, 2017, 243; Temme M., *Algorithms and Transparency in View of the New General Data Protection Regulation,* in *European Data Protection Law Review,* 3, 4, 2017, 473.

[22] Malgieri G., Comandé G., *ibidem.*

[23] About which, *see* Yordanov A., *Nature and Ideal Steps of the Data Protection Impact Assessment Under the General Data Protection Regulation*, in *European Data Protection Law Review,* 3, 4, 2017, 486.

5. GDPR and EU platform work Directive.

Lastly, also the Directive (EU) 2024/2831 of 23 October 2024, on improving working conditions in platform work, is particularly relevant in this respect.[24] It lays down [Article 1(2) – *Subject matter and scope*]:

- minimum rights that apply to every person performing platform work in the Union who has or who, on the basis of an assessment of the facts, is deemed to have an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice;
- rules to improve the *protection of natural persons in relation to the processing of their personal data* by providing measures on algorithmic management applicable to persons performing platform work in the Union, including those who do not have an employment contract or employment relationship.

In this regard, Recital 12 of this Directive recalls that GDPR ensures the protection of natural persons with regard to the processing of personal data, and in particular provides certain rights and obligations as well as safeguards concerning the lawful, fair and transparent processing of personal data, including with regard to automated individual decision-making.

Recital 38 of the Directive then points out that, while GDPR establishes the general framework for the protection of natural persons with regard to the processing of personal data, it is necessary to lay down specific rules addressing the concerns that are related to the processing of personal data by means of automated monitoring systems or automated decision-making systems in the context of platform work.[25] Article 88 of GDPR already provides that Member States may, by law or by means of collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context. This Directive provides for more specific safeguards concerning the processing of personal data by means of automated systems in the context of platform work, thereby providing for a higher level of protection of the personal data of persons performing platform work. In particular, this Directive establishes more specific rules in relation to GDPR concerning the use of and transparency with regard to automated decision-making. This Directive also establishes additional measures in relation to GDPR in the context of platform work to safeguard the protection of the personal data of persons performing platform work, in particular where decisions are taken or supported by the automated processing of personal data. Terms relating to the protection of personal data in this Directive should be understood in light of the definitions set out in GDPR.

[24] *See* widely the Explanatory Memorandum of the European Commission's Proposal for a Directive on improving working conditions in platform work [COM(2021) 762 final of 9 December 2021] (especially paragraphs 1 and 2). On the topic, in general, *see* Stanzione P. (ed.), *I "poteri privati" delle piattaforme e le nuove frontiere della privacy,* Giappichelli, Turin, 2022.

[25] Mangold S., *Data privacy and digital work platforms in global perspective*, in *Italian Labour Law e-Journal,* 16, 1, 2023, 109.

So, the Chapter III (*Algorithmic Management* – Articles 7-15) of the EU platform work Directive contains an articulated apparatus of obligations of platforms in the use of "automated monitoring systems or automated decision-making systems",[26] such as those of: transparency, i.e. to provide detailed information to persons performing platform work, platform workers' representatives and, upon request, competent national authorities (Articles 9 and 14),[27] as well as trade union information and consultation (Article 13); safety and health (Article 12); regularly, human oversight of automated systems (Article 10); and the right of workers to obtain an explanation from the digital labour platform and the "human review" for any decision taken or supported by the system (Article 11; Recital 49).[28]

In this respect, Recital 48 of the Directive states that GDPR requires data controllers to implement suitable measures to safeguard the data subjects' rights and freedoms and legitimate interests in cases where the latter is subject to decisions based solely on automated processing. That provision requires, as a minimum, the data subject's right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision. In addition to the requirements laid down in GDPR, in the context of algorithmic management and considering the serious impact on persons performing platform work of decisions of restricting, suspending or terminating their contractual relationship or their account, or any decision of equivalent detriment, such decisions should always be taken by a human being. According to Recital 49 below, in addition to the requirements of GDPR in the context of algorithmic management in platform work, persons performing platform work should have the right to obtain, without undue delay, an explanation from the digital labour platform for a decision, the lack of a decision or a set of decisions taken or supported by automated decision-making systems. […] Where such decisions infringe those persons' rights, such as their labour rights, their right to non-discrimination or *the right to protection of their personal data*, the digital labour platform should rectify such decisions without undue delay or, where that is not possible, should provide adequate compensation for the damage sustained and take the steps necessary to avoid similar decisions in the future, including, if

[26] De Stefano V., *The EU Commission's proposal for a Directive on Platform Work: an overview,* in *Italian Labour Law e-Journal,* 15, 1, 2022, 5-8; Di Cataldo L., *Improving working conditions in platform work. A comment about the agreement reached on the European directive*, in *Italian Labour Law e-Journal,* 17, 1, 2024, 141-146; Trojsi A., *La sorveglianza digitale del datore di lavoro,* in Bellavista A., Santucci R. (eds.), *Tecnologie digitali, poteri datoriali e diritti dei lavoratori,* Giappichelli, Turin, 2022, 79-84.

[27] *See* Recital 44: in addition to the requirements laid down in GDPR, digital labour platforms should be subject to transparency and information obligations in relation to automated monitoring systems and automated systems which are used to take or support decisions that affect persons performing platform work, including the working conditions of platform workers, such as their recruitment, their access to and the organisation of work assignments, their earnings, their safety and health, their working time, their access to training, their promotion or its equivalent, and their contractual status, including the restriction, suspension or termination of their account. The type and form of information that is to be provided to persons performing platform work regarding such automated systems, as well as the timing of its provision, should be specified. Individual platform workers should receive that information in a concise, simple and understandable form, in so far as the systems and their features directly affect them and, where applicable, their working conditions, so that they are effectively informed. They should also have the right to request comprehensive and detailed information about all relevant systems. Comprehensive and detailed information regarding such automated systems should also be provided to representatives of persons performing platform work, as well as to national competent authorities upon their request, in order to enable them to exercise their functions.

[28] Peruzzi M., nt. (13), 73-74.

appropriate, the modification or the discontinuation of the use of the relevant automated decision-making system. With regard to human review of decisions, the specific provisions of Regulation (EU) 2019/1150 should prevail in respect of business users.

By the way, among the many Recitals of the Directive, in addition see especially Recital 39. It emphasizes that Articles 5, 6 and 9 of GDPR require that personal data be processed in a lawful, fair and transparent manner. This implies certain restrictions on the manner in which digital labour platforms are able to process personal data by means of automated monitoring systems or automated decision-making systems. Nonetheless, in the particular case of platform work, the consent of persons performing platform work to the processing of their personal data cannot be assumed to be freely given. Persons performing platform work often do not have a genuine free choice or are not able to refuse or withdraw consent without detriment to their contractual relationship, given the power imbalance between the person performing platform work and the digital labour platform. Therefore, digital labour platforms should not process the personal data of persons performing platform work on the basis that a person performing platform work has given consent to the processing of his or her personal data.

With regard to data protection, under Chapter III of the EU platform work Directive, see in particular Article 7 (*Limitations on the processing of personal data by means of automated monitoring systems or automated decision-making systems*). It – as well as Recitals 40 and 41 – stipulates that digital labour platforms shall not, by means of automated monitoring systems or automated decision-making systems: (a) process any personal data on the emotional or psychological state of a person performing platform work; (b) process any personal data in relation to private conversations, including exchanges with other persons performing platform work and their representatives; (c) collect any personal data of a person performing platform work while that person is not offering or performing platform work; (d) process personal data to predict the exercise of fundamental rights, including the freedom of association, the right of collective bargaining and action or the right to information and consultation as laid down in the Charter; (e) process any personal data to infer the racial or ethnic origin, migration status, political opinions, religious or philosophical beliefs, disability, state of health, including chronic disease or HIV status, emotional or psychological state, trade union membership, sex life or sexual orientation; (f) process any biometric data, as defined in Article 4, point (14), of GDPR, of a person performing platform work to establish that person's identity by comparing that data to stored biometric data of natural persons in a database[29] (paragraph 1). This Article shall apply to all persons performing platform work from the start of the recruitment or selection procedure (paragraph 2). In addition to automated monitoring systems and automated decision-making systems, this Article shall also apply where digital

[29] According to Recital 41, this ban on the processing of biometric data of persons performing platform work for the purpose of identification – namely establishing a person's identity by comparing his or her biometric data to stored biometric data of a number of individuals in a database (one-to-many identification) – does not affect the possibility for digital labour platforms to conduct biometric verification, namely verifying a person's identity by comparing his or her biometric data to data previously provided by that same person (one-to-one verification or authentication) where such processing of personal data is lawful under GDPR or other relevant Union and national law.

labour platforms use automated systems taking or supporting decisions that affect persons performing platform work in any manner (paragraph 3).

Article 8(1) (again about *Data-protection impact assessment*) of this Directive then states that the processing of personal data by a digital labour platform by means of automated monitoring systems or automated decision-making systems is a type of processing which is likely to result in a high risk to the rights and freedoms of natural persons within the meaning of Article 35(1) of GDPR (so also Recital 43 of the Directive). When carrying out, pursuant to that provision, the assessment of the impact of the processing of personal data by automated monitoring systems or automated decision-making systems on the protection of personal data of persons performing platform work, including on the limitations of processing pursuant to Article 7 of this Directive, digital labour platforms, acting as controllers as defined in Article 4, point (7), of GDPR, shall seek the views of persons performing platform work and their representatives. Digital labour platforms shall provide the assessment as referred to in paragraph 1 to workers' representatives (paragraph 2).

Also, Recital 43 of the Directive states that digital labour platforms should always carry out a data-protection impact assessment in accordance with the requirements laid down in Article 35 GDPR. Taking into account the effects that decisions taken by automated decision-making systems have on persons performing platform work, in particular platform workers, this Directive establishes more specific rules regarding the consultation of persons performing platform work and their representatives in the context of data-protection impact assessments.

Additionally, according to Article 9(6) (*Transparency with regard to automated monitoring systems and automated decision-making systems*) of the Directive, persons performing platform work shall have the right to the portability of personal data generated through their performance of work in the context of a digital labour platform's automated monitoring systems or automated decision-making systems, including ratings and reviews, without adversely affecting the rights of the recipient of the service under GDPR.[30] The digital labour platform shall provide persons performing platform work, free of charge, with tools to facilitate the effective exercise of their portability rights, referred to in Article 20 of GDPR and above.[31] Where the person performing platform work so requests, the digital labour platform shall transmit such personal data directly to a third party.

Articles 18 (*Right to redress*) and 19 (*Procedures on behalf or in support of persons performing platform work*) of the EU Directive on platform work are without prejudice to Articles 79, 80 and 82 GDPR. Article 20 (*Communication channels for persons performing platform work*) of the Directive stipulates that Member States shall take the measures necessary to ensure that digital labour

[30] Recital 45 of EU platform work Directive specifies that this right is in addition to the right to the portability of personal data which the data subject has provided to a controller in accordance with Article 20 of GDPR, and that, under this right, persons performing platform work should have the right to receive any personal data generated through their performance of work, without hindrance and in a structured, commonly used and machine-readable format, to transmit them or have them transmitted to a third party, including another digital labour platform.

[31] Also, according to Recital 45 of EU platform work Directive, digital labour platforms should provide persons performing platform work with tools to facilitate effective data portability that is free of charge in order to exercise their rights under this Directive and under GDPR.

platforms provide persons performing platform work, by means of the digital labour platforms' digital infrastructure or by similarly effective means, with the possibility to contact and communicate privately and securely with each other, and to contact or be contacted by representatives of persons performing platform work, while complying with GDPR. Member States shall require digital labour platforms to refrain from accessing or monitoring those contacts and communications.

Finally, as stated in Recital 64 of the EU platform work Directive, given that this Directive provides for more specific rules and additional rules in relation to GDPR in the context of platform work to ensure the protection of personal data of persons performing platform work, the national supervisory authorities provided for pursuant to Article 51 of GDPR should be competent to monitor the application of those safeguards. The procedural framework of GDPR, in particular Chapters VI, VII and VIII thereof, should apply for the enforcement of the more specific and additional rules of this Directive, in particular as regards supervision, cooperation and consistency mechanisms, remedies, liability and penalties, including the competence to impose administrative fines up to the amounts referred to in Article 83(5) of GDPR. Accordingly, Article 24(1) (*Supervision and penalties*) of the EU platform work Directive provides that the supervisory authority or authorities responsible for monitoring the application of GDPR shall also be responsible for monitoring and enforcing the application of Articles 7 to 11 of this Directive as far as data-protection matters are concerned, in accordance with the relevant provisions in Chapters VI, VII and VIII of GDPR. The upper limit for administrative fines referred to in Article 83(5) of GDPR shall be applicable to infringements of Articles 7 to 11 of this Directive. Without prejudice to the application of GDPR, Member States shall lay down the rules on penalties, applicable to infringements of national provisions adopted pursuant to provisions of this Directive or of the relevant provisions already in force concerning the rights which are within the scope of this Directive; the penalties shall be effective, dissuasive and proportionate to the nature, gravity and duration of the undertaking's infringement and to the number of workers affected (paragraph 5).

6. Conclusions.

The hypothesis put forward – that is the aim of the research – is, in conclusion, tested: i.e. the corroboration of the key role played by GDPR in Labour Law, emerging from the method of comparison with the contents of the successive EU legislative Acts relevant in the field of labour, also considered in their value as a "legal basis" according to the GDPR.[32]

Subsequent EU Directives and Regulations are in the wake of the GDPR, recognising it as the general legal reference text for the safeguard of individuals with regard to the processing of personal data[33]. They are intended to serve the protection objectives that the GDPR seeks to achieve.

[32] Trojsi A., *Trasparenza e 'base giuridica' secondo il GDPR: profili d'interesse (anche) giuslavoristico*, in *Il Diritto del Mercato del Lavoro,* 3, 2023, 654.
[33] Zanfir-Fortuna G., nt. (5).

On this basis, it will therefore be possible to reconstruct the legal statute for the protection of workers' personal data[34], resulting from the combination of the GDPR rules and the relevant rules of the subsequent EU legislative acts, thus also resolving some specific coordination problems. This may prove to boost (to have the effect of increasing) the protective apparatus of workers.

In addition, as a result, it is possible to underline the confirmation – and even the strengthening – of the centrality of data protection legislation in its function of protecting workers' personal (besides, narrowly, personality) rights in Labour Law.

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[34] About workers' right to privacy and data protection, among all *see* Blanpain R. (ed.), *Protection of Employees' Personal Information and Privacy*, Wolters Kluwer, Alphen aan den Rijn, 2014; Finkin M.W., *Privacy in Employment Law,* Bloomberg Law, Arlington, 2018; Hendrickx F., *Privacy 4.0 at Work: Regulating Employment, Technology, and Automation*, in *Comparative Labor Law & Policy Journal,* 41, 1, 2019, 147. Within Italian labour law doctrine, after the GDPR, *see* then, Ogriseg C., *GDPR and Personal Data Protection in the Employment Context,* in *Labour & Law Issues,* 3, 2, 2017; Pisani C., Proia G., Topo A. (eds.), *Privacy e lavoro. La circolazione dei dati personali e i controlli nel rapporto di lavoro,* Giuffrè Francis Lefebvre, Milan, 2022; Ricci M., Olivieri A. (eds.), *La tutela dei dati del lavoratore. Visibile e invisibile in una prospettiva comparata,* Cacucci, Bari, 2022.

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