

University of Padova
Course of Law and Data
Academic Year 2020-2021
Instructor: Elisa Spiller, Ph.D.

1st Exam Session | January 18th, 2021

Group test no. 3

Instructions

- Write your answers using a commonly used medium size font
- Write your name, surname and student number on the top of the answers' sheet
- Write your group test number
- Focus on the legal aspects of the tasks

Part 1 – Open Questions

1. Alice is a digital entrepreneur. She is going to launch a new app providing services of social networking and contents sharing. Her main target is the teenager population (people at a lower age than 18) of the European market. Alice is well aware that her business project is based on the use of personal data of a delicate category of subjects. *According to the GDPR, what is the best solution to have a compliant personal data processing?*
2. Paul is a doctorate candidate that aims to apply for very competitive positions in some outstanding research centers. Before submitting his applications, he asks for the advice of a professional reputational manager. After a careful inquiry, his consultant finds out some discrediting posts that may negatively affect Paul's applications. Unfortunately, these are not directly accessible entering Paul's identifying information. Anyway, these contents are accessible if you carry out more in-depth research. *According to the GDPR, what would be the best remedy available within the data subject's rights? And do you see any problem about the exercise of this right?*
3. @Home is a new company that works in the express and home delivery sector. The company is examining the possibility of adopting a massive tracking system of its fleet of vehicles. This should improve the quality of their services, allowing the customers real-time control of their orders. However, this solution might have a significant impact on the drivers' positions, continuously tracked over their working time. *According to the GDPR, which is the duty on the shoulders of the company in this case? And what should they do to be fully compliant with data protection legislation?*

Part 2 – Reading and comprehension

Task: In the next page, you find a clear version of the article proposed, and a link to the original version. After a careful reading of it,

- identify the problematic issue(s) presented by the Author, and the related interests at stake
- and illustrate your point of view about the use of these solutions (*pros and cons* from a legal point of view)

Do it on the base of your competencies in data protection (*e.g., types of data processed, the legal basis of the processing, impacts on the rights of the data subjects, interests of the controllers...*) and help yourself with the reflections emerged in the seminars.

Court Rules Deliveroo Used 'Discriminatory' Algorithm

By Gabriel Geiger | January 5th, 2021 (estimated time of reading: 5 minutes)

<https://www.vice.com/en/article/7k9c4e/court-rules-deliveroo-used-discriminatory-algorithm>

An Italian court determined that companies can be held liable even if an algorithm unintentionally discriminates against a protected group.

An algorithm used by the popular European food delivery app Deliveroo to rank and offer shifts to riders is discriminatory, an Italian court ruled late last week, in what some experts are calling a historic decision for the gig economy. The case was brought by a group of Deliveroo riders backed by CGIL, Italy's largest trade union.

A markedly detailed ordinance written by presiding judge Chiara Zompi gives an intimate look at one of many often secretive algorithms used by gig platforms to micromanage workers and which can have profound impacts on their livelihoods.

While machine-learning algorithms are central to Deliveroo's entire business model, the particular algorithm examined by the court allegedly was used to determine the "reliability" of a rider. According to the ordinance, if a rider failed to cancel a shift pre-booked through the app at least 24 hours before its start, their "reliability index" would be negatively affected. Since riders deemed more reliable by the algorithm were first to be offered shifts in busier timeblocks, this effectively meant that riders who can't make their shifts—even if it's because of a serious emergency or illness—would have fewer job opportunities in the future.

According to the court, the algorithm's failure to take into account the reasons behind a cancellation amounts to discrimination and unjustly penalizes riders with legally legitimate reasons for not working. Deliveroo was ordered to pay €50,000 (~\$61,400) to the suing parties.

Legal experts that Motherboard spoke to described the decision as a possible turning point. Importantly, they said, the court

determined that even if an algorithm unintentionally discriminates against a protected group a company can still be held liable and be forced to pay damages.

«This is a landmark case» Valerio De Stefano, a professor in labor law at KU Leuven who specializes in AI and labor regulation, told Motherboard over the phone. «What it shows, basically, is that on a legal level you can have indirect discrimination through algorithms and that algorithms are therefore subject to judicial review, that you can legally question how these types of algorithms work. I think that's important, because people can often think of algorithms as objectively neutral, when in fact there's always the possibility of discrimination involved».

In a statement to Motherboard, a Deliveroo spokesperson claimed that the company no longer uses the same shift booking system outlined in the case.

«This judgement refers to a historic optional booking model which is not used by Deliveroo in Italy or other markets» the spokesperson wrote. «Riders have complete flexibility to choose when to work, where to work, for little or as long as they want. This means that there is no booking system and no obligation to accept work».

«We offer self-employment because this offers the flexibility riders want» they continued. «Every survey shows riders overwhelmingly value flexibility above all else - more than 80% in the latest survey. Currently Deliveroo receives thousands of requests to work as a self-employed rider each week and we have doubled the number of riders in the UK - we now work

with 50,000 riders in the UK, up from 25,000 last year».

But the ramifications of the court's decision could go far beyond a single booking system or algorithm, says Ivana Bartoletti, co-founder of the Women Leading in AI network and author of "An Artificial Revolution".

«Even if this particular shift booking system is no longer in place, I think this decision will indicate to companies such as Deliveroo, but of course others as well, that they need to be more conscious about addressing and understanding the potential problems and inequalities their algorithms create, or they could face legal consequences» Bartoletti said. «Of course, that's not enough on its own—we need regulatory and legislative solutions as well. But, the combination of all of these things could be a major step forward».

The case is also indicative of an increased willingness on behalf of regulators, the judicial system, labor unions, and workers across the continent to tackle blackbox algorithms, and an increased awareness of how such algorithms can potentially be abused to circumvent traditional labor protections. In July 2020, for example, four U.K. drivers backed by the App Drivers and Couriers Union sued Uber to gain access to similar algorithms used by Uber. And, three months later, another group of Uber drivers filed a lawsuit against the company for allegedly being fired by an automated algorithm used by the platform without being given an opportunity to appeal.