

**Check list for studying risks and regulation of profiling**

The check list we are presenting is intended to list the main issues and features that are relevant to map the risks and regulation of automated profiling. The check list can be used both in concrete research projects studying the risks and regulation of profiling and as a research agenda to further deepen the research and foster the knowledge and awareness with stakeholders on profiling in general.

1. General

* What is understood by ‘profiling’?
  + Academic and official definitions
  + The definition elaborated within the PROFILING project

‘Profiling is a technique to automatically process personal and non-personal data, aimed at developing predictive knowledge from the data in the form of constructing profiles that can subsequently be applied as a basis for decision-making. A profile is a set of correlated data that represents a (human or non-human, individual or group) subject. Constructing profiles is the process of discovering unexpected patterns between data in large data sets that can be used to create profiles. Applying profiles is the process of identifying and representing a specific subject or to identify a subject as a member of a specific group or category and taking some form of decision based on this identification and representation.’

* What is the context or domain of application?
  + In which context(s) is profiling used?
  1. intelligence, national security, counter-terrorism
  2. criminal investigation
  3. border control
  4. finance (credit rating, anti-money laundering)
  5. healthcare domain (including insurance)
  6. employment
  7. education
  8. marketing
  9. social media and web
  10. behavioural advertising
  11. other …
  + Who are the stakeholders in this context?
  + Which profiling technologies are used in this context?
  + Which data and databases are used in this context?
* Which information is available about profiling in this context (‘state of the art’)?
  + EU projects, national projects, non-EU projects dealing with profiling issues
  + Academic literature
* What are the purposes of profiling in this context?
* How does the legal framework regulate profiling?
  + Data protection:
    - at European level:
      * EU Data Protection Directive or Framework Decision
      * CoE Recommendation (2010) 13 on the protection (…) of personal data in the context of profiling
      * proposal for General Data Protection Regulation
        + Comments/opinions?
    - at national level: 28 European Member States + Switzerland
      * implementation in national law
      * written policies by national DPAs
  + Which other legal provisions may be relevant as regulating profiling?
    - E.g. criminal law, liability / tort law, administrative law, …

1. Risks and benefits

* What are the potential risks and benefits?
  + Potential benefits (in different domains):
    - Produce knowledge
    - Support pre-emptive and surveillance policies
    - Counter-terrorism
    - Detect money-laundering and financial frauds
    - Fight against tax evasion
    - Predictive medicine and effective health treatments
    - Increase efficiency of marketing activities
    - Other…
  + Potential risks:
    - Impact on fundamental rights and fundamental values:
* Autonomy and self-determination
* Due process
* Right to data protection
* Right to non-discrimination
* Right to privacy
* Transparency
* Other…
  + - Which risks emerge from data protection practice (‘law in action’)?
      * Are there complaints on profiling to DPA at national level?
      * Has the DPA investigated profiling practices at national level?
* How does the present legal framework address the risks?
* [Do the benefits outweigh the risks?]
* Which (potential) gaps are there in legal protection under current frameworks?

1. Solutions and remedies

* Which remedies exist for citizens to redress violations of their rights through profiling practices?
* Which solutions can be thought of to address risks that are not sufficiently regulated under current law?
* Should / can legislation be adapted (‘law in the books’)?
  + At EU level: GDPR / Directive proposals
  + At national level
* Should / can enforcement of the law be strengthened (‘law in action’)?
* Should / can awareness be raised?
  + What is the current awareness of profiling?
    - policy-makers
    - DPAs, other supervisory authorities (e.g., anti-discrimination supervisor)
    - profiling actors (government / industry)
    - general public
  + How can awareness be raised?
* Should / can technological and/or organisational measures be taken to improve protection?
  + privacy by design, non-discrimination by design, …
  + which obstacles exist for value-sensitive design?
  + which incentives exist for value-sensitive design?