



profiling
PROTECTING CITIZENS' RIGHTS FIGHTING ILLICIT PROFILING

The Profiling Project: NDPAs Survey

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The PROFILING Project

- The United Nations Interregional Crime and Justice Research Institute (UNICRI) is leading a consortium of European partners in the PROFILING project, funded by the European Commission, DG Justice, under the Fundamental Rights and Citizenship programme.
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The PROFILING Project

Duration: 24 months

Start date: 12 November 2012

End date: 11 November 2014

Project Partners:

- UNICRI, UN Institute, Headquartered in Italy
 - University of Tilburg, the Netherlands
 - Technical University of Berlin, Germany
 - Amapola, Italy
 - Romanian Center for European Policies, Romania
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The PROFILING Project

Objective:

- to identify and tackle the challenges posed by profiling technology to fundamental rights with a focus on data protection.
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The PROFILING Project

- Three working papers (<http://profiling-project.eu/>):
 1. Defining profiling
 2. Evolution of technologies
 3. Impact of profiling on fundamental rights
 - Final conference in Rome-Sept. 2014
 - Presentation at the European Parliament in Brussels –Nov. 2014
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Survey - Data Protection Authorities

- One of the PROFILING project's main tasks has been to collect and compare information on the issue of profiling (with a focus on **automated profiling**) from European national **Data Protection Authorities (DPAs)**.
 - Methodology: The questionnaire was the result of the consortium's work and the input and feedback provided by the DPAs of Romania, Germany and Italy, the European Data Protection Supervisor (EDPS) and the Council of Europe.
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The PROFILING Questionnaire

Contents:

- Definition and legislation
 - General questions
 - Questions related to national legislation
 - Questions related to the General Data Protection Regulation
 - Domains of application
 - Complaints and remedies
 - Fundamental rights: how do fundamental rights/principles relate to profiling
 - Citizen awareness
 - Strategies for awareness
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Overview of the results

- Questionnaire submitted to the Data Protection Authorities of the 28 EU members states + Switzerland, through the Article 29 Working Party.
- Complete questionnaire received from **18 DPAs**: Austria, Bulgaria, Croatia, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Malta, Romania, Slovakia, Slovenia, Sweden, Switzerland, United Kingdom.
- DPAs which responded but did not fulfilled the questionnaire: Denmark, Luxembourg, Netherlands.

Definition and legislation

General questions

- 16 out of 19 DPAs have expressed the need for a **definition** of profiling in order to clarify and define this new notion and then to determine which safeguards can be used.
Remark: for the UK, profiling is just another form of personal data processing so it does not need specific regulation.
- **Most important risk of profiling**: infringes upon liberties and fundamental rights.
- **Most important benefit**: the development of tailored commercial services.
- The majority of DPAs believe that **profiling is a challenging area to be regulated and must be regulated at all steps** (collection and storage – analysis – practical application of profile).

Definition and legislation

National legislation

- 17 out of 19 countries have transposed article 15 of Directive 95/46/EC (except Greece and Switzerland, which is not an EU member).
- No country has implemented Recommendation (2010)13 on Profiling from the Council of Europe.
- 13 countries have (directly or indirectly) implemented Art. 7 on “Automated individual decisions” of Decision 2008/977/JHA of the Council Framework on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

Definition and legislation

General Data Protection Regulation

- Main aspects to be included in the GDPR:
 - a comprehensive definition of profiling
 - adequate safeguards for individuals
 - right to transparency
 - larger responsibility for the data controller
- The present draft of Article 20 of GDPR can be improved:
 - Main Weaknesses: unclear definition of profiling, unclear terminology, uncertainty concerning the use of sensitive data.
 - Main strength: increased obligations for the data controller.
- On criminal justice, a small majority of DPAs think that Article 9 of the proposed Directive on Data Protection is not sufficient and, for some, even less protective than Article 20 of the GDPR.

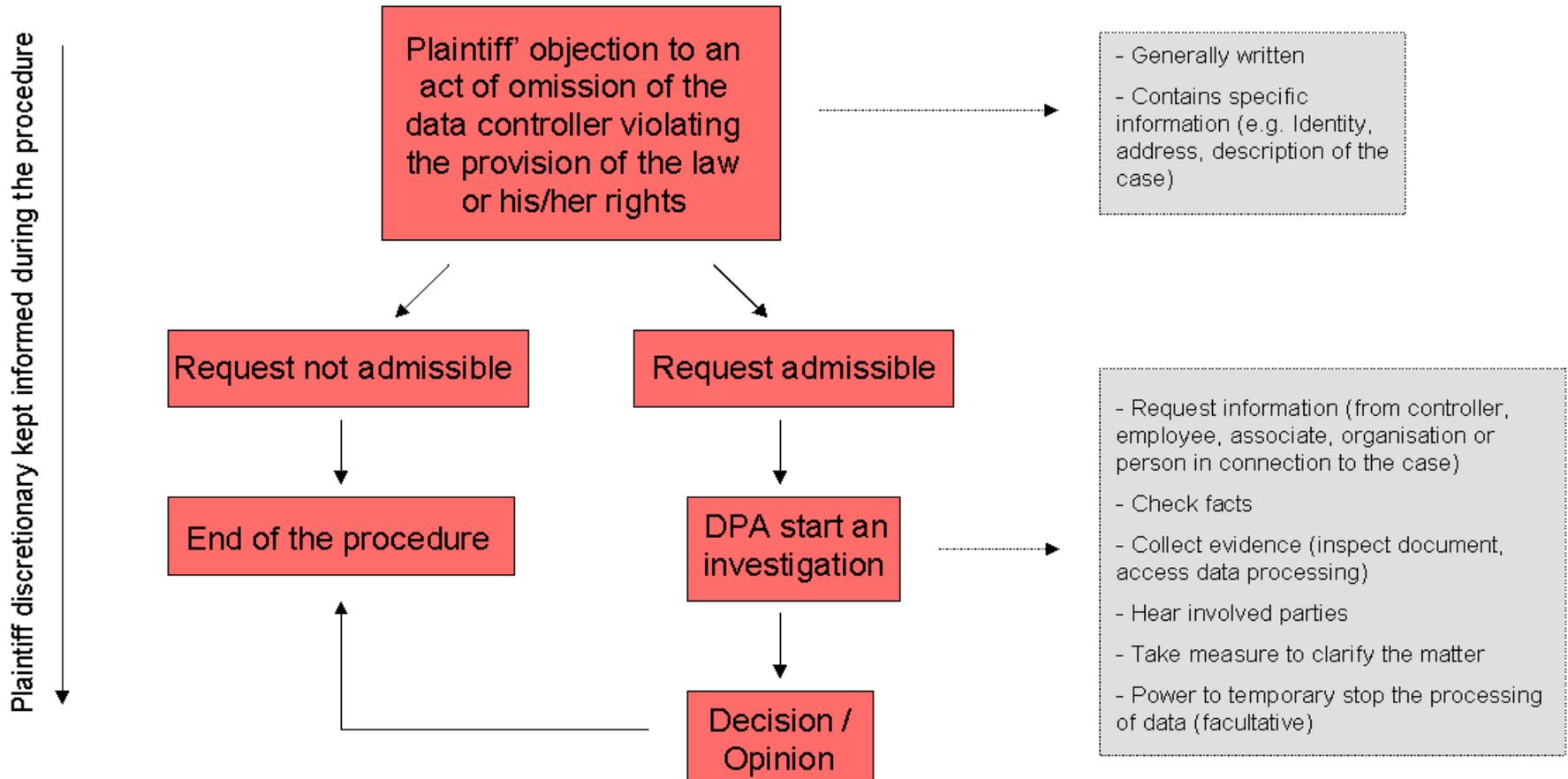
Domains of application

- **Finance** and **marketing** are the sectors to which profiling applies the most.
 - Potential risks: the creation of inaccurate profiles, which lead to the exclusion of services (discrimination); lack of information causing a loss of control for the individual over his/her personal data.
 - Potential benefits: easier decision-making process; more effective advertising campaigns and better services provided to the consumer.
- Other domains identified by the DPAs: social media and web; behavioural advertising; criminal investigation; employment; intelligence, national security, counter-terrorism; healthcare domain (including insurance); border control; education.

Complaints and remedies

- Although no complaint procedure to the DPA for data protection violations is envisaged in Directive 95/46/EC, a general procedure can be carried out following national legislation [[see next slide](#)].
- DPAs can also investigate data processing practices through their own initiatives (7 out of 15 have already used this right).
- **Major reason for filing complaints:** data processing for **marketing issues**.
- 8 out of 16 DPAs have already received a complaint on **automated profiling**.

General complaint procedure to DPA



Complaints and remedies

- **Compensation mechanisms** (or similar practices) are usually envisaged in the EU countries. National Data Protection Acts do not necessarily foresee such compensation, but data subjects can resort to civil, penal or administrative procedures.
- Only 3 countries provide **specific national training courses** on profiling for DPA officials (Finland, Italy, Slovakia).

Fundamental rights

- Main fundamental rights/principles challenged by profiling: right to privacy and data protection, principle of necessity and proportionality, awareness and transparency, non-discrimination, right to self-determination.
- 9 out of 18 DPAs envisage having a “prior checking” procedure.
- The risk of infringement of citizens’ right to data protection is higher in the **financial domain** (mentioned by 14 DPAs) and lower in the education domain (mentioned by 9 DPAs).
- In practice, 6 out of 16 DPAs have already processed cases of infringement of fundamental rights/principles in the context of profiling.

Citizen awareness

- According to DPAs, **if data subjects are aware of the legal effects of profiling practices and measures** they might be able to submit a complaint.
 - **A lack of knowledge** of the existence of profiling practices is the main limitation for data subjects' understanding of profiling risks and implications.
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Strategies for awareness

- DPAs utilize many methods to improve awareness among the general public concerning their rights vis-à-vis the data collected/used for profiling purposes:
 - websites, written documentation (reports, guidelines, newsletters, leaflets...), internal and external seminars/conferences, media (tv, radio, social networks, newspapers), annual surveys and hotlines.
- **10 out of 18 DPAs have already produced reports/ studies on profiling to increase data subjects' awareness.**
- Almost all DPAs agree that **data subjects' awareness on automated profiling and its potential risks should be increased.**

Conclusions

- According to NDPAs profiling is a challenging and risky procedure.
 - The following measures should be taken to better address challenges and risks:
 - Make data controllers more aware of their responsibilities.
 - Significantly enhance the awareness of citizens.
 - Improve the training of DPA employees.
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Thank you for your attention!

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For more information on the PROFILING project please see:

http://www.unicri.it/special_topics/citizen_profiling/

<http://profiling-project.eu/>
