

The General Data Protection Regulation

The new provisions on profiling

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Esch-sur-Alzette (Belval)



Mathilde Stenersen

Legal department

Outline

1. Definitions
2. General rules and legal bases
3. Data quality principles
4. Rights of data subjects
5. Practical considerations

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1. Definitions

- **Profiling**

*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 preferences, interests, reliability, behaviour, location or movements*

- **Automated individual decision-making (AID)**

The data subject shall have the right not to be subject 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

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1. Definitions

2. Principle and legal bases

1. Profiling

2. Automated individual decision-making (AID)

3. Data quality principles

4. Rights of data subjects

5. Practical considerations

2.1. Principle - profiling

- Any kind of *automated* form of processing
 - May include human involvement
- **To evaluate personal aspects** about a natural person, *in particular to analyse or predict aspects*
 - ✓ Performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements
 - ✓ Includes profiling for simple analysis of the data subject

2.1. Legal bases - profiling

- Lawful conditions for processing

- Consent of the data subject
- The performance of a contract
- Legal obligation
- Vital interests of the data subject
- Public interest or exercise of official authority
- The legitimate interests of the controller or a third party
 - Balance against rights and freedoms of data subjects

The processing must be **necessary**

- ! Special categories of data !

- Article 9 GDPR

2.2. Principle - AID

- **The right not to be subject to a decision ...**
- **... based solely on automated processing, including profiling, ...**
- **... producing legal effects ...**
- **... or similarly significantly affects**

2.2 Legal bases - AID

- The processing can be carried out, if it is
 - A. necessary for the performance of or entering into a contract, or
 - B. authorised by EU or Luxembourg law, which contains suitable safeguards, or
 - C. based on the data subject's explicit consent

2.2 Legal bases - AID

- ! Decisions cannot be based on **special categories of data**, unless
 - The data subject has given his or her **explicit consent**, except where EU or Luxembourg law states that the data subject cannot give their consent, or
 - The processing is necessary for reasons of **substantial public interest** on the basis of Union or Luxembourg law, and
- The controller must implement **suitable measures to safeguard** the rights and freedoms and legitimate interests of the data subject

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3. Data Quality Principles

Lawfulness, fairness
and transparency

Purpose limitation

Data minimisation

Accuracy

Storage limitation

Integrity and
confidentiality

Accountability

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 1. General rights
 2. Specific rights for AID
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4.1. General rights

Profiling: Rights can be exercised both against the controller making the profile and the controller using the profile

Right to be informed

- Information about the profiling, objectives and consequences

Right of access

- Confirmation as to whether a profile is created

Right to rectification

- Possibility to have data corrected or completed (e.g. provision of a supplementary statement)

Right to erasure

Right to restriction of processing

Right to data portability

- Does not apply to the data created by the controller (e.g. user profile created by the controller)

Right to object

- Legitimate interests, public interest or direct marketing (where profiling is related to direct marketing)

4.2. Specific rights for AID

- Increased transparency
 - Right to be informed / Right of access
 - Inform the data subject of the use of this type of activity
 - Provide meaningful information about the logic involved
 - Explain the significance and envisaged consequences

- If the processing is based on a contract (A) or explicit consent (C), the right to
 - Obtain human intervention on the part of the controller
 - Express his or her point of view
 - Contest the decision

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5. Practical considerations

- Put in place simple procedures for the data subject to exercise rights
- Implement technical safeguards for the processing
- Data Protection Impact Assessment

A silhouette of a person is centered on a light gray background. The silhouette is filled with a pattern of binary code (0s and 1s). The background is framed by a red border on the left and bottom, and a blue border on the right and top.

Thank you for your attention !