

COMP Article 20

16.10.2013

Article 20

Measures based on Profiling

1. *Without prejudice to the provisions in Article 6 every natural person shall have the right ~~not to be subject to object to a measure which produces legal effects concerning this natural person or significantly affects this natural person, and which is based solely on automated processing intended to evaluate certain personal aspects relating to this natural person or to analyse or predict in particular the natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour.~~ profiling in accordance with Article 19. The data subject shall be informed about the right to object to profiling in a highly visible manner.*
2. Subject to the other provisions of this Regulation, a person may be subjected to *a measure of the kind referred to in paragraph 1 profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject* only if the processing:
 - (a) is *carried out in the course of necessary for* the entering into, or performance of, a contract, where the request for the entering into or the performance of the contract, lodged by the data subject, has been satisfied, *provided that or where* suitable measures to safeguard the data subject's legitimate interests have been adduced, *such as the right to obtain human intervention*; or
 - (b) is expressly authorized by a Union or Member State law which also lays down suitable measures to safeguard the data subject's legitimate interests;
 - (c) is based on the data subject's consent, subject to the conditions laid down in Article 7 and to suitable safeguards.
3. *Profiling that has the effect of discriminating against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity, or that results in measures which have such effect, shall be prohibited. The controller shall implement effective protection against possible discrimination resulting from profiling.* Profiling shall not be based solely on the special categories of personal data referred to in Article 9.
4. *In the cases referred to in paragraph 2, the information to be provided by the controller under Article 14 shall include information as to the existence of processing for a measure of the kind referred to in paragraph 1 and the envisaged effects of such processing on the data subject.*

5. Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject shall not be based solely or predominantly on automated processing and shall include human assessment, including an explanation of the decision reached after such an assessment. The ~~Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of further specifying the criteria and conditions for~~ suitable measures to safeguard the data subject's legitimate interests referred to in paragraph 2 shall include the right to obtain human assessment and an explanation of the decision reached after such assessment.

5a. The European Data Protection Board shall be entrusted with the task of issuing guidelines, recommendations and best practices in accordance with Article 66 paragraph 1(b) for further specifying the criteria and conditions for profiling pursuant to paragraph 2.

Recitals

(58) Without prejudice to the lawfulness of the data processing, every natural person should have the right ~~not to be subject to object to a measures which is based on~~ profiling ~~by means of automated processing. However, such measures~~ Profiling which leads to measures producing legal effects concerning the data subject or does similarly significantly affect the interests, rights or freedoms of the concerned data subject should only be allowed when expressly authorised by law, carried out in the course of entering or performance of a contract, or when the data subject has given his consent. The In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human assessment intervention and that such measure should not concern a child. Such measures should not lead to discrimination against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity.

(58a) Profiling based solely on the processing of pseudonymous data should be presumed not to significantly affect the interests, rights or freedoms of the data subject. Where profiling, whether based on a single source of pseudonymous data or on the aggregation of pseudonymous data from different sources, permits the controller to attribute pseudonymous data to a specific data subject, the processed data should no longer be considered to be pseudonymous.