



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 11 March 2014

**6079/1/14
REV 1**

**Interinstitutional File:
2012/0011 (COD)**

LIMITE

**DATAPROTECT 20
JAI 58
MI 116
DRS 19
DAPIX 12
FREMP 20
COMIX 82
CODEC 300**

NOTE

from: Presidency
to: Working Group on Information Exchange and Data Protection (DAPIX)
Subject: Proposal for a regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)
- Profiling

Delegations will find below comments regarding profiling.

TABLE OF CONTENT

CZECH REPUBLIC	3
SPAIN	6
ITALY	7
POLAND	13
SLOVAKIA	18
UNITED KINGDOM	19

CZECH REPUBLIC

In general

CZ wishes to point out that comments given below are without prejudice to horizontal questions and issues, such as delegated and implementing acts or legal form of the proposal. Given the fact that these horizontal issues are being discussed separately, CZ did not specifically comment e.g. on provisions establishing implementing or delegated powers.

Recital 58)

The second sentence of the recital (on principles and lawfulness) should be deleted, as it is superfluous.

Article 4 paragraphs 12a, 12b

The definitions of “profiling” and “profile” and their mutual relationship should be clarified. At present, there is too much confusion resulting (in particular) from the words “... to create or use a profile...” in paragraph 12a.

It is not clear whether “profiling” is:

- an automated processing that evaluates particular aspects of data subject in order to create a set of data characterising a category of individuals, or
- an automated processing that applies a set of data characterising a category of individuals to a particular data subject, or
- an automated processing that evaluates particular aspects of data subject in order to apply already created set of data characterising a category of individuals to a particular data subject,
- or all of the above or something else.

Relationship between paragraphs 1 and 1a of Article 20 already shows that without clear definitions of what profile and profiling is (and is not) it will be extremely difficult to arrive at clear rules on it.

CZ proposes that:

- *mere creation of abstract profiles (categories of individuals) by automated or any other processing of pseudonymised personal data would not be regulated by special provision*
- *creation of abstract profiles by automated or any other processing of personal data would at most call for appropriate safeguards*
- *creation of abstract profiles by automated or any other processing personal data that are predominantly sensitive would always call for adequate safeguards*
- *connecting a data subject to abstract profile (“religious traveller”, “pregnant student”) by automated data processing would be regulated pursuant to Article 20(1)*
- *creation of personalized profile (“A is adrenaline sports young rich male”) for further automated processing would be regulated similarly to Article 20(1)*

Article 14a

In the paragraph 2(h) the word “profiling” should be replaced by the word “processing” to ensure consistency of the text.

Article 20

The text of paragraph 1 is too complex and too restrictive. It should be simplified by using definitions established (and clarified) in Article 4(12a)(12b). The part on suitable safeguards should be deleted and kept only in 1(a) and 1(b).

1(c) already provides for greater protection by requiring “explicit” consent of data subject.

The word “necessary” in paragraph 1(a) should be replaced by “carried out”.

Usually, automated data processing based on profiling (or however the Article ends up) is not “necessary” for a contract, but makes entering into contract and performing the contract more accessible and cheaper for both parties. The word “necessary” would only lead to proliferation of consents based on (c).

The text of the paragraph 1a should be clearly distinguished from the paragraph 1.

It should be clear whether the paragraph 1a is to regulate application of profile to particular person or something else.

Paragraph 1a(a) should refer to paragraph 1 rather than paragraph 1a in the last line.

Paragraph 3 should refer to processing “... based **solely or predominantly** on special categories of personal data ...”.

CZ believes that such restriction captures the right balance, also with regard to very broad definitions of certain categories of sensitive data (such as data concerning health in Article 4 paragraph 12 which make basic physician’s confirmation that A is fit to cook sensitive data).

SPAIN

The Spanish delegation would prefer the approach that came out from the Irish presidency, and has therefore a reservation on the new amendments proposed by the presidency.

From our prospective there is no need for a specific regulation of profiles in art.20. The additional safeguards on transparency and information that seem to be required concerning the elaboration of profiles could be addressed on chapter III with no additional changes on Article 20. On this basis we could accept the proposed definition of profiles.

Article 20 has become overly complex and has internal redundancy. Those technicalities should be addressed and as already stated under paragraph 15 we would very much prefer the wording that came from the Irish presidency.

58) **Automated processing of personal data and profiling should be subject to specific conditions to safeguard the rights and freedoms of the data subject. In particular the principles and the conditions for the lawfulness of processing personal data should apply.**

Every data subject should have the right not to be subject to a decision which is based on **automated processing of data intended to evaluate certain personal aspects relating to a natural person.** However, such **processing** should be allowed when expressly authorised by Union or Member State law, including for fraud monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or carried out in the course of entering or performance of a contract between the data subject and a controller, or when the data subject has given his **explicit** consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention (...). **Automated processing and profiling (...) based on special categories of personal data should be prohibited in principle; such prohibition should be derogated from only¹ only be allowed under specific conditions.**

Article 4

Definitions

For the purposes of this Regulation:

- (12a) 'profiling' means any form of automated processing (...) intended to create or use a (...) profile to evaluate² by evaluating personal aspects relating to a natural person, in particular the analysis and prediction of aspects concerning performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements³;

¹ This wording would be more in line with the current principle set out in Article 9(1).

² We consider that the assessment of personal aspects etc. is not the means for profiling, but rather the purpose for which the profile is used (this is in line with Article 15(1) of Directive 95/46/EC). The analysis and prediction of aspects etc. are, conversely, the components of the automated processing categorized as “profiling”. We think the wording suggested here better mirrors this distinction.

³ BE, RO and SE scrutiny reservation. BE, FR, LU, SI and RO would prefer reverting to the Council of Europe definition. COM reservation.

(12b) ‘profile’ means a set of data characterising a category of individuals that is intended to be applied to a natural person;

Article 14

Information to be provided where the data are collected from the data subject¹

1a. In addition to the information referred to in paragraph 1, the controller shall² provide the data subject with such further information³ necessary to ensure fair and transparent processing in respect of the data subject⁴, having regard to the specific circumstances and context in which the personal data are processed⁵:

.....

*(h) the existence of **processing** referred to in Article 20(...) and information concerning (...) the **processing including knowledge of its logic**⁶, as well as the significance and the envisaged consequences of such **processing for** the data subject.⁷*

¹ DE, EE, ES, NL, SE, FI, PT and UK scrutiny reservation. DE, supported by ES and NL, has asked the Commission to provide an assessment of the extra costs for the industry under this provision.

² DE, EE, and PL asked to insert "on request". DE, DK, NL and UK doubted whether the redraft would allow for a sufficient risk-based approach and warned against excessive administrative burdens/compliance costs. DK and UK in particular referred to the difficulty for controllers in assessing what is required under para. 1a in order to ensure fair and transparent processing. DE, EE and PL pleaded for making the obligation to provide this information contingent upon a request thereto as the controller might otherwise take a risk-averse approach and provide all the information under Article 14(1a), also in cases where not required. UK thought that many of the aspects set out in paragraph 1a of Article 14 (and paragraph 2 of Article 14a) could be left to guidance under Article 39.

³ CZ suggested adding the word 'obviously'.

⁴ FR scrutiny reservation.

⁵ COM reservation on deletion of the words 'such as'.

⁶ This is in line with the current Article 15(1), letter g) (and with Article 12, letter a) of Directive 95/46/EC). As such, it would not appear to entail additional costs for data controllers.

⁷ SE scrutiny reservation.

Article 14 a

**Information to be provided where the data have not been obtained
from the data subject¹**

2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with such further information necessary to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context² in which the personal data are processed (...):

(h) *the existence of **processing profiling**³ referred to in Article 20(1) and (3) and information concerning (...) the **processing including knowledge of its logic**,⁴ as well as the significance and the envisaged consequences of such **processing for** the data subject.⁵*

Article 15

Right of access for the data subject⁶

1. The data subject shall have the right to obtain from the controller at reasonable intervals and free of charge⁷ (...) confirmation as to whether or not personal data concerning him or her are being processed and where such personal data are being processed access to the data and the following information:

(h) in the case of **processing** referred to in Article 20, knowledge of the logic involved⁸ in any automated data processing as well as the significance and envisaged consequences of such processing⁹.

¹ DE, EE, ES, NL (§§1+2), AT, PT scrutiny reservation.

² ES, IT and FR doubts on the addition of the words 'and context'.

³ To harmonize wording with Article 14 and 15.

⁴ See comment on Article 14.

⁵ PL asks for the deletion of the reference to 'logic'.

⁶ DE, FI and SE scrutiny reservation. DE, LU and UK expressed concerns on overlaps between Articles 14 and 15.

⁷ DE, ES, HU, IT and PL reservation on the possibility to charge a fee. DE, LV and SE thought that free access once a year should be guaranteed.

⁸ PL reservation on the reference to 'logic': the underlying algorithm should not be disclosed. DE reservation on reference to decisions.

⁹ NL scrutiny reservation. CZ and FR likewise harboured doubts on its exact scope.

Article 20

Automated decisions and requirements applying to¹ profiling²

1. Every data subject shall have the right not to be subject to a decision based solely on automated processing of data intended to evaluate certain personal aspects relating to a natural person, such as his or her performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements and *which produces legal effects* concerning him or her or severely³ affects him or her unless such processing is subject to suitable measures to safeguard the data subject's rights and freedom and his or her legitimate interests, such as the rights of the data subject to obtain human intervention on the part of the controller, to express his or her point of view, and to contest the decision, and:
 - (a) is necessary for the entering into, or performance of, a contract between the data subject and a data controller and ~~suitable measures to safeguard the data subject's legitimate interests have been adduced, such as the rights of the data subject to obtain human intervention on the part of the controller, to express his or her point of view, and to contest the decision⁴~~ or
 - (b) is (...) authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's legitimate interests; or
 - (c) is based on the data subject's explicit consent (...).

¹ This heading would appear to better mirror the contents of the Article. Automated processing is too broad as it encompasses practically all the processing operations covered by the Regulation.

² DE, ES, FR, AT, PL, SE and UK scrutiny reservation. COM reservation: COM is of the opinion that that the level of data protection in the current draft of this article is below that of Directive 95/46.

³ DE and PL wondered whether automated data processing was the right criterion for selecting high risk data processing operations and provided some examples of automated data processing operation which it did not consider as high risk. DE and ES pointed out that there are also cases of automated data processing which actually were aimed at increasing the level of data protection (e.g. in case of children that are automatically excluded from certain advertising).

⁴ This paragraph would appear to be repeated.

- 1a.** Without prejudice to paragraph 3, profiling shall only be considered to be in compliance with this Regulation if the controller implements appropriate measures to safeguard the rights and freedoms of the data subject, including the measures referred to in Articles 14, 14a and 15¹;
- 1b.** Where measures or decisions which produce legal effects concerning the data subject or severely affect him or her are based on profiling, the rights and suitable measures and conditions specified in paragraph 1 hereof shall also apply².
- (b)** ~~In accordance with this Regulation and in particular with Articles 5 and 6, profiling may take place only under condition that:~~
- ~~**(a)** the profile shall not be processed for any other purpose than the one for which it is created and used, in particular not for the purpose of supporting measures or decisions which produce legal effects concerning the data subject or severely affects him or her, unless point (a), (b) or (c) of paragraph 1a applies; and~~
- ~~**(b)** the controller implements appropriate measures to safeguard the rights and freedoms of the data subject, including information on the existence of profiling as well as on the significance and the envisaged consequences of the profiling in accordance with point (h) of Article 14(1a) and point (h) of Article 14a(2)³~~
2. (...)

¹ This paragraph is aimed to clarify the conditions applying in any case to profiling, as a form (subset) of automated processing to evaluate personal aspects of a natural person. Specific information obligation are envisaged, in particular. Profiling based on sensitive data is, however, prohibited in principle.

² This paragraph is aimed to clarify that any decisions based on profiling (being a form of automated processing to evaluate personal aspects of a natural person) must comply with the conditions and safeguards applying to any such decisions as per paragraph 1.

³ DE thinks this provision must take account of two aspects, namely, whether and under what conditions a profile (= the linking of data which permits statements to be made about a data subject's personality) may be created and further processed, and, secondly, under what conditions a purely automated measure based on that profile is permissible if the measure is to the particular disadvantage of the data subject. DE would like to see a rule included on profiling in regard to procedures for calculating the probability of specific behaviour (cf. Article 28b of the German Federal Data Protection Act, which requires that a scientifically recognized mathematical/statistical procedure be used which is demonstrably essential as regards the probability of the specific behaviour).

3. Processing referred to in paragraphs 1 and 1a shall not (...) be based on special categories of personal data referred to in Article 9(1), unless **points (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's legitimate interests**¹ are in place.
4. (...)
5. (...)

¹ BE, FR, IT, PL, PT, AT, SE and UK reservation FR and AT reservation on the compatibility with the E-Privacy Directive. BE would prefer to reinstate the term 'solely based', but FR and DE had previously pointed out that 'not ... solely' could empty this prohibition of its meaning by allowing sensitive data to be profiled together with other non-sensitive personal data. DE would prefer to insert a reference to the use of pseudonymous data.

POLAND

(58) The data subject should have the right – not to be subject to a decision based **solely** **predominantly** on ~~automated processing, including such forms of processing such as~~ profiling ~~,intended to evaluate certain [personal] aspects relating to his or her performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements~~ which produces legal effects concerning him or her or (which) severely affects him or her. However, such processing should be allowed when explicitly authorised¹ by Union or Member State law, including for fraud and tax evasion² monitoring and prevention purposes and to ensure the security and reliability of a service provided by the controller, or carried out in the course of entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and an explanation of the decision reached after such assessment³. Profiling and automated **processing decision making** based on special categories of personal data should only be allowed under specific conditions.

¹ BE suggested adding ' or recommended', with regard to e.g. ECB recommendations.

² Further to MT suggestion.

³ Further to PL suggestion.

Article 14

Information to be provided where the data are collected from the data subject¹

- 1a. In addition to the information referred to in paragraph 1, the controller shall provide the data subject² with such further information³ necessary to ensure fair and transparent processing in respect of the data subject⁴, having regard to the specific circumstances and context in which the personal data are processed⁵:

.....

- (h) *the existence of automated decision making and profiling referred to in Article 4 (12a) and Article 20(~~1~~) and information concerning (...) the processing, as well as the significance and the envisaged consequences of such processing for the data subject⁶.*

¹ DE, EE, ES, NL, SE, FI, PT and UK scrutiny reservation. DE, supported by ES and NL, has asked the Commission to provide an assessment of the extra costs for the industry under this provision.

² DE, EE, and **PL** asked to insert "on request". DE, DK, NL and UK doubted whether the redraft would allow for a sufficient risk-based approach and warned against excessive administrative burdens/compliance costs. DK and UK in particular referred to the difficulty for controllers in assessing what is required under para. 1a in order to ensure fair and transparent processing. DE, EE and **PL** pleaded for making the obligation to provide this information contingent upon a request thereto as the controller might otherwise take a risk-averse approach and provide all the information under Article 14(1a), also in cases where not required. UK thought that many of the aspects set out in paragraph 1a of Article 14 (and paragraph 2 of Article 14a) could be left to guidance under Article 39.

³ CZ suggested adding the word 'obviously'.

⁴ FR scrutiny reservation.

⁵ COM reservation on deletion of the words 'such as'.

⁶ SE scrutiny reservation.

Article 14 a

Information to be provided where the data have not been obtained
from the data subject¹

.....

2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with such further information necessary to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context² in which the personal data are processed (...):

.....

(h) the existence of automated decision making and profiling referred to in Article 4 (12a) and Article 20(~~1~~) and (~~3~~) and information concerning (...) the processing, as well as the significance and the envisaged consequences of such processing for the data subject³.

.....

Article 15

Right of access for the data subject⁴

1. The data subject shall have the right to obtain from the controller at reasonable intervals and free of charge⁵ (...) confirmation as to whether or not personal data concerning him or her are being processed and where such personal data are being processed access to the data and the following information:

.....

¹ DE, EE, ES, NL (§§1+2), AT, PT scrutiny reservation.

² ES, IT and FR doubts on the addition of the words 'and context'.

³ PL asks for the deletion of the reference to 'logic'.

⁴ CZ, DE, IE, FI and SE scrutiny reservation. DE, LU and UK expressed concerns on overlaps between Articles 14 and 15.

⁵ DE, FI and SE scrutiny reservation. DE, LU and UK expressed concerns on overlaps between Articles 14 and 15.

- (h) in the case of automated decision making and profiling referred to in *Article 4 (12a) and Article 20*, knowledge of the logic involved¹ in any automated data processing as well as the significance and envisaged consequences of such processing².

Article 20

~~*Automated decision making and profiling*~~³

1. The data subject shall have the right- not to be subject to a decision based **solely predominantly on automated processing, including profiling, intended to evaluate certain [personal] aspects relating to his or her performance at work, economic situation, health, personal preferences, or interests, reliability or behaviour, location or movements and profiling** which produces legal effects concerning him or her or (which) severely⁴ affects him or her⁵.

¹ PL reservation on the reference to 'logic': the underlying algorithm should not be disclosed.
DE reservation on reference to decisions.

² NL scrutiny reservation. CZ and FR likewise harboured doubts on its exact scope.

³ DE, ES, FR, AT, PL, SE and UK scrutiny reservation. COM and HU reservation: COM is of the opinion that that the level of data protection in the current draft of this article is below that of Directive 95/46.

⁴ DE and ~~PL~~ wondered whether automated data processing was the right criterion for selecting high risk data processing operations and provided some examples of automated data processing operation which it did not consider as high risk. PL would prefer to refer to 'significantly'. DE and ES pointed out that there are also cases of automated data processing which actually were aimed at increasing the level of data protection (e.g. in case of children that are automatically excluded from certain advertising).

⁵ DE thinks this provision must take account of two aspects, namely, whether and under what conditions a profile (= the linking of data which permits statements to be made about a data subject's personality) may be created and further processed, and, secondly, under what conditions a purely automated measure based on that profile is permissible if the measure is to the particular disadvantage of the data subject. DE would like to see a rule included on profiling in regard to procedures for calculating the probability of specific behaviour (cf. Article 28b of the German Federal Data Protection Act, which requires that a scientifically recognized mathematical/statistical procedure be used which is demonstrably essential as regards the probability of the specific behaviour).

- 1a. A data subject may be subject to a decision referred to in paragraph 1 in the following cases and under the condition that the data controller implements all suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, such the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision¹:
- (a) is necessary for the entering into, or performance of, a contract between the data subject and a data controller² or
 - (b) is (...) authorized by Union or Member State law to which the controller is subject and which also specifies suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or
 - (c) is based on the data subject's explicit consent (...).
2. (...)
3. ~~Automated decision making and~~ profiling shall not² (...) be based on special categories of personal data referred to in Article 9(1), unless points (a) or (g) of Article 9(2) applies and suitable measures to safeguard the data subject's legitimate interests are in place³.
4. (...)
5. (...)⁴

¹ NL had proposed to use the wording 'and arrangements allowing him to put his point of view, inspired by Article 15 of Directive 95/46..

² CZ and **PL** pleaded in favour of introducing 'solely'.

³ BE, FR, IT, PL, PT, AT, SE and UK reservation FR and AT reservation on the compatibility with the E-Privacy Directive. BE would prefer to reinstate the term 'solely based', but FR and DE had previously pointed out that 'not ... solely' could empty this prohibition of its meaning by allowing sensitive data to be profiled together with other non-sensitive personal data. DE would prefer to insert a reference to the use of pseudonymous data.

⁴ PL suggested adding the following para.: '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) and (ba) for further specifying the criteria and conditions for profiling pursuant to paragraph 2'.

SLOVAKIA

SK would like to join those states which expressed the need to harmonize provisions of Art. 14a (2) point h) and Art. 15 (1) point h) since the former does not correspond with the latter which leads to legal uncertainty.

We also support propositions of HU, UK, IT and PL to edit title of the Art. 20 since the expression “*Automated processing*” does cover the whole Regulation and naming an article in this manner causes confusion.

We would also like to support opinions of ES, IT, NL, FR, CZ, DE, and FI concerning better elaboration of Art. 20, which is in its current state unclear and some of its provisions are repeated several times through the whole article.

We do however welcome the effort of the Presidency to elaborate separate definition of the profile in Art. 4 (12b), which in our opinion corresponds with the recommendation of the Council of Europe. Together with the definition of profiling in the recital current version of the proposal for the Regulations in our opinion represents the most acceptable option regarding the area of profiling.

3 March 2014 In general the text of the Presidency on profiling sets out in the right direction, however several delegations pointed out various insufficiencies which are necessary to solve out.

SK leads towards opinions of IR, ES and PL which believe that text of the Irish presidency defined profiling better as any form of automated processing not a form of automated processing.

We would also welcome explanation of the last sentence of recital No. 58 „*Profiling and automated decision making based on special categories of personal data should only be allowed under specific conditions*“. We consider it desirable to specify what exactly are these specific conditions which allow profiling based on special categories of personal data. Current wording is in our opinion unclear and causes legal uncertainty.

SK would also like to join footnote No. 4 in Art. 20 (5)

UNITED KINGDOM

Written Comments on Profiling

We welcome the opportunity, provided by the Presidency of the Council, to make general comments and suggest textual amendments on the Presidency's proposals regarding the theme of profiling.

General

We would like to begin by highlighting the benefits of profiling. Profiling is not a bad thing. For instance, decisions to give an individual a credit card may be based on profiling, and we are all aware of the consequences of uninformed lending decisions. Good credit lending decisions are essential for a stable, modern economy.

With this in mind, we query what the problem is that we are attempting to solve. The provision which dealt with automated decision making in the 1995 Directive has worked well in our view and appears to have been sufficient.

Having said that, we found no problems with the position set out in the previous Presidency paper on profiling (17971/13). We however have some concerns about the amendments in this new paper (5344/14).

Article 4.12b

We have two primary concerns with the definition of "profile". Firstly, we do not believe a definition is needed. Secondly, we query the choice to describe it as "a set of data characterising a category of individuals". A profile may instead be a characteristic which could be assigned to an individual. Profiles do not necessarily place people into a category; they describe a characteristic.

A profile may also be made up of one piece of data, not necessarily a set of data.

Article 14 and 14a

The UK has no particular objection to the proposed changes to these Articles.

Article 15

We would like to take the opportunity to reiterate our previous position on this Article. We firmly believe there should be the flexibility for controllers to charge a modest fee for access. **[Do we want to make the case for why?]**

Article 20

We query the amendment to the title of this Article: **Automated processing and** profiling. Article 2(1) already states that the whole material scope of the Regulation is automated processing.

A20.1

The chapeau to paragraph 1 is very long and confusing. The additional wording duplicates what is set out in paragraph 1a.

A20.1a

Our understanding is that **A20.1a.a** would, as drafted, apply to all profiling and not just that which, as per A20.1 produces legal effects, etc. Applying these conditions to any profiling without first considering what impact the profiling might have on an individual is fundamentally incompatible with the risk based approach.

It appears to us that there is a drafting error in respect of sub-paragraph (1a) which seems to suggest that any profiling must meet at least one of the conditions set out in A20.1(a) to (c). If that is the case, then the effect is to say that any profiling, whatever the impact, can only take place if one of those conditions is met. But that runs expressly against A20.1 which suggest that such conditions need only be met where profiling has legal effects for or severely affects a data subject.

Finally, we do not agree that profiling based on special categories of personal data should only be permitted if either Article 9(2)(a) or (g) apply. That appears to us to be unnecessarily restrictive and we do not understand what the justification for imposing such restrictions would be.