

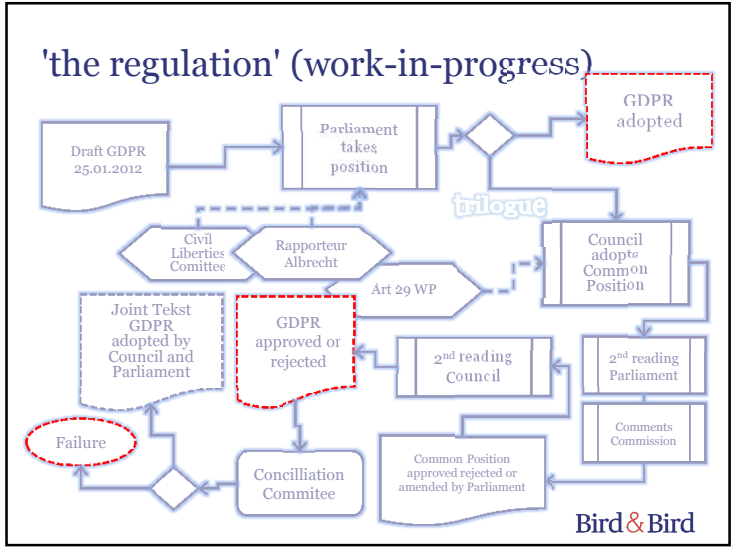
Profiling en de privacywet & Bird & Bird

Gerrit-Jan Zwenne
Vereniging voor Reclamerecht
29 oktober 2013

Behavioral advertising & de privacywet & Bird & Bird
Nationaal Reclamerecht Congres
10 december 2010
Gerrit-Jan Zwenne & Berend van Hijk

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profiling*)

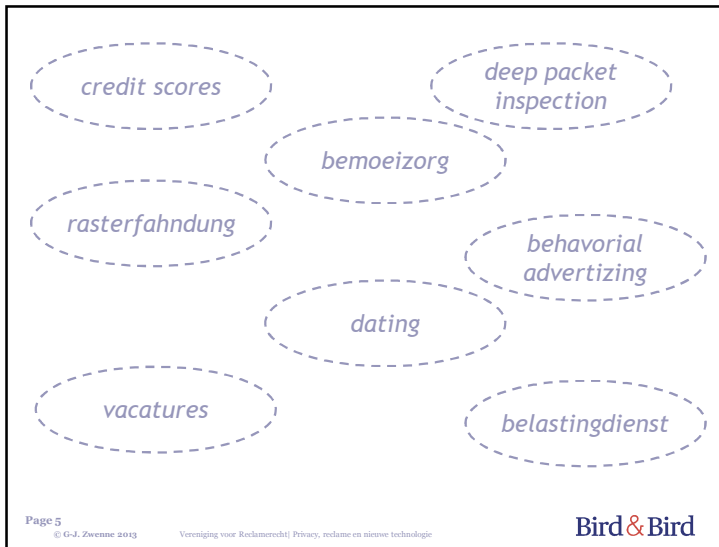
processing of personal data

- *intended evaluate certain personal aspects relating to a natural person, or*
- *to analyse or predict in particular that natural person's performance at work, economic situation, location, health, personal preferences, reliability or behaviour*

Art 3a LIBE

*) was: «automated decision making»

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someone may be subjected to profiling only if...

- this is necessary for the entering into, or performance of, a contract, provided that suitable measures to safeguard the data subject's legitimate interests have been added, or
- this is authorized by law which also lays down suitable measures to safeguard the data subject's legitimate interests, or
- this is based on data subject's consent

Art 20 LIBE

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no profiling solely on the basis of 'sensitive' data

ie. race or ethnic origin, political opinions, religion or beliefs, trade union membership, sexual orientation or gender identity

obligation to implement effective protection against possible discrimination resulting from profiling

Art 20 LIBE

Baltimore State Hospital
E/O Criminals Income
Mr. H. Lester
2000 West Baltimore Street
Baltimore, MD 21223

April 2, 1991, Quantico VA

Dear Dr. Lester

At the request of.....

Sincerely
Clarice Starling

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right to object to profiling

- every natural person shall have the right to object to profiling
- data subject shall be informed about the right to object to profiling in a **highly visible** manner

Art 20 LIBE

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processing grounds (eg. provision of data for profiling purposes)

- (a) consent
- (b) performance of a contract
- (c) legal obligation
- (d) vital interests
- (e) public task
- (f) processing is necessary for the purposes of the legitimate interests pursued by ~~the a controller~~ **or in case of disclosure, by the third party to whom the data is disclosed, and which meet the reasonable expectations of the data subject based on his or her relationship with the controller**, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, ~~in particular where the data subject is a child~~. This shall not apply to processing carried out by public authorities in the performance of their tasks

Art 6(1)
LIBE

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information to the data subject

- about possible profiling and measures based on profiling
- envisaged effects of profiling on the data subject
- standardised information policies

Art 13a
and 14 LIBE

	No personal data are collected beyond the minimum necessary for each specific purpose of the processing	✓
	No personal data are retained beyond the minimum necessary for each specific purpose of the processing	✗
	No personal data are processed for purposes other than the purposes for which they were collected	✓
	No personal data are disseminated to commercial third parties	✓
	No personal data are sold or rented out	✓
	No personal data are retained in unencrypted form	✗

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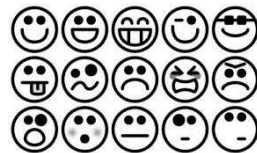
right to erasure ~~and to be forgotten~~

to obtain the erasure of personal data and abstention from further dissemination of such data,

Art 17 LIBE

to obtain from third parties the erasure of any links to, or copy or replication of that data, if...

- data are no longer necessary
- consent is withdrawn
- use is made of the right to object
- court order
- unlawful processing



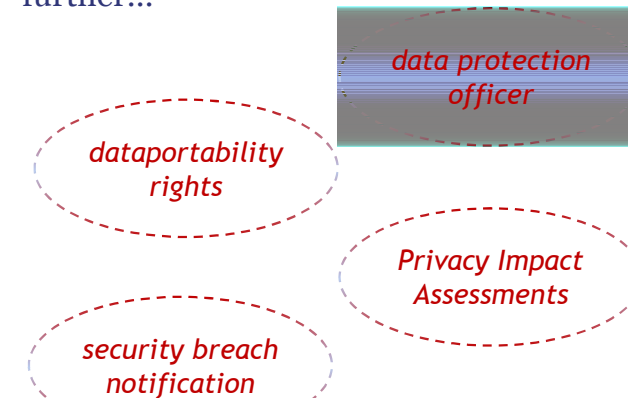
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further...



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sanctions and fines

- in cases of first and non-intentional non-compliance: a warning in writing
- regular periodic data protection audits



*a fine up to €100 000 000
or up to 5% of the annual
worldwide turnover
(whichever is greater)*

Bird & Bird

dank voor uw aandacht
gerrit-jan.zwenne@twobirds.com

