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Profiling and selecting: an advisory report on the use of profiling in the implementation of immigration policy

Conclusions and recommendations

The digitalisation of society has led to the growing use of large quantities of structured and unstructured data obtained from a range of sources (big data) and of profiling based on that data. More information is becoming available in digital form, while new technologies facilitate the linking of files to generate new information. Government agencies and private sector organisations use profiling in a variety of domains; examples include the investigation of crime by the police and direct marketing to consumers by companies. On the whole, the aim is to improve efficiency and to make the best possible use of experience-based information. This advisory report confines itself to the use of profiling in the implementation of immigration policy by government.

In this report the ACVZ uses the following definition of profiling.

Profiling is a two-stage process:

- first, the drafting of a group profile consisting of indicators which, together, present an opportunity or a risk in the implementation of government policy;
- second, the processing, analysis and assessment of (personal) data on the basis of indicators derived from a group profile with the aim of evaluating an individual/organisation in terms of risks and/or opportunities.

The use of profiling in implementing immigration policy is still at an early stage. Many organisations are engaged in exploring or testing its potential. The profiles developed so far are largely based on experience-based information and are sometimes simplistic. Furthermore, some profiles are at present based exclusively on data from the organisation drawing them up. The use of data files from private sources and/or public sources such as social media is as yet uncommon. However, the ACVZ's study also shows that most organisations are already sharing data and linking large files for the purposes of profiling.

The research question addressed in this report is as follows.

How can the use of profiling contribute to the efficient, effective and responsible implementation of immigration policy?

In the ACVZ's view, technological developments in the field of data collection and analysis make it inevitable that, in the future, government will make increasing use of big data techniques on which profiling will more and more frequently be based. The same applies to the organisations responsible for implementing immigration policy.

On the basis of the study, the ACVZ argues that it is essential to develop a clear and future-proof framework in which the use of profiles in immigration policy is subject to adequate safeguards.

The ACVZ would make the following recommendations

The study shows that all the organisations surveyed meet the requirement that they process personal data on the basis of legislation and in the execution of a public-law task. They are furthermore aware of the importance of careful procedure and they respect the prohibition on automated decision-making. But there is usually no clear statutory basis for the exchange and linkage of files containing personal data and the use of profiles. The fact that many use voluntary agreements and supplementary rules is not a solution to this problem. The first recommendation therefore reads as follows.

- 1) *Ensure there is an explicit statutory basis for the exchange and linkage of data files and the use of profiles; make sure that profiling is only employed if the requisite legal safeguards, such as the principle of non-discrimination, the criteria of necessity and proportionality, and the presence of independent supervision, have been met.***

The study further shows that organisations in the immigration system that use profiling have not yet or not yet fully introduced the appropriate working methods. In some cases, indicators have not been precisely defined, in others cooperation between the department responsible for analysis and operational staff is lacking. Adequate monitoring and evaluation are not always in place. In all the profiles studied, there was no regular comparison with random samples; as a result, the consequences of working with profiles are not sufficiently clear.

It is not wise to make use of profiles if the associated range of instruments has not been deployed or insufficiently deployed, since this means the general requirements set by legislation with regard to lawfulness, necessity, due care, transparency, purpose limitation and non-discrimination have not been met. As a result, the ACVZ would make the following recommendations.

- 2) *Improve the quality of profile application by using a profile only if:***
 - a privacy impact assessment has been conducted in which the following question has been adequately answered: does the use of the profile meet the requirements with regard to lawfulness, necessity, due care, transparency, purpose limitation, non-discrimination and non-stigmatisation?***
 - the profile has been tested before use;***
 - feedback of results is guaranteed;***
 - the results of using the profile are compared with random samples;***
 - an adequate monitoring and evaluation system is in place;***
 - steps have been taken to ensure that the question of whether the costs outweigh the benefits is addressed in evaluations.***
- 3) *If feedback, monitoring and evaluation do not show that a profile indicator has added value and/or is still adequate, refine or remove the indicator.***

It is not always clear to the immigration-system organisations surveyed by the ACVZ what privacy protection and non-discrimination standards have to be met. Partners in the system would like more cooperation in the interests of efficiency and effectiveness, but regard the procedures for the mutual exchange of data as cumbersome. This leads to the following recommendations.

- 4) ***Invest in legal expertise in the field of data processing within each organisation.***
- 5) ***Continue to pursue efforts to clarify and simplify the legal parameters for implementing organisations and interested parties. A good example is the 'privacy policy framework' for policy processes at the Ministry of Security and Justice.***
- 6) ***Include in the study currently being conducted into how to formalise cooperation in the field of intelligence-led operations the option of concentrating legal expertise on data protection, and assessment of whether the requirements for use of data have been met in a shared service centre for all organisations in the immigration system.***

The study further reveals that the use of profiling in the immigration system is not accompanied by sufficient investment in the appropriate expertise and staffing capacity; this undermines its effectiveness. Differences in priority-setting in the tasks performed by the partners in the system can similarly hamper effectiveness. The study also shows that the negative aspects and risks receive more attention in profiling applications than positive aspects and opportunities. The ACVZ would therefore make the following recommendations.

- 7) ***If the choice is made to adopt intelligence-led working, including profiling, roll out the new method of operation throughout the organisation. Invest in expertise and capacity in the field of data analysis and data protection. Maintain a focus on the sharing and circulation of information within the organisation. Provide information about the usefulness of and necessity for feedback of results within the organisation.***
- 8) ***Give greater prominence to system-wide goals in the results-based accountability of the partners in the immigration system.***
- 9) ***Focus more on profiling promising applications and speedy processing (taking into account the conditions governing automated decision-making laid down in legislation).***

Generally speaking, the immigration system is still insufficiently transparent concerning the use of profiling and the sources of information consulted. The responsible bodies in the system have a tendency to broaden the aims of data processing. This conclusion leads to the following recommendations.

- 10) ***Increase transparency concerning the use of profiling by establishing system-wide transparency guidelines. Give an insight into the sources of information used for profiling and the indicators, provided this is not detrimental to the effectiveness of profiling.***
- 11) ***Respect the principle of purpose limitation in data processing. If necessary, ensure that a new statutory basis for other purposes is created. Each time a data set is expanded, check whether this is necessary.***

If used without due care or proper consideration, profiling entails a risk of discrimination and stigmatisation. The law therefore sets strict requirements on the use of sensitive personal data in profiling. This also applies to the nationality indicator frequently used in the immigration system. Furthermore, indicators that at first sight seem neutral, may be indirectly discriminatory or stigmatising – if for example they identify a particular neighbourhood. Adopting the four-eyes principle can reduce the risk of actions which are ill-considered or lack due care. The ACVZ therefore advises as follows.

- 12) *Examine the use in profiling of the nationality indicator (which is sensitive personal data) throughout the system and ask when its use in profiling is or is not justified, necessary, appropriate and proportionate in relation to the aim to be achieved.***
- 13) *Scrap the 'high-risk neighbourhood' criterion and in the future be alert to other criteria which at first sight seem worded in a neutral manner but in practice may have a stigmatising effect.***
- 14) *Pursue long-term investment in training concerning discrimination and stigmatisation for public officials with discretionary powers. Ensure that the four-eyes principle is observed wherever possible.***