Basic information

2008/2020(INI) INI - Own-initiative procedure	Procedure completed
Problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control **Subject** 1.20.09 Protection of privacy and data protection 7.30 Police, judicial and customs cooperation in general 7.30.20 Action to combat terrorism	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	LUDFORD Baroness Sarah (ALDE)	31/01/2008

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	WIERSMA Jan Marinus (PSE)	29/01/2008

European Commission

Commission DG	Commissioner
Justice and Consumers	BARROT Jacques

Key events

Date	Event	Reference	Summary
19/12/2007	Non-legislative basic document published	B6-0483/2007	Summary
21/02/2008	Committee referral announced in Parliament		
31/03/2009	Vote in committee		Summary
03/04/2009	Committee report tabled for plenary	A6-0222/2009	
23/04/2009	Debate in Parliament		
24/04/2009	Decision by Parliament	T6-0314/2009	Summary
24/04/2009	Results of vote in Parliament		
24/04/2009	End of procedure in Parliament		

Technical information	
Procedure reference	2008/2020(INI)
Procedure type	INI - Own-initiative procedure
Legal basis	Rules of Procedure EP 134o-p3
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/58595

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Non-legislative basic document		B6-0483/2007	19/12/2007	Summary
Committee opinion	AFET	PE412.266	20/01/2009	
Committee draft report		PE418.037	12/02/2009	
Amendments tabled in committee		PE421.316	11/03/2009	
Committee report tabled for plenary, single reading		A6-0222/2009	03/04/2009	
Text adopted by Parliament, single reading		T6-0314/2009	24/04/2009	Summary

Problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control

2008/2020(INI) - 19/12/2007 - Non-legislative basic document

PURPOSE: to propose a European Parliament recommendation to the Council on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control.

CONTENT: pursuant to Rule 114(1) of the Rules of Procedure, Sarah **LUDFORD** (ALDE, UK) proposed, on behalf of the ALDE Group, a draft recommendation on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control.

Recalling that profiling is growing as a practice in the field of law enforcement and policing, targeting specific ethnic, race and religious groups, as well as protestors and travellers and preoccupied by the fact that the Commission's proposal for an EU Passenger Name Records (PNR) system providing for the collection of personal data of passengers travelling to the EU could provide a basis for profiling, the draft recommendation proposes a certain number of rules defining the framework of profiling in certain specified areas:

The draft recommendation requests that:

- law enforcement must always be conducted with due respect for data protection, fundamental rights and the principle of non-discrimination;
- current law enforcement and security practices which entail racial, ethnic and behavioural profiling and risk assessment should be subjected to research, analysis and political discussion, with the justification and benefits weighed against the harm from these practices;
- existing laws should be examined for the scope they give for profiling, and consideration given to law reform if necessary to ensure that discriminatory impact is avoided;
- there is a need to establish a clear definition of legitimate versus illegal uses of sensitive personal data in the security field and to encourage greater cooperation between relevant security agencies in understanding and addressing profiling, and working with relevant communities in this effort.

In addition, the draft recommendation regrets that repeated concerns raised by Parliament in connection with racial, ethnic and behavioural profiling in the context of data protection, law enforcement cooperation, exchange of data and intelligence, aviation and transport security, immigration and border management and anti-discrimination measures have not so far been adequately addressed in order to reach agreement on legitimate practice.

Problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control

2008/2020(INI) - 24/04/2009 - Text adopted by Parliament, single reading

The European Parliament adopted by 372 votes to 12, with 17 abstentions, a resolution in which it addresses a number of recommendations to the Council on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control.

Recall that profiling is an investigation technique made possible by new technologies and commonly used in the commercial sector, but is now also increasingly used as an instrument of law enforcement, notably for the detection and prevention of crime and in the context of border controls.

Given that Member States are making ever greater use of new technologies (via programmes and systems involving the acquisition, use, retention or exchange of information on individuals, as a means of combating terrorism or responding to other threats in the context of the fight against crime), the Parliament calls for **the adoption at European level of a clear definition of profiling**, having in mind the specific objective pursued.

In this context, the Parliament makes the following recommendations:

- all processing of personal data for law enforcement and anti-terrorist purposes should be based on published **legal rules imposing limits on use** , which are clear, specific and binding and subject to close and effective supervision by independent data protection authorities and to stringent penalties for breach (according to the Parliament, mass data storage for precautionary motives is disproportionate in relation to the basic requirements of an effective fight against terrorism);
- a **legal framework should be established providing a clear definition of profiling**, whether through the automated mining of computer data or otherwise, with a view to establishing clear rules on legitimate use and laying down limits; it is also necessary to introduce the necessary data protection safeguards for individuals. According to the Parliament, data-mining and profiling blur the boundaries between permissible targeted surveillance and problematic mass surveillance in which data are gathered because they are useful rather than for defined purposes;
- the collection and retention of personal data and use of profiling techniques in respect of persons not suspected of a specific crime or threat should be subject to particularly strict “necessity” and “proportionality” tests;
- factual and intelligence data, and data on different categories of data subjects, should be clearly distinguished;
- access to police and secret service files should be allowed only on a **case-by-case basis**, for specified purposes, and should be under judicial control in the Member States;
- restrictive legislation on profiling should not prevent legitimate database access as part of such targeted investigations;
- there should be **time limits on the retention of personal information**;
- the creation of a high standard of protection for personal data does not preclude the generation of anonymous statistical data including variables on ethnicity, ‘race’, religion, and national origin that is necessary to identify any discrimination in law enforcement practices;
- the **collection of data on individuals solely on the basis that they have a particular racial or ethnic origin**, religious conviction, sexual orientation or behaviour, political opinions or are members of particular movements or organisations which are not proscribed by law **should be prohibited** ; it is also necessary to establish safeguards regarding protection and procedures for appealing against the discriminatory use of law enforcement instruments (according to the Parliament, ethnic profiling raises deep concerns about conflict with non-discrimination norms);
- there should be strong safeguards established by law which ensure appropriate and effective judicial and parliamentary scrutiny of the activities of the police and the secret services, including their counter-terrorism activities;
- redress should be effective and accessible (with clear information being given to the data subject on the applicable procedures);
- a set of criteria should be established for assessing the effectiveness, legitimacy and consistency with European Union values of all profiling activities (if necessary, the Parliament proposes setting **binding rules** which avoid any infringement of fundamental rights).

The Council is also called upon to commission a study, to be conducted under the responsibility of the Commission, covering the actual and potential application of profiling techniques, their effectiveness in identifying suspects and their compatibility with civil liberties, human rights and privacy requirements. Member States should be asked to supply figures on stop-and-search and other interventions which result from profiling techniques.

Lastly, the Parliament highlights the danger that innocent people may be subject to **arbitrary** stops, interrogations, travel restrictions, surveillance or security alerts because information has been added to their profile by a State agent.