Ambient Intelligence and Data Protection. Challenges and opportunities after the Lisbon Treaty

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Abstract

The paper considers the impact of Ambient Intelligence technologies (AmI) and of profiling techniques on the right to data protection, in particular under two perspectives: on one side, the increasing 'security emphasis', that characterizes major initiatives of the current European policy and that allows to foresee the advance of new *'AmI detection scenarios'* ; on the other side, the consequences of the entry into force of the Lisbon Treaty (among which, the existence of a legal basis for a new comprehensive legislative framework, the binding value of art 8 Charter of Nice and the new powers of the European Parliament).

As in an AmI environment 'intelligence' is embedded everywhere, an 'Internet of the things' increases the possibilities for collecting and aggregating data. One of the key elements of AmI environment is the profiling technique, thanks to which computers can process large amounts of previously collected data in order to extract recurrent patterns and make decisions in an automated way. These techniques have been recognised in recent years as major threats to privacy and data protection, due to the risks of unauthorised accesses and misuses of these data. Profiling techniques are increasingly used also for security purposes as counter-terrorism activities (i.e. new detection technologies), without receiving, so far, the due legal attention, despite the issues that may arise, such as the risks of false positives, overlapping of profiles, unfair decisions, indirect discrimination.

Finally, it will be argued that, thanks to the Charter's 'orizontal effect', and pending the adoption of a specific EU regulation on data processing for security purposes, some protection may be obtained through the enforcement of the Charter also in the areas of the former III pillar of the EU or in contexts in which the right to privacy is restricted (art 8(2) ECHR).