

Preventing unlawful profiling today and in the future: FRA's guide



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What's new?

FRA Guide 2010

- Only for law enforcement officers
- Ethnic discriminatory profiling
- Light introduction on data mining



FRA Guide 2018

- Law enforcement officers **and border guards**
- **Unlawful** profiling, including data protection
- Dedicated chapter on algorithmic profiling

Structure of the Guide

1. When is profiling unlawful, and what are the added values of lawful profiling

Legal frameworks, effect on policing

2. How to keep profiling lawful?

Toolbox, good practices, examples...

3. Algorithmic profiling

Definition, uses, specific legal requirement

When is profiling unlawful?

The Guide focuses on the fundamental rights that are mainly affected by unlawful profiling:

- the right to non-discrimination, and
- the rights to privacy and data protection.

Privacy and data protection

EU legal framework

- Directive 2016/680 (Police Directive)
→ *applies for the purposes of prevention, investigation, detection or prosecution of criminal offences*
- Regulation 2016/679 (General Data Protection Regulation)
→ *For all other purposes*

4 legal requirements for lawful collection and processing of personal data

- Legal basis
- Legitimate aim
- Necessity
- Proportionality

Lawful profiling *means* effective policing

- Unlawful profiling **impacts** on **trust** in the police and border management and **good community relations**
- **Effectiveness of policing**

*For example,
breaking the
self-fulfilling
prophecy*

Individuals to be stopped only
because they are or perceived to
be of one ethnic group

Some of the members of
that ethnic group stopped
are indeed acting unlawfully

Personal or
institutional bias
that persons
belonging to a
specific ethnic
group are
criminals

Stopping people
from this ethnic
group is falsely
perceived as
effective

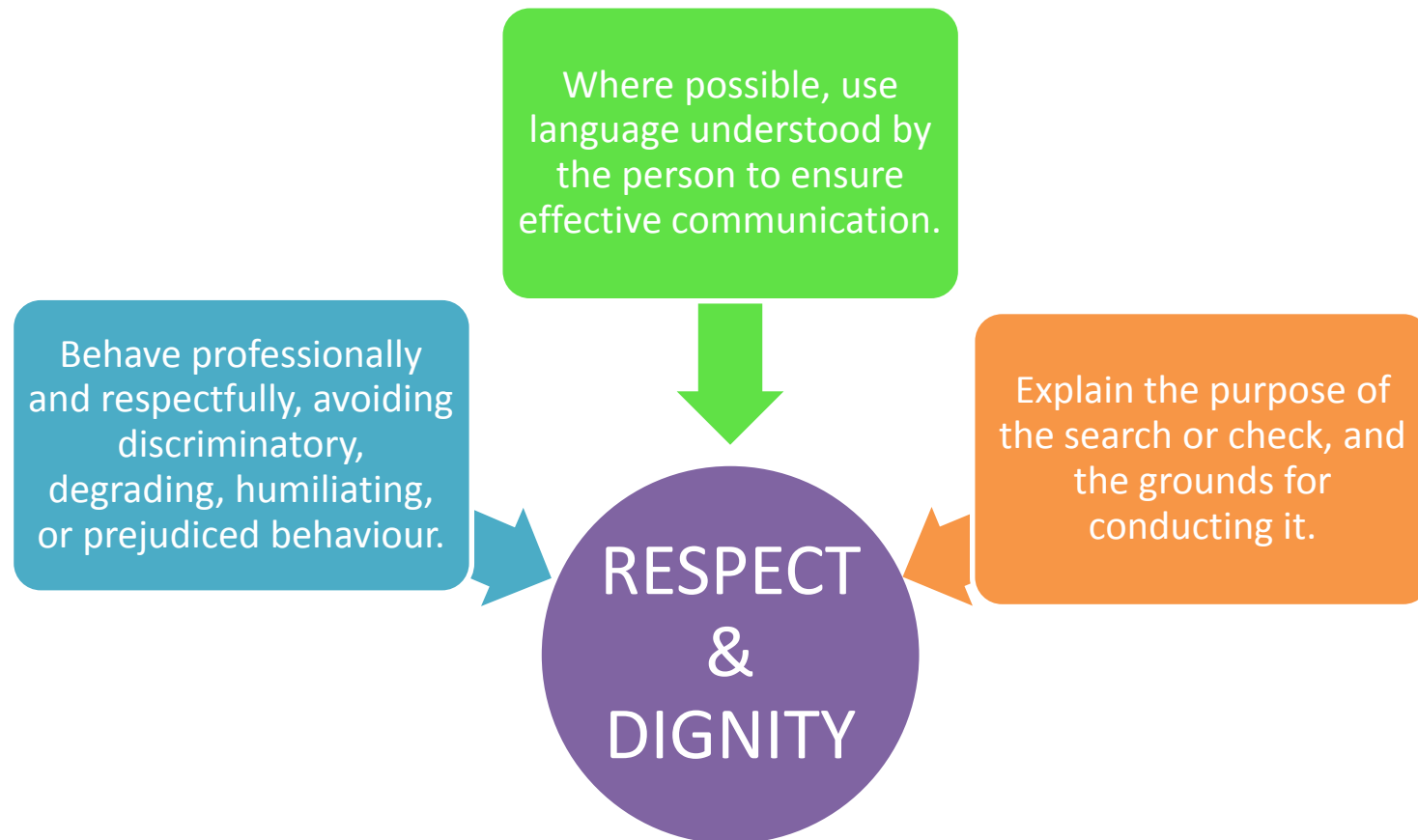
**Self-fulfilling
prophecy
perpetuating
discrimination**

Ensuring lawful profiling: a toolbox

3 key principles:

1. Respect individuals' **dignity**.
2. Ensure that profiling is based on **reasonable and objective grounds**.
3. Guarantee **accountability**.

1. Respect individuals' dignity



2. Reasonable and objective grounds

- **avoiding bias**, including through
 - clear guidance
 - targeted training
- making **effective use of intelligence and information.**
- **stop and search forms**

*For
example,
the
combination
of elements:*

Intelligence



Behaviour and other objective facts



Characteristics based on protected grounds *



Adequate protection of personal data



Lawful Profiling



3. Accountability

Key message

- Law enforcement and border management officials are accountable for keeping profiling within the law.

How to ensure accountability

- Collection of reliable, accurate and timely data on profiling activities
- Implementation of effective internal monitoring
- Stop and search forms, body-worn cameras

Positive effect on policing

- Effective complaint mechanisms will also secure and restore public trust

*For ex:
essential
elements of
internal
monitoring*



Algorithmic profiling

Definition

“any step-by-step computerised techniques that analyse data to identify trends, patterns or correlations”

Main uses

- In law enforcement → predictive policing
- In border management → large-scale databases

Potential fundamental rights impacts

Large, but mainly on prohibition of discrimination and data protection (specificities: dynamic algorithms, inference of sensitive personal data)

Applicable legal frameworks

Data protection reform offer rules, principles, and necessary requirements to support lawful algorithmic profiling

How to use the Guide?

Target audience

- Mainly trainers and management officials
- Support to officers in mid-level positions

Practical: it includes check-lists, examples, best practices

Added value for Equality Bodies:

- support **awareness-raising** activities and discussion
- Remind officers of the legal requirements and their liability
- Provide officers with concrete examples and toolbox

Thank you!

Questions?



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