AI & Protection of personal data:
how GDPR regulates AI and how AI challenges GDPR

Marc Lemmer, Maxime Dufour

28 January 2024

Agenda

- Introduction: AI
  - a key enabling technology
  - opportunities and challenges
- Recap: GDPR
  - a technology agnostic regulation to protect human rights and personal data
  - its principles, rights, obligations
- AI challenging the GDPR: use cases
- Challenges to come: Concusion and recommendation

Introduction:

AI, a key enabling technology leveraging amazing opportunities and bearing fundamental challenges to humanity

- History
  - Alan Turing, 1956 Dartmouth workshop, ….
- Winters and summers of AI
- Chat GPT, 2023:
  - industrialization of AI
- Accelerated future:
  - convergence of NBICs (nanotechnology, biotechnology, information technology and cognitive science)

Introduction:

AI, a key enabling technology leveraging amazing opportunities and bearing fundamental challenges to humanity

- AI: the good, the bad, the ugly

BOONE ASHWORTH GEAR DEC 29, 2023 8:00 AM

Get Ready for a 'Tsunami' of AI at C

CES, which kicks off January 9 in Las Vegas, will feature
be empowered by machine intelligence.

LIVESCIENCE

Space Health Planet Earth Animals Physics & M

TRENDING James Webb Space Tel otos Anir

ZD NET

tomorrow belongs to th

security advice buying guides

intelligence

Evil AI: These are the 20 most dangerous crimes that artificial intelligence will create

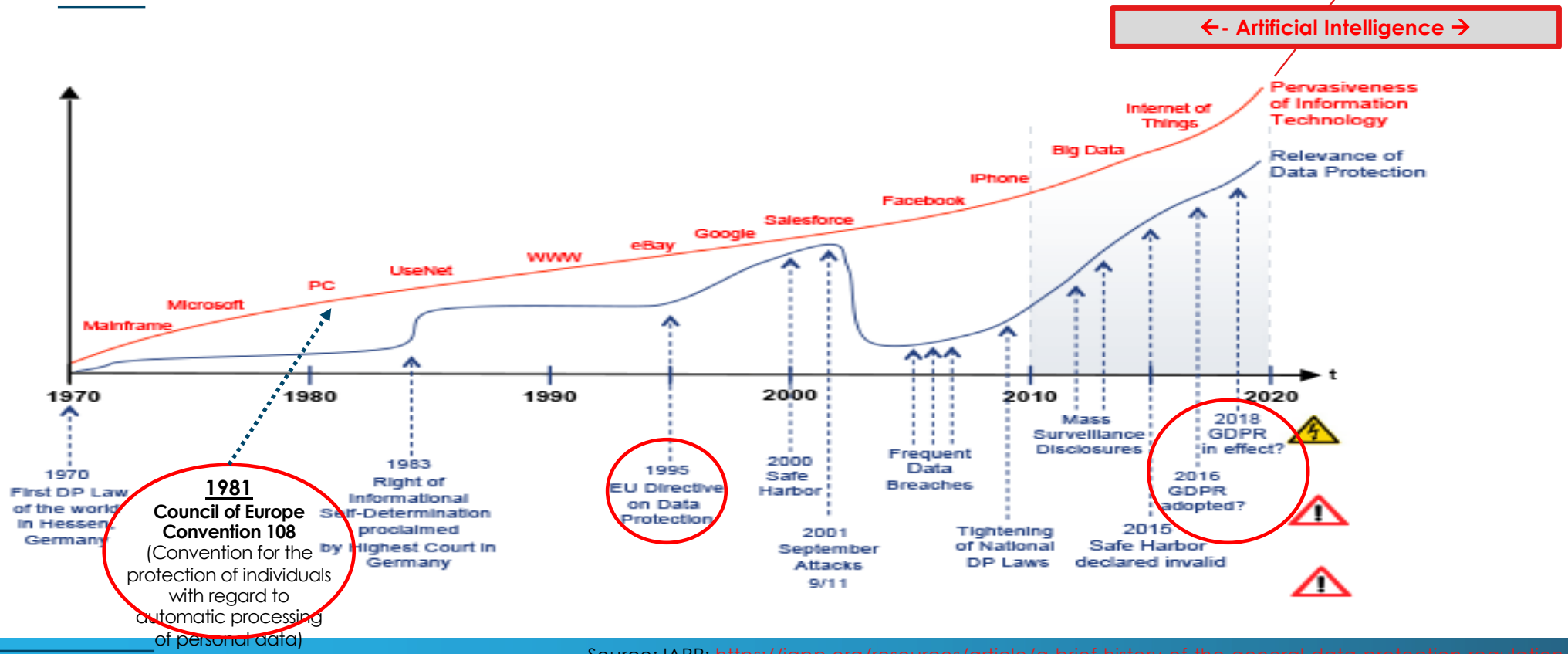
A new report tells us which criminal applications of AI we should really worry about.

Written by **Daphne Leprince-Ringuet,** Contributor

Aug. 5, 2020 at 8:51 a.m. PT

REGULATION NEEDED !

Introduction
Relevance of data protection in a world evolving with IT



Source: IAPP: https://iapp.org/resources/article/a-brief-history-of-the-general-data-protection-regulation/ .
https://iapp.org/about/person/0011a00000DILyEAAV2016

Recap GDPR: a paradigm shift

CNPD
COMMISSION NATIONALE POUR LA PROTECTION DES DONNÉES

Harmonised legal framework

- From ex ante control to ex post verifications: More freedom but increased responsibility for data controllers: **accountability**
- Strengthening of **individuals' rights**
- Powerful **enforcement** capabilities of supervisory authorities
- **Same rules** apply since 25 May 2018 in the EEA (27 EU MS +LTN+ISL+NOR)
- To all organisations **active on EU territory**
- **Extra-territorial reach**: GDPR is not limited to the EU; it has a global impact

Recap GDPR: Data protection principles

1. Purpose limitation (scope of processing)	4. Accuracy (correctness of data)
2. Lawfulness, fairness and transparency	5. Storage limitation (duration of data storage)
3. Data minimisation (quantity of data)	6. Integrity and confidentiality (security of data)
7. Accountability	

Recap GDPR: Rights of data subjects

1. Right to be informed
2. Right of access
3. Right to rectification
4. Right to be forgotten
5. Right to restriction of processing
6. Right to data portability
7. Right to object
8. Right to contest an automated decision-making / profiling
9. Right to withdraw consent
10. Right to file a complaint

Recap GDPR: obligations of Data Controllers and Data Processors

CNPD
COMMISSION NATIONALE POUR LA PROTECTION DES DONNÉES

DATA CONTROLLER

- Record Keeping
- DPIA
- Notification of Data Breaches
- DC processing instructions
- DPO appointment*
- Cooperation with Supervisory Authority

Compliance with data protection principles

- transparency
- minimization
- accuracy
- storage limitation
- security
- accountability

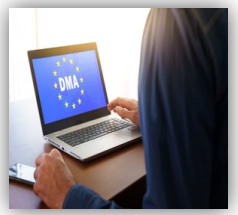
DATA PROCESSOR

- Record Keeping
- Processing according to instructions of DC
- Sub-processing with DC agreement
- Notification of Data Breaches to DC
- DPO appointment*
- Cooperation with DC and Supervisory Authority

Data protection beyond GDPR:
The European digital regulation package

- The EU digital economy package (2021) focusing on
  - Personal data
  - Non personal data, industry data
  - Digital services platforms
  - Digital market actors
  - Connected devices, IoT
  - Artificial intelligence
- GDPR considered as the foundational building block when personal data are concerned

DSA –
Digital Services Act



DMA –
Digital Markets Act

DA –
Data Act

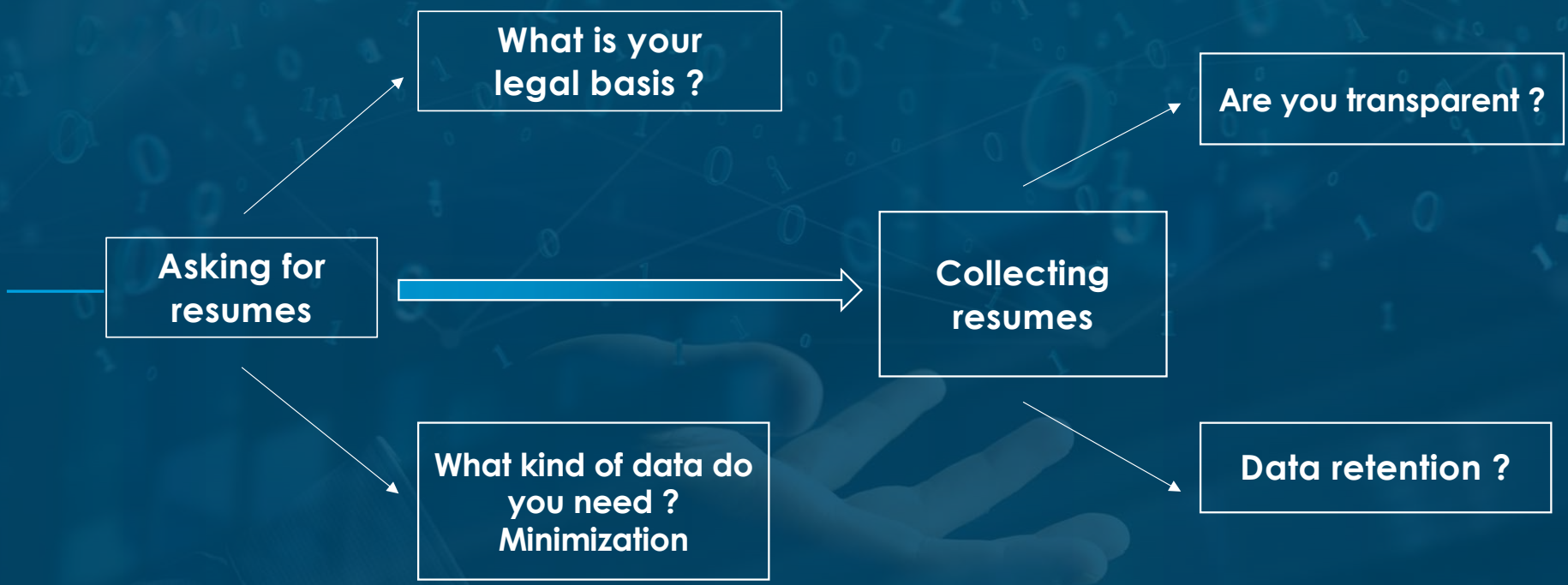
DGA –
Data Governance Act

AI Act -
Artificial Intelligence Act

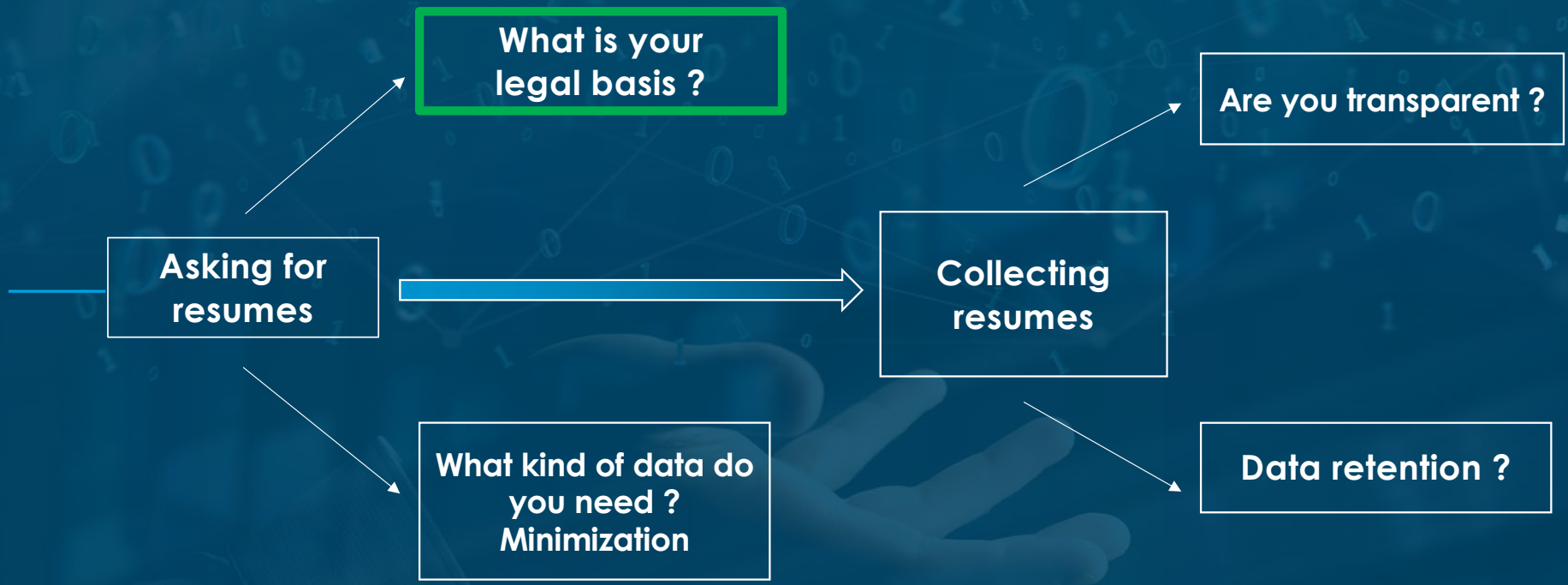
DATA PROTECTION & AI

USE CASE

USE CASE: RECRUITMENT



USE CASE: RECRUITMENT

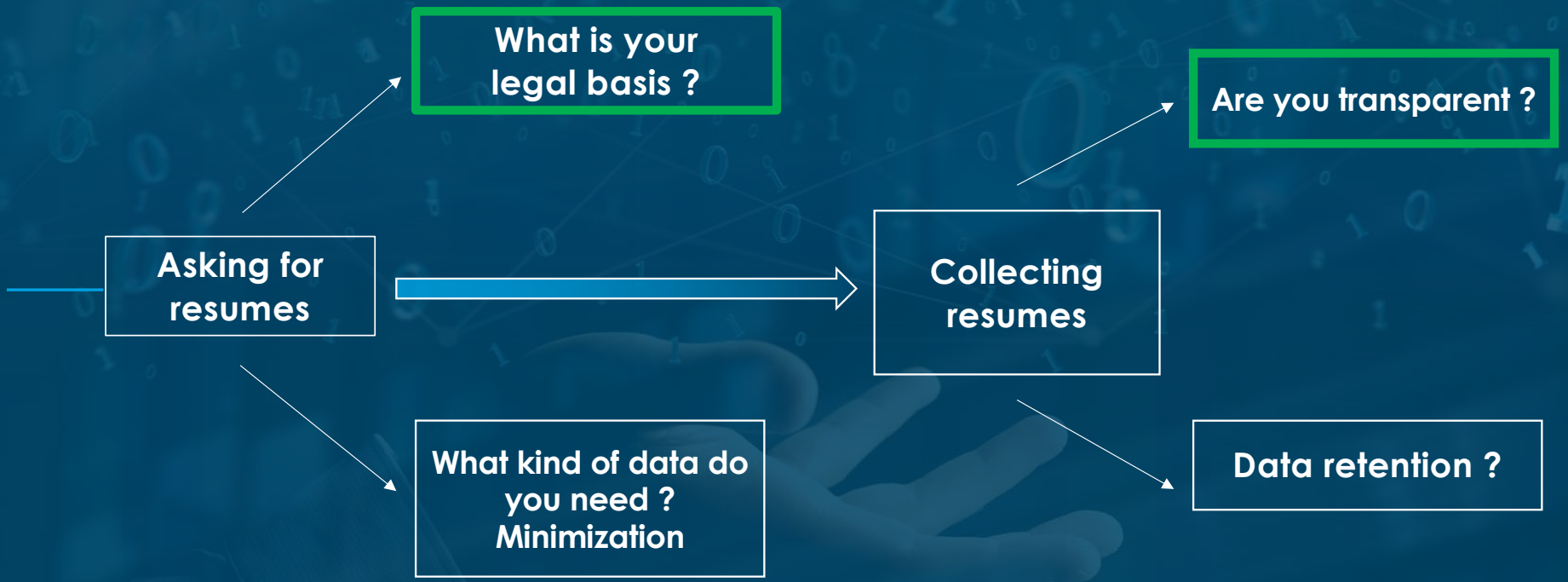


USE CASE: Legal basis

GDPR requires the use of a legal basis for the processing of personal data:

- **Consent: have to be: freely given, specific, unambiguous, informed)**
  - *shall be presented in a manner which is clearly distinguishable from the other matters,*
  - *in an intelligible and easily accessible form,*
  - *using clear and plain language.*
  - *Can be withdrawn (easily)* ***at any time.***
  - ***Cannot be freely given to an employer (when it matters)***
- **For the performance of a contract**

USE CASE: RECRUITMENT



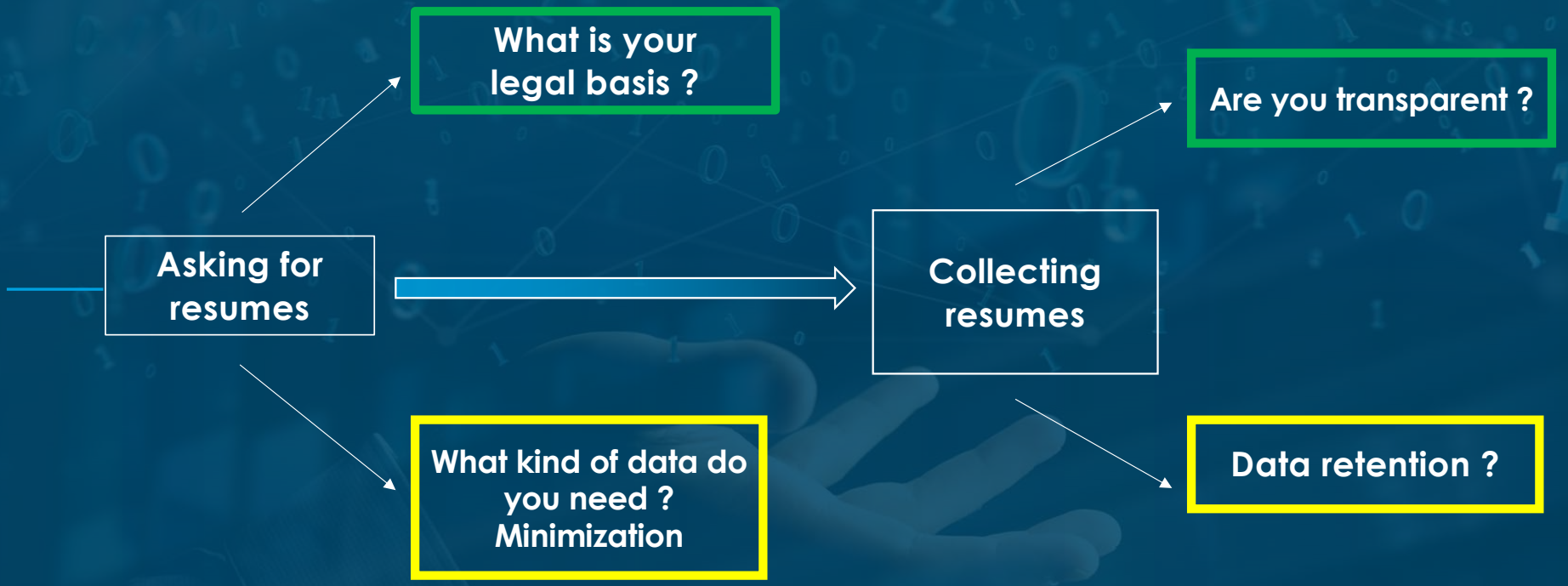
USE CASE: Are you transparent?

When you are processing personal data you have to comply with article 12 of the GDPR.

It includes to communicate at least:

- **Identity and contact details** of the controller (&DPO)
- The **purposes & the legal basis** of the processing
- The **recipients** or categories of recipients of the personal data
- **Transfer of personal data to a third country** or international organization
- The period for which the personal data will be **stored**
- The existence of every **data subject's rights** (& the existence of the right to withdraw consent at any time)

USE CASE: RECRUITMENT



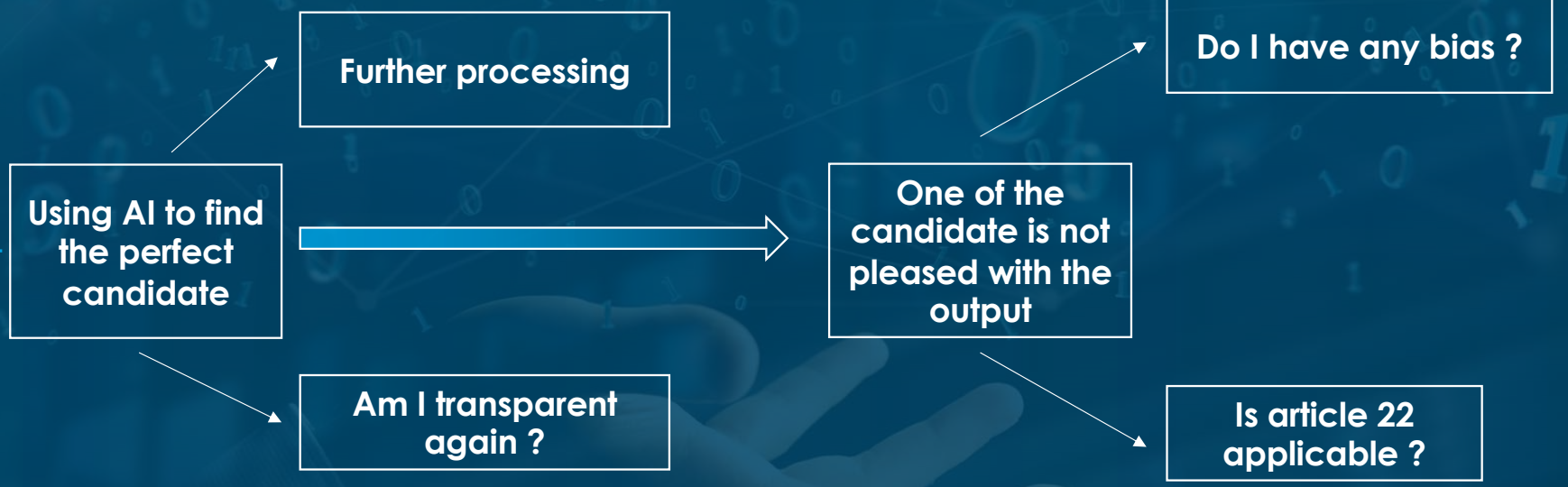
USE CASE: MINIMIZATION & privacy by design

Before processing any personal data you should ask yourself some questions :

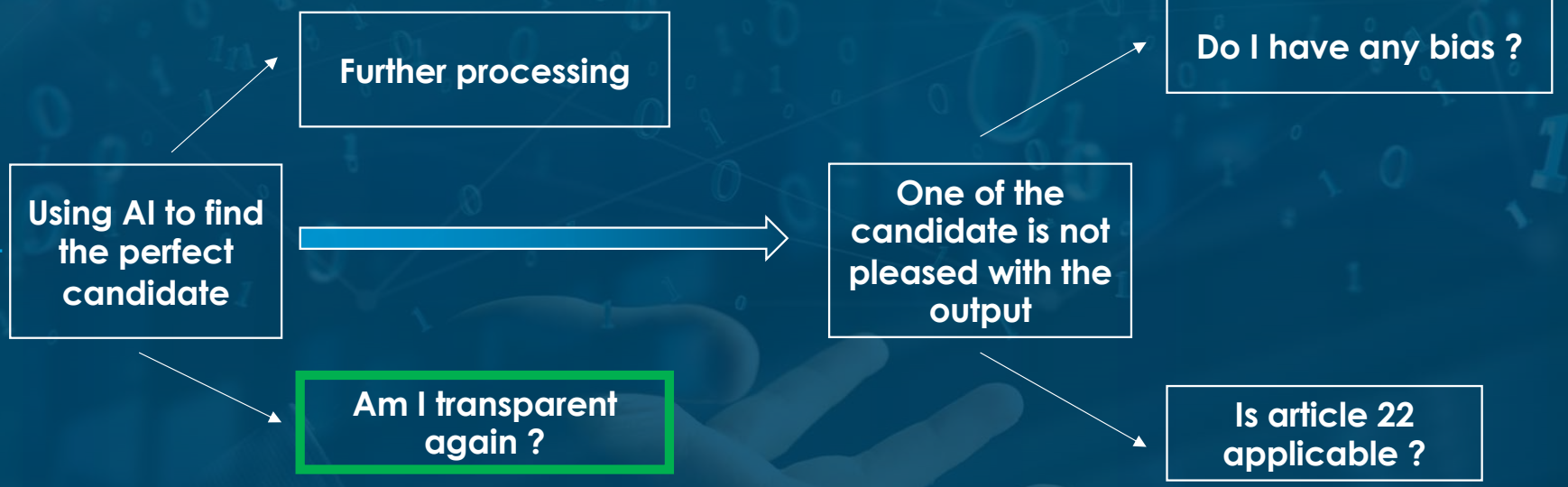
- What **kind of data** do I need ?
  - Am I requiring **sensitive data** ?
  - **Is it really useful at this point** ? (as instance: do I need the name, the address, the gender, a picture, the person age, when I don't know yet, if I will conduct an interview or not ? Can I collect any data just in case I will ?)

- How much time am I going to keep these data ? For what purpose(s) ?

AI USE CASE


Using AI to find the perfect candidate
Further processing
Am I transparent again ?
One of the candidate is not pleased with the output
Do I have any bias ?
Is article 22 applicable ?

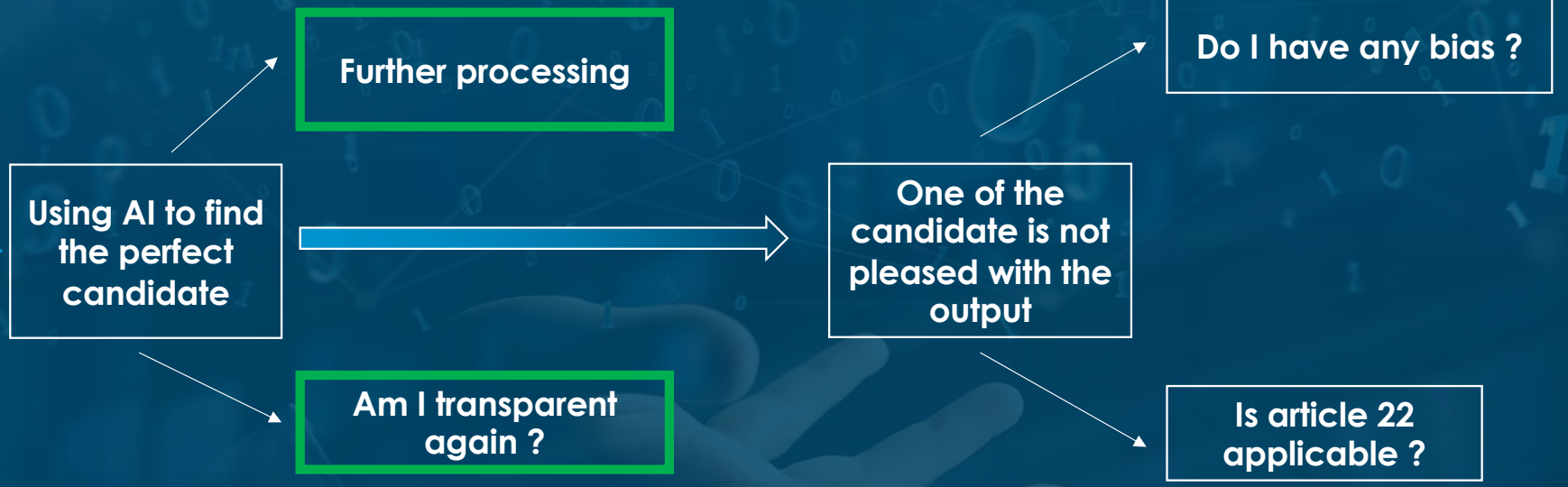
AI USE CASE


Using AI to find the perfect candidate
Further processing
Am I transparent again ?
One of the candidate is not pleased with the output
Do I have any bias ?
Is article 22 applicable ?

AI USE CASE: Transparency and Explainability

- If you want to train a new model with the data you have, **this is a new process**.
- This process should be:
  - **Transparent** (as before) but this time you will have to explain how your AI is working.
  - **Explicable**, you have to be sure to understand every output provided by the model.
  - **Not time consuming – Straight to the point**, from an ethical point of view you need to make an "easy" policy.

AI USE CASE

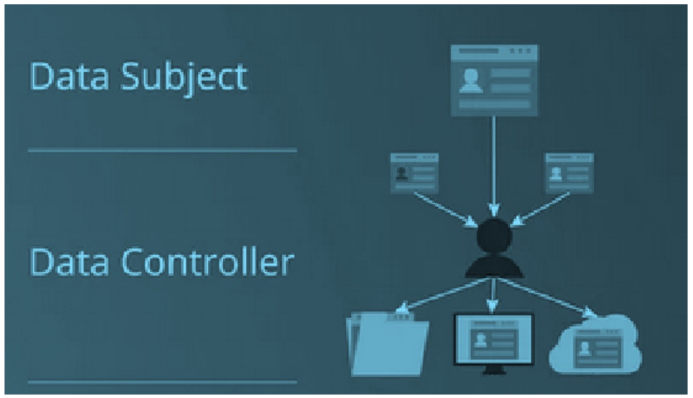

Using AI to find the perfect candidate
Further processing
Am I transparent again ?
One of the candidate is not pleased with the output
Do I have any bias ?
Is article 22 applicable ?

AI USE CASE: Further processing

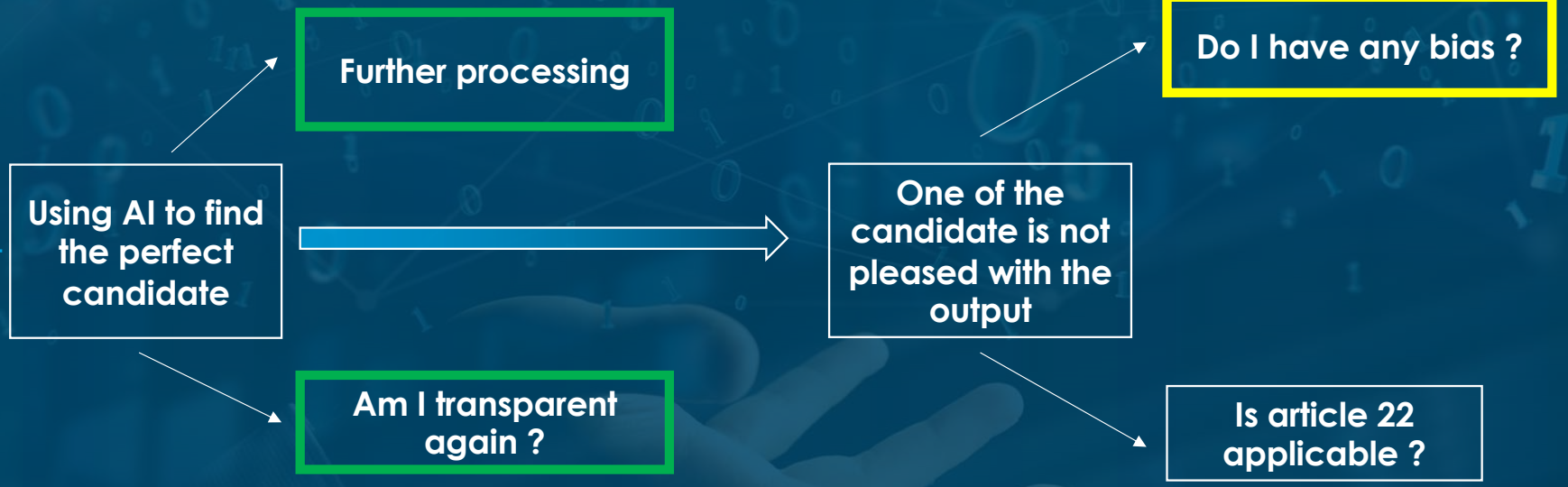
Further processing is: The processing of personal data for a **purpose other than that for which it was initially collected**.

If your processing is not base on consent:

- Is your consent **compatible** with the initial purpose?
- Take into account :
  - *Any link between the purposes*
  - ***The context** in which the personal data have been collected*
  - *The **nature of the data** (in particular if you process data linked to criminal convictions)*
  - *Consequences of the intended further processing for data subjects*
  - *Appropriate safeguards*



AI USE CASE


Using AI to find the perfect candidate
Further processing
Am I transparent again ?
One of the candidate is not pleased with the output
Do I have any bias ?
Is article 22 applicable ?

AI USE CASE: Bias

Bias is a **disproportionate weight in favor of or against** an idea or thing, usually in a way that is closed-minded, **prejudicial, or unfair.**

Be sure to :

- Have an appropriate AI governance
- Have a correct knowledge of your data
- Conduct audits and prepare an action plan

→ AI Act should grant the possibility to process sensitives data in the future in order to reduce AI bias.


POLITICO

Enter keyword

EXPLORE

NEWSLETTERS & PODCASTS

POLITICOPRO

Dutch scandal serves as a warning for Europe over risks of using algorithms

The Dutch tax authority ruined thousands of lives after using an algorithm to spot suspected benefits fraud – and critics say there is little stopping it from happening again.

CNPD

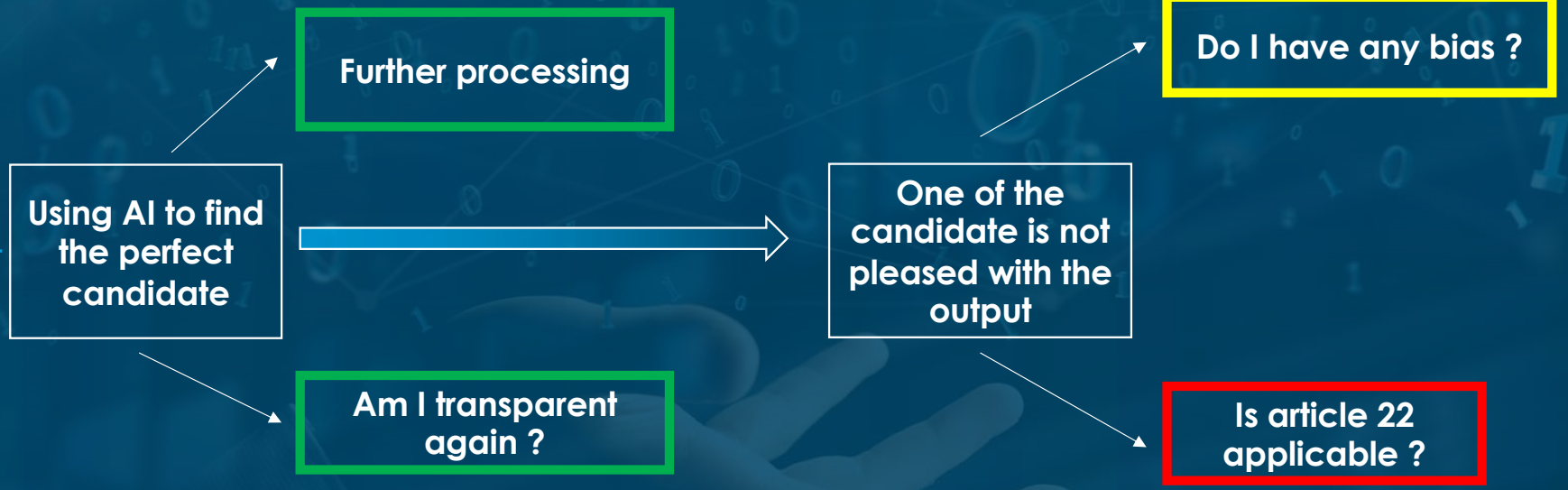
COMMISSION NATIONALE POUR LA PROTECTION DES DONNÉES

DERSTANDARD

Vorurteile und zweifelhafte Umsetzung: AMS-KI-Chatbot trifft auf Spott und Hohn

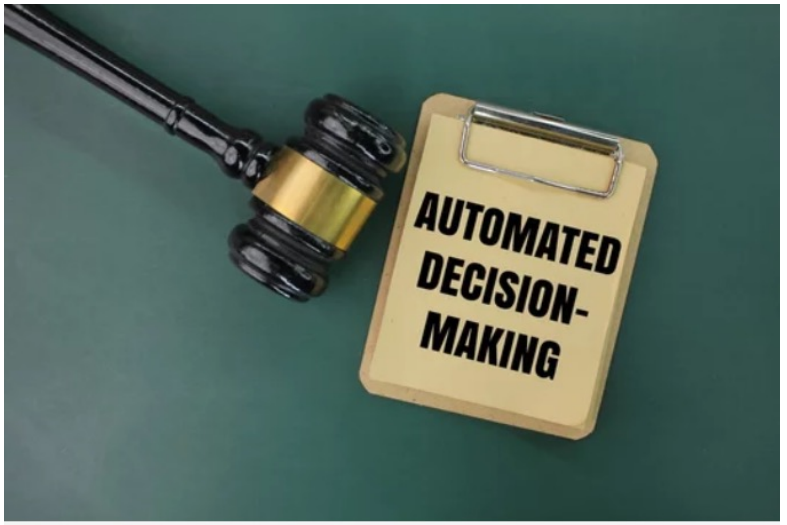
Der auf ChatGPT basierende "Berufsinfomat" zeigt allerlei Probleme – und lässt sich zudem leicht austricksen. Das AMS weist die Kritik von sich, sieht Kosten von 300.000 Euro gerechtfertigt

AI USE CASE


Using AI to find the perfect candidate
Further processing
Am I transparent again ?
One of the candidate is not pleased with the output
Do I have any bias ?
Is article 22 applicable ?

AI USE CASE: decision based solely on automated processing

If the candidate wishes to go through a human recruitment process, the data controller should allow him/her to do so.



Further more the data controller have to provide : "***meaningful information about the logic involved***, *as well as the significance and the envisaged consequences of such processing for the data subject.*"

Challenges to come

- Harmonized enforcement (GDPR, AI Act)
- Cooperation between authorities (GDPR, AI Act)
- Independent authorities to enforce the future AI regulation
- Role of and interaction with DPAs (GDPR)
- Certifications issued under AI regulation and GDPR

Conclusion & recommandations

- Be ready for AI regulation:
  - AI Act will try to address some of these conflicts
  - But anyhow, the GDPR will continue to apply
- Be accountable and balanced when developing / using AI:
  - leveraging the power of AI **vs** obligation to respect the GDPR rights of data subjects
  - Apply GDPR principles : **Lawfulness, Transparency ,Fairness,**
  - Apply **Privacy by design & default**

- Regulatory sandboxes for AI applications:
  - CNPD "Public consultation" on how critical issues, challenges or solutions related to data protection in the context of AI are being addressed by Luxembourg organisations
    → **ia@cnpd.lu**

MERCI! THANK YOU! DANKE!

Commission nationale pour la protection des données
15, Boulevard du Jazz
L-4370 Belvaux

261060-1 | www.cnpd.lu | info@cnpd.lu