Regulating for privacy? A critical assessment of the EU Data Protection Regulation and its provisions to embed the assessment and prediction of risk in technological design processes

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The EU Data Protection Regulation was finalised at the end of 2015. The reforms aimed to update the framework to address the growth of new technologies. To further this aim it includes a number of wider regulatory measures to shape an environment in which technology is designed with an on-going focus on end user privacy.   Privacy Impact Assessments (PIA) are increasingly used and, in certain jurisdictions legally mandated, in projects to foresee risks to privacy and to plan strategies to avoid these. Once adopted and implemented, the EU's Data Protection Regulation will, in many circumstances require the need for what it terms a Data Protection Impact Assessment. However, if it is not engaged with critically, this regulatory solution can become a box ticking exercise that can mask risks to end user privacy in the development of a technology. The Regulation also enshrines at a legal level the concept of Data Protection by Design; a cohesive approach to technology design that embeds a focus on data protection from the beginning of a project. That this disputed concept now forms part of the EU Data Protection environment raises difficulties in relation to its interpretation and wider enforcement, with certification schemes set to be made available.

This paper draws upon the experience of monitoring the impact of the Data Protection Regulation in a large, EU-funded project (SecInCoRe http://www.secincore.eu/) to develop cloud-based disaster response technology. The ability to harness technology in crisis management has developed to a point at which wide-scale interagency collaboration is increasing, alongside initiatives to harness crowdsourced responses. Given the scale of the information gathered, there is a pressing need to ensure that technology is developed in a way that protects the interests of end users and stakeholders. Insights and observations will be made on how the data protection impact assessment operates and the extent to which developers engage with the concept of data protection by design, with the aim of drawing conclusions that can both improve the current project and be transferable to other technology development projects.