

Deliberation n° 2018-327 of 11 octobre 2018 on the adoption of the list of processing operations for which a data protection impact assessment (DPIA) is required (article 35.4 GDPR)

The Commission nationale de l'informatique et des libertés,

Having regard to the Council of Europe Convention N° 108 for the protection of individuals with regard to automatic processing of personal data;

Having regard to the Regulation (EU) 2016/679 of the European parliament and of the council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and in particular Article 35;

Having regard to the Act n°78-17 of 6 January 1978 on information technology, data files and civil liberties;

Having regard to the Decree N° 2005-1309 of 20 October 2005 enacted for the application of Act No 78-17 of 6 January 1978 on Data Processing, Files and Individual Liberties;

Having regard to the Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679;

Having regard to Opinion 9/2018 of the European Data Protection Board on the draft list of the competent supervisory authority of France regarding the processing operations subject to the requirement of a data protection impact assessment (Article 35.4 GDPR) adopted on 25th September 2018;

Having heard the comments of Mrs Nacima BELKACEM, Government Commissioner,

Makes the following observations:

Article 35.1 of the General Data Protection Regulation (hereinafter "GDPR") provides that a data protection impact assessment (hereinafter "a DPIA") must be carried out when a processing operation is "*likely to result in a high risk to the rights and freedoms of natural persons*".

Article 35.3 GDPR illustrates what processing is likely to result in a high risk with three types of processing. In the Guidelines on DPIA, the European Data Protection Board (hereinafter "EDPB") has clarified the criteria that can help to identify when processing operations are subject to the requirement for a DPIA.

Article 35.4 GDPR provides that the competent supervisory authorities shall establish and make public a list of the kind of processing operations which are subject to the requirement for a DPIA.

Article 35.6 GDPR provides that where such list involves processing operations, which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in several Member States, or may substantially affect the free movement of personal data within the Union, it shall be submitted to the European Data Protection Board's opinion as part of the consistency mechanism.

On 14th June 2018, a draft list was adopted by the Commission and submitted to the EDPB on 6th July 2018. The EDPB adopted an opinion on this draft decision on the 25th September 2018, which was notified to the Commission on the 2nd October 2018.

Decides :

To adopt the list of processing operations for which data protection impact assessment (DPIA) is required which is attached to this deliberation;

This list is non-exhaustive. In accordance with Article 35.1 GDPR, a DPIA should be carried out if the processing is likely to result in a high risk to the rights and freedoms of natural persons.

This list is based on the EDPD's Guidelines on DPIA. It aims at complementing and specifying these guidelines.

This deliberation will be published in the Official Journal of the French Republic.

The President

I. FALQUE-PIERROTIN

Annex:

List of processing operations for which a data protection impact assessment (DPIA) is required

Types of processing operations	Reference to the EDPB's guidelines criteria
Processing of health data carried out by healthcare establishments or medico-social establishments for the care of individuals	<ul style="list-style-type: none"> - sensitive data - vulnerable data subjects
Processing of genetic data of vulnerable data subjects (patients, employees, children, etc.)	<ul style="list-style-type: none"> - sensitive data - vulnerable data subjects
Processing carried out for the profiling of data subjects for human resources purposes	<ul style="list-style-type: none"> - profiling - vulnerable data subjects
Processing carried out for the purpose of systematic monitoring of employees' activities	<ul style="list-style-type: none"> - systematic monitoring - vulnerable data subjects
Processing carried out for the management of alerts and reports (whistleblowing) in the field of social and health matters	<ul style="list-style-type: none"> - vulnerable data subjects - evaluation/scoring - sensitive data
Processing carried out for the management of alerts and reports (whistleblowing) in professional matters	<ul style="list-style-type: none"> - vulnerable data subjects - evaluation/scoring - sensitive data
Processing of health data that is necessary for establishing a data warehouse or a register	<ul style="list-style-type: none"> - sensitive data - vulnerable data subjects
Processing involving the profiling of persons that may lead to their exclusion from a contract or to its suspension or even termination	<ul style="list-style-type: none"> - evaluation/scoring - combined data sets
Mutualized processing of personal data related to verified contractual breaches, likely to result in a decision to exclude a data subject from the benefit of a contract, or to suspend or terminate it	<ul style="list-style-type: none"> - combined data set - preventing data subjects from exercising a right
Profiling processing using data coming from external sources	<ul style="list-style-type: none"> - combined data set - evaluation/scoring
Processing of biometric data of vulnerable data subjects (patients, employees, children, etc.) for the purpose of recognizing the data subject	<ul style="list-style-type: none"> - sensitive data - vulnerable data subjects

Processing aiming at evaluating applications for social housing and for their management	<ul style="list-style-type: none"> - <i>sensitive data</i> - <i>evaluation/scoring</i>
Processing carried out for the purpose of social or medico-social care	<ul style="list-style-type: none"> - <i>sensitive data</i> - <i>evaluation/scoring</i> - <i>vulnerable data subjects</i>
Processing of location data on a large scale	<ul style="list-style-type: none"> - <i>sensitive data</i> - <i>large scale</i>