



Decision No 34/2019 of 6 March 2019 of the national data protection commission adopting the list of types of processing operations subject to the requirement of a data protection impact assessment

Having regard to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and the free movement of such data, repealing Directive 95/46/EC (hereafter “GDPR”), and in particular Article 35 thereof;

Having regard to the Act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework;

Having regard to the Guidelines of the European Data Protection Board (hereafter “EDPB”) 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, adopted on 4 April 2017;

Having regard to the Opinion 26/2018 of the EDPB on the draft list of the competent supervisory authority of Luxembourg regarding the processing operations subject to the requirement if a data protection impact assessment (Article 35.4 of the GDPR), adopted on 4 December 2018;

Whereas, under Article 35.1 of the GDPR, a data protection impact assessment (hereafter “DPIA”) must be carried out by the controller where processing is “likely to result in a high risk to the rights and freedoms of natural persons”;

Whereas, Article 35.3 of the GDPR sets out three types of processing likely to present a high risk. The EDPB has identified nine criteria to determine whether a processing operation is likely to present a high risk;

Whereas, under Article 35.4 of the GDPR, the supervisory authorities are obliged to establish and make public a list of the kind of processing operations subject to the requirement for DPIA. Article 35.6 of the GDPR provides that, where the list involves “processing activities which are related to the offering of goods and 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 must be submitted to the consistency mechanism and must be communicated to the EDPB;

Whereas, on 22 August 2018, a draft list was submitted by the National Data Protection Commission to the EDPB. The EDPB adopted an opinion on this draft on 4 December 2018, which was notified to the National Data Protection Commission on 7 December 2018. An amended proposal was submitted by the National Data Protection Commission to the EDPB on 20 December 2018, which was approved by the EDPB on 12 February 2019.



Commission nationale pour la protection des données

Délibération N° 34/2019 du 6 mars 2019 portant adoption de la liste des types d'opérations de traitement pour lesquelles une analyse d'impact relative à la protection des données est requise

In the light of the above, the National Data Protection Commission, composed of three Commissioners, by a unanimous vote:

adopts the list annexed to this decision relating to the types of processing operations for which a DPIA is required.

The list is non-exhaustive. In accordance with Article 35.1 of the GDPR, a DPIA must be carried out where processing is likely result in a high risk for the rights and freedoms of natural persons.

The list is based on the Guidelines of the EDPB on Data Protection Impact Assessment (DPIA), which it supplements and complements for specific processing operations.

Thus decided on 6 March 2019 in Esch-sur-Alzette.

The National Data Protection Commission



National Data Protection Commission

Decision No 34/2019 of 6 March 2019 adopting the list of types
of processing operations for which an impact assessment
relating to the protection of data is required

List of types of processing operations for which an impact assessment relating to the protection of data is required (article 35.4 GDPR)

1. Processing activities that rely on genetic data as defined under GDPR article 4 (13) in conjunction with at least one other criteria from the European Data Protection Board (hereinafter: “EDPB”) guidelines¹, except for healthcare professionals when providing healthcare services;
2. Processing activities that include biometric data as defined under GDPR article 4(14) and have as a purpose identification of data subjects in conjunction with at least one other criteria from the EDPB guidelines;
3. Processing activities involving the combination, matching or comparison of personal data collected from processing activities having different purposes (from the same or different data controllers)– provided that they produce legal effects concerning the natural person or similarly significantly affects the natural person;
4. Processing activities that consist of or include regular and systematic monitoring of employee activities provided that they might produce legal effects concerning the employees or similarly significantly affects them;
5. Processing activities on files that might contain personal data of the whole national population provided that such a DPIA has not already been carried out as part of a general impact assessment in the context of the adoption of that legal basis;
6. Processing activities that have a scientific, historical research purpose or a statistical purpose as required in Article 65 of the act of 1 August 2018 on the organisation of the National Data Protection Commission and the general data protection framework;
7. Processing activities that consist in systematic tracking of natural persons position;
8. Processing activities based on indirect collection of personal data when it is not possible / feasible to guarantee the right of information in conjunction with at least one other criteria from the EDPB guidelines.

¹ The European Data Protection Board endorsed the aforementioned guidelines of its predecessor, the “Article 29 Working Party” on 25 may 2018 by the adoption of the document “Endorsement 1/2018”.

