EDPB – [Template] for Data Protection Impact Assessment ('DPIA')

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To: European Data Protection Board (EDPB)
From: Privacy Management Partners (PMP)
Subject: Public consultation on EDPB DPIA Template
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Please find below PMP's response to the draft Data Protection Impact Assessment (DPIA) Template. As PMP, we have read the template with interest, and are happy to share our observations with you.

PMP focuses on realizing pragmatic solutions for societal challenges, from data protection to the deployment of AI applications. We work interdisciplinary, combining legal, ethical, and organizational expertise. Through collaboration and knowledge sharing, we help organizations not only comply with laws and regulations but also take control of responsible digitalization within their organization. Our clients are primarily found within the central government, municipalities, healthcare institutions, scientific institutes, and higher education.

Compliance vs. risks for rights and freedoms of data subjects

We conclude that the DPIA Template (hereinafter: Template) contains most of the in Article 35 GDPR described conditions, such as:

- legal basis,
- proportionality,
- risks,
- mitigations,
- DPO involvement and,
- residual risks.

However, we feel that the European Data Protection Board (EDPB) strongly focusses on subjects such as legal qualification, compliance and documentation. Instead of, what we believe to be the main goal/focus of a DPIA: *what are the risks (and mitigations) for the rights and freedoms of data subjects that the processing of personal data brings?*

Especially when considering Article 35 GDPR in context with Articles 1 & 5, 24 GDPR, and Recitals 4, 75 – 76 GDPR, the focus of a DPIA should primarily lie on organizing the

processing in such a way that natural persons (or data subjects) are protected against any foreseeable harm. We see that this Template will shift the intention of a DPIA as stated within the GDPR and focussess mainly on compliance aspects. Rights and freedoms refer to infringements of fundamental rights. For example, falling into debt, social effects, losing one's job, adherence to (medical) professional secrecy, etc. These are issues that our clients (mostly government and healthcare institutions) must take care of.

We also see this in the use of particular terms ('threats', 'vulnerabilities', 'residual risk', 'likelihood'), that have a strong connotation with the world of Cybersecurity; a profession that looks differently at risks than a, for instance, privacy professional or DPO. But also, in the way the EDPB uses the DPIA as an accountability instrument rather than a design instrument. This way, risks are qualified based on legal qualifications and exemptions (Articles 5,6 & 9 GDPR) and not based on functional information based on the described data processing.

Scope of the template

We also feel when focusing mainly on compliance within the DPIA Template, its scope and usefulness is unnecessarily limited. For instance, how will this DPIA Template work for the use of AI (and the scope of the AI Act such as conducting a FRIA), or within the context of e-Privacy, the Digital Service Act, the Data Governance Act, or the Data Act? How will this format work for relevant societal issues?

Central governments in the Netherlands mostly use their own specific template, also known as the "Rijksmodel", or national DPIA model. Within this *Rijksmodel* there is also room for improvement. For instance, good practices such as workshops, alternative working methods, explanations with examples, and the involvement of representatives (Works Councils – business councils, citizens, customer groups). In this regard, the EDPB should also focus on these good practices. The DPIA must also be suitable for assessing legislation (the so-called Legislative DPIA). Government bodies in the Netherlands are required to do so ("Motie-Franken"). This concerns the effects that legislation can have on groups and/or individuals in society.

Specific remarks

What is the proposed target group for the Template? It seems that this Template is not suitable for people who have limited to no knowledge of the GDPR.

Chapter numbers and letters do not correspond with the Explainer and the Template.

The Template explainer states that Chapter 1.1.c. (*secondary or compatible uses*) only focuses on the possibility of using the described data for further processing, but states nothing about when the described personal data is already further processed.

We give in consideration to start the DPIA template with Yes/No questions to assess whether a DPIA is required.

We are more than happy to answer your questions, if you have any. Please feel free to contact us.

Kind regards,

PMP
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