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Number: 014-1/2018/12
Date: 21 December 2018

European Data Protection Board

Subject: The list of the kind of processing operations¹ which are subject to the requirement for a Data Protection Impact Assessment under the Article 35(4) of the General Data Protection Regulation (EU) 2016/679 (GDPR)

Initial statements

- The list is based on Article 29 Working Party “**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**” (WP 248 rev.01, Adopted on 4 April 2017 As last Revised and Adopted on 4 October 2017).
- The list **complements** and **further specifies the guidelines**.
- The list is **not exhaustive** and may be updated and supplemented with more examples in the future.

In addition to the cases provided for in Article 35 (3) GDPR, and taking into account the exception provided for in Article 35 (10) GDPR, carrying out a DPIA shall be compulsory if the processing operation meets at least two of the following criteria:

1. Extensive evaluation and profiling of individuals

- *Explanation and examples:* Large scale processing of personal data including scoring, evaluating, predicting and profiling of individuals, such as:
 - Credit worthiness assessment of individuals based on central credit reference system and other data;
 - Monitoring driving data and profiling of drivers for the purpose of personalized insurance.

2. Automated-decision making with legal or similar significant effect

- *Explanation and examples:* Processing that aims at taking decisions on individuals producing legal effects concerning the individual or which similarly significantly affects the individual, such as automated-decision making on:
 - Credit worthiness,
 - Social benefits entitlement,

¹ The list of examples provided herewith **is not an exhaustive list** of processing operations that require a Data Protection Impact Assessment. Examples provided are of illustrative nature in order to achieve better understanding of the criteria.

- Scholarship entitlement,
- Job qualifications,
- Health insurance entitlement.

3. Systematic monitoring of individuals

- *Explanation and examples:* Systematic observation, monitoring or other type of surveillance over individuals who may not be aware of or it may be impossible for them to avoid being subject to such processing or have no control over it (e.g. due to it being performed in publicly accessible spaces). Examples where a Data Protection Impact Assessment is obligatory are:
 - Automated number plate recognition systems;
 - Public transport and electronic toll collection systems;
 - E-government projects;
 - Passenger name record screening;
 - Black-lists of offenders;
 - Video surveillance of events with drones;
 - Video surveillance in public spaces;
 - Mass or systematic processing of personal data performed by law enforcement in connection with criminal and minor offences.

4. Processing of special categories of personal data

- *Explanation and examples:*
 - When processing of special categories of personal data, data on criminal or minor offences, such as:
 - Formation and functioning of criminal or minor offence databases,
 - Development or re-design of medical information systems, solutions and applications,
 - New individual health monitoring mobile applications
 - When processing of special categories of personal data is done for purposes other than those for which data was collected, such as:
 - Publicly available registers of individuals based on their particular circumstances or status,
 - Direct marketing based on special categories of personal data (e.g. towards individuals with a particular disease).
 - When special categories of personal data are systematically exchanged between different data controllers, such as:
 - Interconnection of data filling systems with criminal and minor offence registries or other data filling systems with special categories of personal data,
 - Development of interfaces and applications enabling access to criminal and minor offence registries,
 - E-health systems.

5. Data processed on a large scale

- *Explanation and examples:* Data processed on a large scale taking into account the following factors, when determining whether the processing is carried out on a large scale: the number of data subjects concerned, either as a specific number or as a proportion of the relevant population, the volume and/or the range of different data items being processed, the duration or permanence of the data processing activity and the geographical extent of the processing activity, such as:

- Loyalty schemes,
- Electronic communications data processed by telecom operators,
- Data on insurers and insurance claims with insurance companies,
- Nation-wide registries of personal data,
- Financial data and data on the use of financial services in banks, savings banks and other financial institutions,
- Large-scale processing of traffic, location and other electronic communications data protected by Article 37 of the Constitution of the Republic of Slovenia.

6. Matching or combining of different datasets (e.g. obtained through different activities of data controllers) and big data analytics

- *Explanation and examples: Matching or combining of different datasets (e.g. obtained through different activities of data controllers) and big data analytics, such as:*
 - Matching of data of insurers and data on insurance claims by the insurance company in order to ascertain trends, shares, cause-and-effect connections etc.,
 - Matching absenteeism data with data on gender, age and education of employees,
 - Shopping and movement habits analysis,
 - Analysis of movement, usage and habits of users of electronic communications,
 - Big data analysis in one or more nation-wide registries.

7. Imbalance of power

- *Explanation and examples: Processing of personal data of vulnerable (groups of) individuals, where there is significant imbalance of power between data controllers and individual, such as:*
 - Processing of personal data of employees in conjunction with at least one other criterion, children, individuals with fully or partially limited legal capacity, asylum seekers, migrants, elderly, patients etc.

8. Innovative use or applying new technological or organisational solutions

- *Explanation and examples: Innovative use or combining existing and new technologies, where personal and societal consequences are not necessarily well researched and known and that may lead to novel forms, larger scale and new purposes of processing, such as:*
 - Intelligent video analytics systems,
 - The use of drones,
 - Certain “Internet of Things” applications (e.g. smart metering), etc.

9. When the processing in itself prevents data subjects from exercising a right or using a service or a contract

- *Explanation and examples: Processing of personal data that aims at allowing, modifying or refusing data subjects’ access to a service or entry into a contract, such as:*
 - Nation-wide electronic toll collection system.
 - Pre-screening of customers against a credit reference database.

10. Processing of biometric data which is processed for the purpose of uniquely identifying a natural person in conjunction with at least one other criterion;

- *Explanation and examples: Processing of fingerprints, faces or other biometric traits for the purpose of uniquely identifying a natural person.*

11. Processing of genetic data in conjunction with at least one other criterion;

- *Explanation and examples: Genetic testing and determining the likelihood of disease risk.*

Note: The list of the kind of processing operations which are subject to the requirement for a Data Protection Impact Assessment should be interpreted **in line with provisions of the General Data Protection Regulation and supervisory authorities' guidelines**. More information on Data Protection Impact Assessments and the relevant guidelines are available at the Information Commissioner's website:

- o <https://www.ip-rs.si/zakonodaja/reforma-evropskega-zakonodajnega-okvira-za-varstvo-osebni-podatkov/kljucna-podrocja-uredbe/ocena-ucinka-v-zvezi-z-varstvom-podatkov/>