

Deliberation 2018-327 of October 11, 2018 National Commission for Computing and Liberties Legal status: In force Date of publication on Légifrance: Wednesday November 7, 2018 NOR: CNIL1829647X Deliberation No. 2018-327 of October 11, 2018 adopting the list of processing operations for which a data protection impact assessment is requiredThe National Commission for Computing and Liberties,

Having regard to Convention No. 108 of the Council of Europe for the protection of individuals with regard to automatic processing of personal data;

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 on the free movement of such data, and repealing Directive 95/46/EC, in particular its article 35;

Considering the law n° 78-17 of January 6, 1978 modified relating to data processing, files and freedoms;

Considering the decree n° 2005-1309 of October 20, 2005 modified taken for the application of the law n° 78-17 of January 6, 1978 relating to data processing, files and freedoms;

Having regard to the Guidelines on Data Protection Impact Assessment (DPIA) and how to determine whether processing is likely to create a high risk for the purposes of Regulation (EU) 2016/679 adopted on 4 April 2017;

Having regard to Opinion 9/2018 of the European Data Protection Board relating to the draft list of the French supervisory authority relating to the types of processing operations for which a data protection impact assessment (Article 35.4 of the GDPR), adopted on September 25, 2018;

After hearing the observations of Mrs. Nacima BELKACEM, Government Commissioner,

Makes the following observations:

Article 35.1 of the General Data Protection Regulation (GDPR) provides that a data protection impact assessment (DPIA) must be carried out when processing is likely to create a high risk for the rights and freedoms of the persons concerned.

Article 35.3 of the GDPR sets out three types of processing that may present a high risk. The European Data Protection Board (EDPB) has itself identified nine criteria for characterizing processing likely to create a high risk.

Article 35.4 of the GDPR requires supervisory authorities to draw up and publish a list of the types of processing operations for which a data protection impact assessment is required.

Article 35.6 of the GDPR provides that, when this list concerns processing activities linked to the offer of goods or services to

data subjects or the monitoring of their behavior in several Member States, or which may significantly affect the free movement of personal data within the Union, it must be subject to the consistency check mechanism and must be communicated to the European Data Protection Board (EDPB).

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

Decided :

The adoption of the list annexed to this deliberation relating to the types of processing operations for which a data protection impact assessment is required.

This list is not exhaustive. In accordance with Article 35.1 of the GDPR, a DPIA must be carried out when the processing is likely to create a high risk for the rights and freedoms of natural persons.

This list is based on the EDPS guidelines relating to the impact assessment relating to data protection (DPIA) which it completes and clarifies for specific processing operations.

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

ANNEX

LIST OF TYPES OF PROCESSING OPERATIONS FOR WHICH A DATA PROTECTION IMPACT ASSESSMENT IS REQUIRED

Types of processing operations

Criteria from the EDPS guidelines that they meet

Processing of health data implemented by health establishments or medico-social establishments for the care of people

- collection of sensitive data
- so-called vulnerable people

Processing of genetic data of so-called vulnerable people (patients, employees, children, etc.)

- collection of sensitive data
- so-called vulnerable people

Processing operations establishing profiles of natural persons for human resources management purposes

- assessment or rating

- so-called vulnerable people

Processing for the purpose of constantly monitoring the activity of the employees concerned

- so-called vulnerable people
- systematic monitoring

Processing for the purpose of managing alerts and reports in social and health matters

- so-called vulnerable people
- assessment or rating
- collection of sensitive data

Processing for the purpose of managing alerts and reports in professional matters

- so-called vulnerable people
- assessment or rating
- collection of sensitive data

Processing of health data necessary for the constitution of a data warehouse or a register

- collection of sensitive data
- so-called vulnerable people

Processing involving the profiling of persons which may result in their exclusion from the benefit of a contract or in the suspension or even termination thereof

- assessment or rating
- crossing or combining datasets

Shared processing of contractual breaches noted, likely to lead to a decision of exclusion or suspension of the benefit of a contract

- crossing or combining datasets
- automated decision-making with significant legal or similar effect

Profiling processing using data from external sources

- assessment or rating
- crossing or combining datasets

Processing of biometric data for the purpose of recognizing people, including so-called vulnerable people (pupils, elderly people, patients, asylum seekers, etc.)

- collection of sensitive data
- so-called vulnerable people

Examination of requests and management of social housing

- collection of sensitive data
- assessment or rating

Processing for the purpose of social or medico-social support for people

- collection of sensitive data
- assessment or rating
- so-called vulnerable people

Large-scale location data processing

- collection of sensitive data
- data processed on a large scale

The president,

I. Falque-Pierrotin