
Intellectual Property, Media and IT

Legal Flash | Portugal

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I. CNPD approves Regulation no. 1/2018 on the Data Protection Impact Assessment (DPIA)

On October 16, the Portuguese National Commission of Data Protection (“CNPD”), as an independent administrative entity with powers of authority for the control of personal data processing activities, prepared and published, the list of personal data processing activities subject to a Data Protection Impact Assessment (DPIA), according to Article 57, no.1, item k) and Article 57, no. 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016 (GDPR).

Pursuant to article 35º, no. 1 of GDPR, the processing of personal data that is likely to pose a high risk to the rights and freedoms of natural persons must be preceded by a DPIA. The aim of a DPIA is to ensure that the GDPR is enforced in such cases, making it possible to diagnose, in particular, the origin, nature, particularity and seriousness of that risk by identifying and mitigating it, by means of adjusted measures to diminish the negative impact that such processing activity may have on the data subjects.

Accordingly, each national supervisory authority must prepare a list of the processing activities likely to involve this risk, in addition to those already exemplified in paragraph 3 of the same article. When preparing this list, CNPD referred to the Guidelines on Data Protection Impact Assessment approved by the Article 29 Working Party and assumed by the European Data Protection Committee, which determine whether the processing is 'likely to result in a high risk' for the purposes of GPDR.

After public consultation (Notice no. 136/2018, published in the 2nd series of the National Official Journal, no. 150, of August 6, 2018) and consideration of the suggestions made therein and of the recommendations made in Opinion No. 18 / 2018 of the European Data Protection Committee, CNPD approved the list of personal data processing activities subject to a data protection impact assessment, in addition to those provided for in Article 35 (3) of GPDR, which identifies the following processing activities:

1. "Processing of information arising from the use of electronic devices which transmit, through communication networks, personal data relating to health;
2. Interconnection of personal data or any processing relating to personal data provided for in Article 9 no. 1 or Article 10 of GDPR or of highly-personal data;
3. Processing of personal data provided for in Article 9 no. 1 or Article 10 of GDPR or of highly-personal data, based on indirect collection of the data, where it is not possible or feasible to ensure the right to information in accordance with Article 14 no. 5 item b) of GDPR;
4. Processing of personal data that involves or consists of a large-scale profile creation;



5. Processing of personal data to track the location or behavior of the data subject (e.g. workers, customers or just passers-by), which has the effect of assessing or classifying such data subject, except when the processing is indispensable for the provision of services specifically required by them;
6. Processing of the data provided for in Article 9 no. 1 or in Article 10 of GDPR or of highly-personal data for archival purposes of public interest, scientific and historical research or statistical purposes, with the exception of the processing activities provided for and regulated by law that offer adequate guarantees of the rights of the data subjects;
7. Processing of biometric data for the unambiguous identification of the data subject, when they are vulnerable persons, except for the processing activities provided for and regulated by law, that has been preceded by a data protection impact assessment;
8. Processing of genetic data of vulnerable persons, except for the processing activities provided for and regulated by law, which has been preceded by a data protection impact assessment;
9. Processing of personal data provided for in Article 9 no. 1 or Article 10 of GDPR or highly-personal data with the use of new technologies or new use of existing technologies. "

CNPD warns that this list is not exhaustive. Other situations may arise, where it may be justified, in accordance with Article 35 of GDPR, to carry out a DPIA, in particular due to technological development.



Contact

Cuatrecasas, Gonçalves Pereira & Associados,
Sociedade de Advogados, SP, RL
Sociedade profissional de responsabilidade limitada

Lisboa

Praça Marquês de Pombal, 2 (e 1-8º)
1250-160 Lisboa I Portugal
Tel. (351) 21 355 3800 I Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com I www.cuatrecasas.com

Porto

Avenida da Boavista, 3265 - 5.1
4100-137 Porto I Portugal
Tel. (351) 22 616 6920 I Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com I www.cuatrecasas.com

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