



TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY (TMT)

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CNPD APPROVES LIST OF PERSONAL DATA PROCESSING THAT REQUIRES AN IMPACT ASSESSMENT

Under the GDPR, whenever the implementation of personal data processing «uses new technologies and, taking into account its nature, scope, context and purposes» it is liable to «a high risk to the rights and freedoms of natural persons», the data controller must carry out a DPIA.

The Data Protection Impact Assessment («DPIA») is a procedure by which the data controller assesses the need for and proportionality of processing to evaluate the risks to the rights, freedoms and guarantees of data subjects.

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The GDPR lists three situations in which a DPIA is mandatory:

«(a) A systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;

(b) Processing on a large scale of special categories of, or personal data relating to, criminal convictions and offences;

(c) A systematic monitoring of a publicly accessible area on a large scale.»

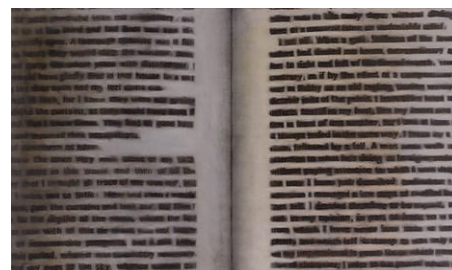
The GDPR provides that the CNPD (the Portuguese National Data Protection Commission), as an independent administrative body and national control authority, can define a list with other data processing operations in which a DPIA is also mandatory.

On 31 October 2018, the CNPD approved Regulation no. 1/2018, which contains the following list of data processing:

- Processing of information resulting from the use of electronic devices that transmit, by communication networks, personal data relating to health;
- Interconnection of personal data or processing of the personal data referred to in article 9(1) or article 10 of the GDPR or data of a highly personal nature;
- Processing of personal data provided for in article 9(1) or article 10 of the GDPR or data of a highly personal nature based on indirect collection of that data, when it is impossible or would involve a disproportionate effort to ensure the right to information pursuant to article 14(5)(b) of the GDPR;
- Personal data processing involving or consisting in the creation of profiles on a large scale;

- Personal data processing that makes it possible to track the location or the behaviour of the data subjects (for example, employees, customers or just passers-by), the purpose of which is to evaluate or classify them, except when the processing is essential to providing services specifically requested by them;
- Processing of the data referred to in article 9(1) or article 10 of the GDPR, or of data of a highly personal nature, for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, with the exception of the processing provided for and regulated by law that provides appropriate guarantees of the data subjects' rights;
- Processing of biometric data for unique identification of data subjects, when they are vulnerable persons, with the exception of processing provided for and regulated by law that has been preceded by a data protection impact assessment;
- Processing of personal genetic data of vulnerable persons, with the exception of processing provided for and regulated by law that has been preceded by a data protection impact assessment;
- Processing of personal data provided for article 9(1) or article 10 of the GDPR, or data of highly personal nature, with the use of new technologies or new uses of existing technologies.

Despite the lack of clarity in relation to the description of some of the processing operations, we welcome the publication of this list because it is a useful tool to help companies comply with the GDPR.



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