

Draft list of the competent data protection supervisory authority of Denmark regarding the processing operations subject to the requirement of a data protection impact assessment (Article 35 (4) GDPR)

The carrying out of a DPIA is only mandatory for the controller pursuant to Article 35 (1) GDPR where processing is “likely to result in a high risk to the rights and freedoms of natural persons”. Article 35 (3) GDPR illustrates what is likely to result in a high risk. This is a non-exhaustive list. The WP 29 Guidelines on data protection impact assessment¹, as endorsed by the EDPB, has clarified criteria that can help to identify when processing operations are subject to the requirement for a DPIA.

The WP 29 Guidelines WP248 state that in most cases, a data controller should consider that a processing meeting two criteria would require a DPIA to be carried out, however, in some cases; a data controller can consider that a processing meeting only one of these criteria requires a DPIA.

This list support the same objective i.e. to identify processing operations likely to result in a high risk and processing operations, which therefore require a DPIA.

Datatilsynet (The Danish Data Protection Agency) wishes to state that The WP 29 Guidelines WP248 are a core element for ensuring consistency across the Union. In that respect, this list is based on the WP248 guidelines. The list of the Danish Data Protection Agency complements and further specifies the guidelines and it has to be made clear that this is a non-exhaustive list of instances where a DPIA has to be done.

These processing activities are always likely to result in a high risk and a DPIA has to be carried out:

1. Processing of biometric data with the purpose of uniquely identifying a natural person in conjunction with at least one other criterion from the WP29, Guidelines (WP 248 rev. 01).
2. Processing of genetic data in conjunction with at least one other criterion from the WP29, Guidelines (WP 248 rev. 01).
3. Processing of location data in conjunction with at least one other criterion from the WP29, Guidelines (WP 248 rev. 01).

¹ WP 29 guidelines on Data Protection Impact Assessment and determining whether processing is “likely to result in a high risk” for the purposes of Regulation 2016/679, WP 248 rev. 01 as endorsed by the EDPB.

4. Processing with use of innovative technology in conjunction with at least one other criterion from the WP29, Guidelines (WP 248 rev. 01).
5. Processing leading to decisions about an individual's access or right to a product, service, opportunity or benefit, which is, based on any form of automated decision-making (including profiling).
6. Processing which includes profiling of individuals on a large scale as defined in the WP29, Guidelines (WP 248 rev. 01).
7. Processing the personal data of vulnerable individuals or on personal data of special categories that use profiling or other automated decision-making.
8. Processing where a personal data breach could have a direct effect on the physical health or safety of individuals.