



The EDPS has been informally consulted on whether a particular number of data subjects concerned by a processing should be considered as **“large scale” in the sense of Article 39(3)(b) of Regulation (EU) 2018/1725** (“the Regulation”).

The Regulation itself does not define what constitutes “large-scale”. The WP29 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, p. 10, regarding “Data processed on a large scale” mention that **“...the GDPR does not define what constitutes large-scale, though recital 91 provides some guidance.”**

- Under recital 91, 2nd sentence, “A data protection impact assessment should also be made where personal data are processed for taking decisions regarding specific natural persons following any systematic and extensive evaluation of personal aspects relating to natural persons...following the processing of special categories of personal data...or data on criminal convictions and offences...”. In the case at hand in the informal consultation, the EUI planned to assess the skills of applicants, including whether they have ever had a disciplinary procedure against them.
- There is, however, no numeric indicator of what could be considered “*extensive evaluation*” in the sense of recital 91, 2nd sentence.

As further noted in the above WP29 Guidelines, p. 10, “...*In any event, the WP29 recommends that the following factors, in particular, be considered when determining whether the processing is carried out on a large scale: a. the number of data subjects concerned, either as a specific number or as a proportion of the relevant population*;...”. There is, however, no further numeric guidance in the above WP29 Guidelines on this matter.

- Whilst the European Parliament legislative resolution of 12 March 2014 (COM(2012)0011 – C7-0025/2012–2012/0011(COD), referred to “...more than 5000 data subjects during any consecutive 12-month period...”, this proposal was not adopted.
- Various numeric thresholds are stipulated at national level and in the context of guidance by national data protection authorities on the proportion of the national population (for details see IAPP, <https://iapp.org/news/a/on-large-scale-data-processing-and-gdpr-compliance/>). The EDPS would urge caution equating “large scale” guidance relating to a percentage of a national population to a population of data subjects covered by a processing at the level of any EUI, though.
- In its Recommendation 01/2019 on the draft list of the European Data Protection Supervisor regarding the processing operations subject to the requirement of a data protection impact assessment (Article 39.4 of Regulation (EU) 2018/1725),

[https://edpb.europa.eu/sites/edpb/files/files/file1/edpb\\_recommendation\\_201901\\_edps\\_39.4\\_dpia\\_list\\_en.pdf](https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_recommendation_201901_edps_39.4_dpia_list_en.pdf), para 15, the EDPB declined to approve numeric guidance as to what should be considered large-scale processing.

In the light of the above, the EDPS considered in the informal consultation that the following aspects **cumulatively advocate for conducting a DPIA** on the processing in the light of the above:

- **The proportion of the relevant population:** Regarding the total number of individuals concerned by the processing, no hard and fast numeric guidance as to what should be considered large-scale processing can be provided, but the notion of “large scale” also refers to the proportion of the relevant population.

In its Recommendation 01/2019, the EDPB noted that “The Board notes that the European Data Protection Supervisor makes reference to the internal phone directory of an EU institution as a counterexample of large scale processing. Without prejudice as to whether a DPIA is indeed required, it is not clear why a phone directory of an EU institution does not per se fall within the notion of large scale processing, especially since it can potentially include personal data of a large number of individuals. The EDPB also reminds that **the notion of large also refers to the proportion of the relevant population**, as defined in Guidelines on Data Protection Officers (‘DPOs’), adopted in December 2016, revised on 5 April 2017, and endorsed by the EDPB. The Board recommends the use of a different example.”

- **The nature of the personal data processed and possible resulting risks:** The assessment of the skills of data subjects, including whether they have ever had a disciplinary procedure against them. The WP29 Guidelines on Data Protection Impact Assessment (DPIA), WP 248 rev.01, highlight that “**As the words “in particular” in the introductory sentence of Article 35(3) GDPR indicate, this is meant as a non-exhaustive list.** There may be “high risk” processing operations that are not captured by this list, but yet pose similarly high risks. Those processing operations should also be subject to DPIAs.”