



Deloitte Legal Newsflash

Data Protection

Biometric data: key takeaways from the new recommendations of the Data Protection Authority

The Belgian Data Protection Authority (DPA) has recently issued a new recommendation about the processing of biometric data (fingerprint, face ID, iris, gait recognition, etc.). The DPA confirms that its previous recommendation on the topic is not applicable anymore since the entry into force of the GDPR. It leaves a period of 1 year both to the processors and the Belgian legislature to implement its new recommendations in order to ensure compliance with the European legal framework.

Key takeaways

Biometric data being considered as particularly sensitive, their processing is subject to strict requirements. Here are some key takeaways from the recommendations of the DPA:

- Explicit **consent** is not a lawful basis if there is an imbalance of powers between the data subject and the processor. Classical examples include employer/employee or citizen/public authority relationships. The DPA also refers to the relationship between a client and a service provider having a **(quasi) monopoly** on the market.
- There is presently no valid legal basis under Belgian law to process biometric data based on a **substantial public interest** (Art.9.2.g) GDPR), while this legal basis could be used in cases where consent is not an option. The DPA leaves a period of 1 year to the Belgian legislature to fill in the gap.

- **Impact analysis** is always mandatory when considering processing of biometric data (except in exceptional cases).
- The exception of a **purely private activity**, which excludes application of the GDPR, is subject to strict requirements (e.g. when fingerprint or face ID is used to unlock a private electronic device).
- According to the principle of proportionality and data minimisation, the processing of biometric data is not lawful if there are **less intrusive alternatives** which would allow to achieve the same goal.

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