

Data Protection Ruling Update: Spain

➤ What was it about?

On 14th November 2022 the Spanish Data Protection Agency (**aepd**) found against Thomas's Spanish distributor on a point of law under the General Data Protection Regulations (**GDPR**) and in particular, the basis upon which Thomas collects sensitive personal data from assessment-takers under Article 9 of the **GDPR**.

Thomas had been collecting sensitive personal data (e.g., disability, ethnicity) for scientific research purposes, through a voluntary survey called the Thomas Research Questionnaire (**TRQ**). Thomas had been collecting this data to ensure fairness in its assessments (that they did not discriminate), in accordance with the various best practice guidelines defined by organisations such as the British Psychological Society (BPS), the European Federation of Psychological Associations (EFPA) and the International Test Commission (ITC). However, on an interpretation of Article 9 of the **GDPR**, the **aepd** took the view that Thomas could not rely upon the scientific research purpose justification for processing ethnicity and disability data because complying with the guidelines of the **EFPA** did not qualify as a valid "Union or Member State Law under Article 9".

The **aepd** then went on to consider whether (in the absence of the scientific research purpose exemption) Thomas could rely upon "consent" as a legitimate lawful basis for processing such sensitive personal data. On this point, the **aepd** took the view that by making clear in the invitation instructions that the **TRQ** was completely voluntary, Thomas was implicitly looking to rely upon "consent" as a lawful basis for processing. Following this line of reasoning it went on to consider that Thomas had not done what it needed to do in order to pass the test under the **GDPR** for getting "consent".

➤ What wasn't it about?

As has been made clear above, the ruling of the **aepd** centred on whether Thomas had chosen the correct lawful basis for processing ethnicity and disability data solely gathered from use of its **TRQ**. The ruling has no impact on the use of Thomas assessments by its customers or the process by which those assessments are generated or delivered to its customers. The ruling also has no relevance to the high technical, security, or organisational standards around Thomas's management of the personal data associated with the provision of its assessments.

➤ What actions have we taken?

As a result of the ruling, Thomas immediately removed its **TRQ** for all participants so that it could remove any questions relating to sensitive data, and ensure these changes were reflected in the various translations of the **TRQ**. Thomas will continue to invest significant time and effort to evidence the fairness of its tests and assessments, using methods that align with our clarified understanding about how we can best adhere to **GDPR** points of law.