



DPO

Definition

Not defined under the GDPR

- The DPO can be a staff member of the controller or processor (internal DPO); or, he/she can be external and fulfil the tasks on a service contract basis; and
- The DPO is a natural (or legal, if external) person responsible for implementing compliance with the GDPR within the entity that has designated her/him with regard to all processing operations carried out by that entity.

Basis of designation

Article 37 (f) GDPR

- Shall be designated based on professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.

EU Representative

External DPO / EU Representative: The interplay between the two roles under the GDPR



DPO

EU Representative

Definition

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Article 4 (17) GDPR

- A natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under the GDPR

Basis of designation

Article 37 (5) GDPR

- Shall be designated based on professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 39.

Article 27 (3) GDPR

- Shall be designated on the basis of its location (in a Member State where the data subjects whose personal data are processed in relation to the offering of goods and services to them, or whose behavior is monitored, are located).

Criteria for
designation

Article 37(1) GDPR

The controller and the processor shall designate a data protection officer in any case where:

- (a) the processing is carried out by a **public authority or body**, except for courts acting in their judicial capacity;
- (b) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, **require regular and systematic monitoring** of data subjects on a **large scale**; or
- (c) the core activities of the controller or the processor consist of processing **on a large scale** of **special categories of data** pursuant to Article 9 and **personal data relating to criminal convictions and offences** referred to in Article 10.

Article 27(1) GDPR

The controller or the processor shall designate in writing a representative in the Union where:

- (*Article 3(2)*) the controller or processor **is not established in the Union** but processes the personal data of data subjects and the **processing activities are related to**:
- (a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
 - (b) the monitoring of their behavior as far as their behavior takes place within the Union.

**Designation
not mandatory**

Where Article 37 GDPR does not apply.

However, it is possible to appoint a DPO on a voluntary basis for good governance/practice.

Article 27(2) GDPR, where the processing:

- Is occasional, does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) or processing of personal data relating to criminal convictions and offences referred to in Article 10; and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing; or
- Is performed by a public authority or body.

**Obligation of
disclosure**

Article 37 (7) GDPR – DPO and Article 27(4) GDPR – EU Representative

The contact details of the DPO and the EU Representative are required to be disclosed to the supervisory authorities and to data subjects.

Tasks

Article 39(1) GDPR

- Inform and advise the controller or the processor and the employees who carry out processing of their obligations pursuant to the GDPR and to other Union or Member State data protection provisions;
- Monitor compliance with the GDPR, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training for staff involved in processing operations, and the related audits;
- Provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 35;
- Cooperate with the supervisory authorities; and
- Act as the contact point for the supervisory authorities on issues relating to processing, including prior consultation referred to in Article 36, and consult, where appropriate, with regard to any other matter.

Article 27(4) GDPR

- Act as a contact person on behalf of the controller or processor for the supervisory authorities and data subjects;
- Cooperate with the supervisory authorities (*Article 31*); and
- Establish and/or maintain the record of processing operations for the Controller or the Processor (*Article 30(1) and (2)*).

Liability

Article 38(3) GDPR

- Act in absolute independence, must not receive any instructions regarding the exercise of her/his tasks.
- Cannot be personally liable for failure to comply with the GDPR's provisions.

Article 27(5) GDPR

- Is not independent, acts on behalf of its principal (the controller or the processor).
- May be held liable in the same way as the controller or the processor for failure to comply with the GDPR's provisions.

Where is the line separating the roles of the EU Representative and DPO?

There is no express prohibition under the GDPR against the same person fulfilling both roles. However, several supervisory authorities and the European Data Protection Board (“**EDPB**”) which replaced the “**Article 29 Working Party**” do not consider the function of representative in the Union as compatible with the role of an external DPO.

This is because the DPO must be able to perform its tasks with a sufficient degree of autonomy whereas the EU Representative is subject to a mandate by a controller or processor and will be acting on its behalf and therefore under its direct instructions.

Therefore, the EDPB considers that a conflict of interest may arise and recalls that it is the controller or processor’s responsibility to ensure that the DPO does not take on other tasks that result in a conflict.

What about the Brexit and UK companies ?

At the end of the transition period (likely on 31 December 2020) and in the event there is no deal between the UK and the EU, all UK companies that do not have an establishment in the EU but are conducting business in the EU and/or processing personal data from individuals who are physically present in the EU will have to appoint a representative.

Similarly, and still in case of a no-deal, the authors tend to think that European entities subject to UK data protection provisions, i.e. if these companies offer goods or services to UK residents, must designate a "UK representative" who is in the UK.

Our team advises digital market actors on a daily basis and is here to assist you:



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