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Factsheet – DPO

I. DO I NEED A DPO?

If you are subject to the GDPR[1], you must appoint a data protection officer (**DPO**) for your organization if you are a public authority or if you are a private company and your *core activities* consist of either:

1. processing operations which require **regular and systematic monitoring** of data subjects *on a large scale*

(this includes for instance tracking and profiling on the internet, including for behavioral advertising; data-driven marketing activities; profiling and scoring for purposes of risk assessment; location tracking; management of loyalty programs; monitoring of wellness, fitness and health data via wearable devices; or the use of CCTV); **or**

2. processing on a *large scale* of **'special categories' of personal data**, or **'criminal convictions or offenses data'**

(e.g. personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person's sex life or sexual orientation).

If you are only subject to the Swiss Federal Act on Data Protection (**FADP**), you do not have an obligation to appoint a DPO (at least for private entities). This will not change under the revised FADP which is expected to come into force in 2023. However, companies which voluntarily appoint a DPO (or data protection adviser) benefits from certain advantages. For instance, under the revised data protection act, they will be released from the obligation to consult with the supervisory authority prior to conducting certain processing operations.

In practice, independently from the above requirements, many companies decide to centralize their data protection tasks to a DPO, a data protection adviser or to a dedicated team. This helps them manage their data protection compliance and risks. This may also be used as a competitive differentiator, increasing consumer confidence, and strengthening the company's reputation.

[1] If you do not know whether the GDPR applies to your activities, you may check our factsheet "GDPR Application in Switzerland" or contact us at contact@idest.pro for further information.

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II. THE ROLE OF A DPO

The tasks assigned to a DPO will depend on the applicable law and internal organization of each entity, but generally include the following:

- ✓ to inform and advise the organization and the employees who process personal data of their obligations
- ✓ to monitor compliance with data protection rules, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and related audits;
- ✓ to provide advice, on request, on data protection impact assessments and verify their execution;
- ✓ to cooperate with the supervisory authority;
- ✓ to act as a contact point on matters relating to the processing of personal data.

This does not mean that it is the DPO who is personally responsible for non-compliance. Data protection compliance remains a corporate responsibility of the company, not of the DPO.

III. WHO CAN ACT AS DPO

Competences? The DPO you choose must have **expert knowledge** of data protection law and practices and the ability to fulfill his or her tasks.

Internal or External? The DPO may be (i) a staff member (**internal DPO**) or (ii) an external person (either an individual or a company) who fulfill the tasks of DPO on the basis of a service contract (**external DPO**).

Independence? The DPO must be able to perform her or his tasks in an independent manner. The level of independence required will depend on the applicable law (requirements are more stringent under the GDPR). The company should for instance refrain from instructing the DPO as regards to the exercise of the DPO's tasks and not dismiss or penalize its DPO for the performance of the DPO's tasks

In addition – although a DPO may fulfill other tasks and duties – the organization must ensure that any such tasks and duties do not result in a *conflict of interests*. Conflicting positions within the organization could for instance include senior management positions (such as chief executive, chief operating, chief financial, chief medical officer, head of marketing department, head of Human Resources or head of IT departments). EU authorities further consider the role of EU representative under Article 27 GDPR[2] as incompatible with the position of DPO.

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[2] If you want more information regarding the role of EU representative pursuant to Article 27 GDPR and whether you need to appoint one, you may check our factsheet "EU Representative" or contact us at contact@idest.pro for further information.

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IV. WHAT RESOURCES SHOULD BE PROVIDED TO THE DPO

The DPO must have the resources necessary to be able to carry out his or her tasks. Depending on the nature of the processing operations and the activities and size of the organization, the following resources should be provided to the DPO:

- ✓ active support of the DPO's function by senior management;
- ✓ sufficient time for DPOs to fulfill their tasks;
- ✓ adequate support in terms of financial resources, infrastructure (premises, facilities, equipment) and staff where appropriate;
- ✓ official communication of the designation of the DPO to all staff, and to the authorities when this is required;
- ✓ access to other services within the organization so that DPOs can receive essential support, input or information from.

V. NEXT STEPS

You will find on the next page a checklist to assess your level or readiness in relation to the appointment of a DPO.

Do not hesitate to contact us if you have additional questions or need further assistance on this subject. We offer various services to assist companies which need or wish to appoint a DPO, ranging from dedicated support to your internal DPO to full external DPO services.

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VI. CHECKLIST:

You can use this checklist[3] to assess your level of compliance in respect of having a DPO.

	Appointing a DPO
☐	We know (i) if we are subject to GDPR and (ii) if so, whether the nature of our processing activities requires the appointment of a DPO
☐	If we must have one – or have decided to appoint one voluntarily – we selected an internal or external DPO based on their professional qualities and expert knowledge of data protection law and practices.
	Position of the DPO
☐	Our DPO reports directly to our highest level of management and is given the required independence to perform their tasks.
☐	We involve our DPO, in a timely manner, in all issues relating to the protection of personal data.
☐	Our DPO is sufficiently well resourced to be able to perform their tasks.
☐	We do not penalize the DPO for performing their duties.
☐	We ensure that any other tasks or duties we assign our DPO do not result in a conflict of interests with their role as a DPO.
	Tasks of the DPO
☐	Our DPO is tasked with monitoring compliance with data protection laws, our data protection policies, awareness-raising, training, and audits.
☐	We take account of our DPO's advice and the information the DPO provides on our data protection obligations.
☐	When carrying out a DPIA, we seek the advice of our DPO who also monitors the process.
☐	Our DPO acts as a contact point for the supervisory authorities. They cooperate with the supervisory authorities.
☐	When performing their tasks, our DPO has due regard to the risk associated with processing operations, and takes into account the nature, scope, context and purposes of processing.
	Accessibility of the DPO
☐	Our DPO is easily accessible as a point of contact for our employees, individuals, and the supervisory authorities.
☐	We have published the contact details of the DPO and communicated them to the relevant supervisory authorities if required.

[3] This checklist is based on a document prepared by the UK Information Commissioner Office (available here).