

LEGAL UPDATE

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GDPR: designating a DPO to successfully carry out your compliance project

With less than 30 days remaining before the upcoming implementation of the General Data Protection Regulation on May 25th, many companies have already initiated their compliance project or are currently considering it. The designation of a Data Protection Officer ("DPO") is one of the first issues they have to face.

As a key agent in the new data governance system, the DPO facilitates compliance with data protection regulations and allows companies to gain a competitive edge if the legal requirements governing his or her designation are met.

Is the designation of a DPO mandatory ?

The GDPR requires the designation of a DPO when a public entity processes data or when the core activities of an entity either consist of processing operations which require regular and systematic monitoring of data subjects on a large scale, or of large-scale processing of sensitive data. It is recommended to conduct an analysis to determine whether an entity has to designate a DPO by law, and to keep a record of said analysis to demonstrate that all the relevant conditions have been examined.

Nonetheless, the designation of a DPO is still recommended even when not mandatory and can be done on a voluntary basis. The DPO is the "conductor" of data protection compliance within his or her organization. He or she monitors and facilitates regulatory compliance by implementing accountability tools, informing and giving advice to his or her organization, cooperates with the relevant supervisory authority and acts as a point of contact.

How to choose one's DPO ?

The DPO has to be chosen on the basis of his or her professional qualities and, in particular the **knowledge of data protection law and practices** and ability to carry out his or her tasks.

Furthermore, the DPO has to be able to carry out his or her tasks with full independence. The DPO cannot receive instructions regarding the exercise of his or her mission and cannot occupy another position deemed incompatible. The GDPR authorizes the DPO to carry out other tasks or duties within an organization provided that this does not lead to a conflict of interests. The position of DPO cannot be occupied jointly with a senior management position (for example chief executive, chief operating officer, chief financial officer, chief medical officer, head of marketing, head of legal department, head of human resources or head of IT department). It is also incompatible with other lower positions within an organization if those positions involve the determination of goals and means of processing. This independence requirement limits the number of individuals eligible to occupy the position of DPO.

It is possible to externalize the function of DPO. The GDPR allows the use of a third-party service provider to occupy the function of DPO.

Given these numerous constraints stemming from the different criteria to take into account when designating a DPO, **many companies choose a law firm to occupy this function.**

Harlay Avocats, which has been awarded the seal of the French data protection authority (CNIL) for its compliance audit process, remains at your entire disposal should you wish to find out more about the requirements governing the designation of a DPO or on the performance of his or her mission.

For any information or requests, please contact us at contact@harlaylaw.com



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