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GDPR: The Data Protection Officer

Background

There is currently no legislative obligation on data controllers or data processors to appoint a data protection officer (the “**DPO**”) under the Irish data protection regime. However, under the General Data Protection Regulation (EU 2016/679) (“**GDPR**”), due to come into effect on 25 May next, certain organisations will be required to appoint a DPO to assist them in monitoring compliance with their obligations under the GDPR.

Is my organisation required to appoint a DPO?

The GDPR requires all public authorities to appoint a DPO. Private sector organisations (whether a data controller or a data processor) will be required to appoint a DPO where their core activity involves:

- (i) regular and systematic monitoring of individuals on a large scale; or
- (ii) large scale processing of special categories of personal data or data relating to criminal convictions and offences.

While the GDPR does not define what is meant by “core activities”, guidance is set out in the Article 29 Working Party Guidelines¹ (the “**Guidelines**”). The Guidelines provide that core

¹ Guidelines on Data Protection Officers (‘DPOs’) as last revised and adopted on 5 April 2017.

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activities can be considered as key operations necessary to achieve the data controller's or data processor's goals and also include activities where the processing of data forms an inextricable part of the organisation's core activities. The Guidelines also give helpful examples of what is meant by "regular" and "systematic" monitoring, noting that profiling of individuals for risk assessment purposes including credit scoring, fraud prevention and detection of money-laundering would constitute "systematic" monitoring of individuals.

The GDPR also allows Member States to enact national law which would require the appointment of a DPO in other cases. In this regard, the [General Scheme of Data Protection Bill](#) proposed by the Irish Government provides the Minister with powers to require the appointment of a DPO in certain other cases.

Even if my organisation is not in scope?

Organisations which are not subject to a mandatory requirement to appoint a DPO under GDPR may choose to do so on a voluntary basis in order to facilitate compliance with the provisions of the GDPR and to foster a data protection culture in the organisation. The same requirements under the GDPR will apply to a DPO appointed on a voluntary basis as those appointed on a mandatory basis. It is also noteworthy that the GDPR lists the factors that must be considered by a supervisory authority when determining what administrative fine it should impose for a breach of the GDPR, including the technical and organisational measures which have been implemented by the organisation. It is therefore likely that the supervisory authority will have regard to whether or not an organisation has appointed a DPO when determining the severity of an administrative fine.

What are the tasks of a DPO?

The GDPR specifies the minimum tasks which must be discharged by a DPO. These include (i) being responsible for informing the organisation and its employees of their obligations pursuant to the GDPR and other data protection legislation; (ii) monitoring compliance with the GDPR, internal data protection policies and any data protection impact assessment implemented by the organisation and (iii) acting as a point of contact and cooperating with the Data Protection Commission.

Although the DPO is tasked with monitoring compliance with the GDPR, it is important to note that compliance with the GDPR remains the responsibility of the data controller or processor and the DPO will not be held personally liable for a breach of the GDPR requirements by a controller or processor.

Who can be appointed as DPO?

While the GDPR requires that a DPO be selected on the basis of professional qualities and an expert knowledge of data protection law, it does not prescribe any mandatory qualifications or expertise which a DPO is required to have. The GDPR makes it clear that a DPO, whether an employee of the organisation or not, must be in a position to perform its duties and tasks in an independent manner. A group of undertakings can designate a single DPO provided that the DPO is easily accessible by each undertaking.

What's next?

Organisations will need to consider whether they are required to appoint a DPO under the GDPR. Unless it is obvious that an organisation is not required to appoint a DPO, the Guidelines recommend that all organisations, regardless of whether they appoint a DPO or not, should document the internal analysis carried out to determine whether or not they should make such an appointment.

Organisations which are required to appoint a DPO or choose to make such an appointment on a voluntary basis will need to begin planning on how best to recruit, train and resource the function adequately so that the DPO is given sufficient autonomy and resources to carry out its functions effectively. They will also need to provide details of the DPO to the Data Protection Commission.

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