

## Chartergates Fact Sheet

### **SUBJECT: DATA PROTECTION OFFICER**

#### *Do I need a Data Protection Officer (“DPO”)?*

The purpose of the DPO is to assist the Controller and Processor comply with all of the data protection requirements under the GDPR. However, under the GDPR, there are only three circumstances in which the appointment of a DPO is mandatory:

- 1) The processing is carried out by a public authority or body, except for courts acting in their judicial capacity;
- 2) 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
- 3) The core activities of the controller or the processor consist of processing on a large scale of special categories of data and personal data relating to criminal convictions.

The Working Party (tasked with putting some detail into the concepts of the GDPR) suggests that “core activities” relate to a company’s primary activities and do not relate to the processing of personal data as an ancillary activity. Therefore, any necessary support functions which the company carries out, such as paying employees, would be considered ancillary functions rather than core activity.

“Regular and systematic monitoring” refers to a company monitoring data subjects on an ongoing or recurring basis at particular intervals for a particular period. Furthermore, the Working Party suggests that the monitoring of data subjects should be pre-arranged, organised or methodical and carried out as part of a strategy.

The regular and systematic monitoring of data subject must be on a “large scale”. The Working Party recommends that the company consider the geographical extent, volume, duration and scope of personal data and data subjects when considering whether processing is large scale.

In light of the above circumstances, whether or not a DPO needs to be appointed depends on the nature of your business, the means by which personal data is processed and the nature of the personal data itself. If your business does not meet any of the above circumstances required by the GDPR then it is not a requirement of the GDPR to appoint a DPO.

Although the appointment of a DPO may not be mandatory, you may consider that having a DPO would better serve the needs of your business and ensure compliance with the GDPR. With that said, you can voluntarily decide to appoint a DPO for your business. It is important to note that should you appoint a DPO on a voluntary basis then the same requirements that apply to mandatory DPOs (set out below) will also apply to any voluntary DPO.

### *The role of the DPO:*

The DPO must have expert knowledge of data protection law and practices and the ability to fulfil at least the following tasks:

- ✓ to Inform and advise the controller or the processor and the employees of their data protection obligations;
- ✓ to monitor compliance with the GDPR, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations;
- ✓ Providing advice where requested as regards the data protection impact assessments (DPIAs) and monitoring compliance and performance.
- ✓ To cooperate with, and act as the contact point for, the supervisory authority on issues relating to processing operations and to consult on any other matter.

In addition to the tasks of the DPO, the GDPR also sets out certain requirements in relation to the position of the DPO whereby:

- ✓ the DPO must be involved, properly and in a timely manner, in all issues which relate to the protection of personal data;
- ✓ the DPO shall be provided resources necessary to carry out his or her tasks and access to personal data and processing operations, and to maintain his or her expert knowledge;
- ✓ the DPO shall report to the highest management level and shall not be dismissed or penalised by the controller or the processor for performing his or her tasks;
- ✓ the DPO must be contactable by anyone whose personal data is being processed;
- ✓ the DPO shall be bound by secrecy or confidentiality concerning the performance of his or her task; and
- ✓ the DPO shall only be able to fulfil other tasks and duties provided there is no conflict of interest with his or her duties as a DPO.

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