

Bonn, Bucharest, Dublin, Lisbon, Madrid, Milan, Paris, The Hague, Vienna, Warsaw

CEDPO considerations on EDPB Questionnaire on the designation and position of data protection officers

CEDPO provide its considerations for organisations that have been invited to complete a DPO questionnaire by their Data Protection Authority.

Disclaimer

This document is intended to assist organisations and their data protection officers when they are completing the EDPB's "Questionnaire on the designation and position of data protection officers". It is not legal advice and organisations should obtain their own legal advice where necessary.

GENERAL OBSERVATIONS

CEDPO welcomes the EDPB's focus on the role of the data protection officer. CEDPO represents DPOs across Europe and is well aware of the complex environment within which DPOs operate. This complexity is both within their own organisation and also with respect to compliance with the legislation and interaction with their Supervisory Authority. CEDPO hopes that the EDBP uses the results of the questionnaire to provide clear guidance to organisations. The guidance should focus on the role of the DPO, what resources to provide to DPOs and the EDPB's expectations of the governance structure that organisations must have in place with respect to data protection.

BACKGROUND

The General Data Protection Regulation (EU Regulation 2016/679) empowers the Supervisory Authorities ("SAs") to put in place measures for effective cooperation with one another. The SAs have established the Coordinated Enforcement Framework ("CEF") to provide a structure for coordinating recurring annual activities. There is one annual coordinated action, focussing on a pre-defined topic using the agreed upon methodology. The first coordinated activity looked at the use of cloud based services by the public sector, during 2022 with a [final report](#) in January 2023. The SA's identified the designation and position of data protection officers as the coordinated activity for 2023. This is included in the EDPB's [Work Programme for 2023-24](#).

ROLE AND POSITION OF DATA PROTECTION OFFICERS

The EDPB launched the [CEF on the role of data protection officers](#) on 15th March 2023. The first phase is to send a questionnaire to organisations asking about the position of the DPO within their organisation. The submitted questionnaires will be used to produce an aggregate EDPB report, generating deeper insight into the role and position of the DPO. In each country, the SA will use the results to determine further national supervision and enforcement action.

Each SA is sending the questionnaire to a sample of organisations in their country. The exact method of delivery and the guidance on completion are being set by the individual SAs. For instance,

- Naming of Organisation – some SAs are permitting organisations to complete the questionnaire anonymously (e.g. the Belgium SA) and some require the organisation to be named e.g. the Irish SA.
- Participation – some SAs have made completion of the questionnaire mandatory and others are permitting organisations to decide whether to participate, while others have said that there will be no consequences where an organisation decides not to participate.
- Questions asked – Most SAs are using a core and common set of questions (closed-ended questionnaire) and some are using the same set of questions but with open answers to be drafted and documented by the respondents and asking for additional materials to be submitted e.g. the French SA has asked for a copy of the organisation's record of processing activity and breach log.
- Type of procedure used – Most SAs present the questionnaire as a general survey, while others have chosen to conduct real controls that can lead to sanctions e.g. the French SA. Some SA's sent it without a deadline.

One may wonder whether these methodological differences between the SAs will not ultimately skew the aggregated results at the level of the EDPB's CEF; the answers to the questions will certainly not be the same on an anonymous/voluntary basis or on a non-anonymous/mandatory basis.

The EDPB has included links to the websites of some of the SAs who have posted materials on the questionnaire. Organisations should ensure that they have considered the materials for all countries where they have data processing operations and/or have been asked to

participate in the process. See the “For further information:” section at the bottom of the [EDPB page](#).

It is reasonable to assume that the SAs will use the results of the questionnaire in forming their enforcement actions within their own country. Organisations should use their responses questionnaire as an opportunity to review their current practices and identify where improvements can be made. Some of these are identified in the next section.

CONSIDERATIONS

Organisations should consider the following when completing the questionnaire:

1. **Who should complete the questionnaire?** Many SAs have directed the questionnaire to the DPO, but have also indicated that they have sent the questionnaire to the DPO as the appointed contact person under Art 39.1.(e). They have indicated that the questionnaire is aimed at the DPO's organisation as much as the DPO. Therefore we recommend that both the organisation and the DPO should be involved in completing it and both should sign off the responses. DPOs should not complete this without their organisation understanding the potential impact of responses given.
2. **What documentation should be retained to support the responses given?** Organisations and DPOs should keep records of how each answer was chosen and any supporting evidence existing at that time. For example, the DPO should have a copy of their own training records supporting the answer given.
3. **What responses should be given?** The questionnaire should be completed accurately and truthfully. Any potential shortcomings that are identified should be transferred to the organisation's risk register. The organisation should identify appropriate improvement plans to remediate any identified risks.
4. **Which questions require careful consideration?** Many of the questions are straightforward and fact based e.g. details about the organisation, the DPO, working hours, who the DPO reports to, the DPO's experience etc. Organisations should carefully read and consider the responses to the following questions:
 - a. **Which of the following tasks are committed to the DPO?** Some of the tasks listed are allocated to the DPO by the GDPR but some are optional for the organisation and the DPO to agree that they should be completed by the DPO. Where this has been done then there may need to be policies and processes in place to avoid potential conflicts of interest.
 - b. **Have additional tasks been committed to the data protection officer compared to those envisaged by the DPO?** Similar to the answer above, decision-making lies with the organisation and the DPO should be providing advice. However, in the operational business environment, these lines can get blurred.

- c. **Would you estimate the aforementioned resources to be sufficient in order to fulfil the tasks of the data protection officer?** Organisations must be able to support why the answer for this is “yes” with appropriate evidence.
- d. **If the data protection officer has other tasks or roles in addition to the tasks of the data protection officer, what are these tasks or roles?** Where the DPO has other roles, then the organisation must document how it manages the conflicts of interest that may arise.
- e. **How often is the data protection officer involved and/or consulted in handling and solving issues relating to the processing and protection of personal data in the organisation?** Article 38.1 requires that the DPO is involved, properly and in a timely manner, in all issues which relate to the protection of personal data. If another answer is the correct one then organisations must demonstrate how their policies and processes are ensuring compliance.

Similar considerations apply to the questions that follow on the data protection officer’s involvement in breaches, sufficient information on issues and the following of the DPO’s opinions and advice.
- f. **Is the data protection officer expected to report regularly to the highest management level of the organisation?** Organisations should put appropriate reporting mechanisms in place as documentary evidence of the DPO’s regular reporting to the highest level of management.

CONCLUSIONS

Organisations should complete the questionnaire after giving the questions careful reading and careful consideration of how their current practices match against them. Any practices that have diverged from the requirements of the GDPR and local legislation should be included in the organisation’s risk register and remediations identified and actioned. Both the highest level of management and the data protection officer should be involved in answering the questions, documenting the answers and signing off before submission.

RESOURCES

1. [Article 61](#) EU 2016/679 giving a legal basis for coordinated enforcement action
2. [EDPB Document on Coordinated Enforcement Action Framework under Regulation 2016/679](#)
3. [Report on the use of cloud-based services by public bodies](#), January 2023
4. [Launch of the CEF on the role and position of data protection officers](#), March 2023
5. [Article 29 Working Group – Guidelines on Data Protection Officers \(“DPOs”\) – wp243rev01](#), April 2017
6. [CEDPO Follow-up letter on the DPO Guidelines](#), February 2017

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