






**COMPARATIVE ANALYSIS OF DATA PROTECTION OFFICIALS
ROLE AND STATUS IN THE EU AND MORE - I
A CEDPO CONTRIBUTION**

<p align="center">Countries</p> <p>Data Protection Officer</p>	<p align="center">France</p> 	<p align="center">Germany</p> 	<p align="center">Sweden</p> 	<p align="center">The Netherlands</p> 	<p align="center">Luxembourg</p> 
<p>Title/name</p>	<p>Correspondant à la protection des données à caractère personnel (called « Correspondant Informatique et libertés » or CIL).</p>	<p>Beauftragter für Datenschutz (DSB) (Data Protection Official).</p>	<p>Personuppgiftsombudet (personal data representative).</p>	<p>Functionaris voor de gegevensbescherming (data protection officer).</p>	<p>Chargé de la protection des données.</p>
<p>Date of creation</p>	<p>D.P : 1.0 :2004</p>	<p>DPO 1.0: 1977 DPO 2.0: 2001 DPO 3.0: 2006 DPO 4.0: 2009</p>	<p>DP: 1.0: 1998</p>	<p>D.P 1.0: 2001</p>	<p>DP 1.0: 2002 DP 2.0: 2007</p>
<p>Number of DPO</p>	<p>2 219 DPO and 8 262 DC having appointed a DPO</p>	<p><i>Unknown as the notification to the Authority is not mandatory.</i></p>		<p>300</p>	<p>90 (76 individuals, 14 legal entities)</p>
<p>Professional associations</p>	<p>AFCDP : www.afcpd.net</p>	<p>Gesellschaft für Datenschutz und Datensicherung e.V (GDD) https://www.gdd.de/</p>		<p>Nederlands Genootschap van Functionarissen voor de Gegevensbescherming (NGFG) http://www.ngfg.nl/</p>	
<p>Legal sources/texts</p>	<p>- Law 2004-17 of August 6, 2004 which has amended the law n°78-17 of January 6, 1978 relative à</p>	<p>Bundesdatenschutzgesetz (BDSG)- In the version promulgated on 14 January 2003 (Federal Law Gazette I, p. 66),</p>	<p>Personuppgiftslag (Personal Data Act) (1998: 204) of April 29, 1998 –Sections 36 to 41.</p>	<p>Wet Bescherming Persoonsgegevens (WBP)-6 July 2000- Chapter 4 and chapter 9 section 2 .</p>	<p>Law of August 2, 2002 on the Protection of Persons with regard to Processing of Personal Data- as amended July 27, 2007- Articles 15 and 40.</p>

	l'Informatique, aux fichiers et aux libertés (article 22 III) - Decree n°2005-1309 of October 20, 2005(articles 42 and following).	last amended by Article 1 of the Act of 14 August 2009 (Federal Law Gazette I, p. 2814), in force from 1 September 2009.			Regulation Grand Ducal of November 27, 2004.
Mandatory / Optional	Optional	Mandatory - Public bodies: which process personal data by automated means (section 4f); - Private bodies: - if more than 9 persons are permanently employed in the automated processing of personal data (section 4f); - if at least 20 persons are employed for a non automated processing (section 4f); - when DCs carry out automated processing subject to a prior checking or commercially carry out automated processing of personal data for the purpose of transfer, transfer in anonymous form or for purposes of market or opinion research irrespective of the number of persons employed in automated processing.	Optional	Optional except for 2 organizations in the public sector as a result of the laws on education inspection and social service number.	Optional
Legal advantages	- Simplification of procedures : exemption of notification to the Authority, - except where a	- Simplification of procedures : the mandatory notifications are made directly to the DPO and not to the Authority	- Simplification of procedures: the DC is not required to notify the Authority, except where the processing is subject	- Simplification of procedures: exemption of notification to the Authority, except for data processing subject to prior investigation. - The DPA supervision is limited in	Simplification of procedures:- exemption of notification to the Authority, except for the data processing subject to prior investigation.

		transfer of personal data outside the EU is envisaged -except for data processing subject to an authorisation of the Authority.	-except when the DC commercially collects data for purposes of transfers, transfers in anonymous form or purposes of market and opinion research.	to preliminary examination.	practice to monitor whether or not the DPO functions properly. - Appointing a DPO will mean that the DPA will exercise restraint with regard to organisations in which the DPO functions properly. <i>The Dutch DPA (Authority) will retain its duties and powers in respect of organisations that have appointed DPOs. However, it will play a less prominent role in its supervision of organisations in which data protection officers are functioning well. The preparation of an annual report is an important indication of a DPO's successful performance, as is the appropriate internal and external distribution of the report***.</i>	
Role	General	- Ensures compliance with the requirements of Data Protection Law; - the scope of his mission can be restricted to one sector of activity (e.g. Human resources).	- Shall work towards ensuring compliance with the applicable data protection provisions in case of a doubt the DPO may consult the competent Authority (prior checking: shall consult the Authority) <i>-may seek advice of the DPA</i> <i>-can cover only one sector of activity except in companies where the appointment of a DPO is mandatory.</i> <i>According to the Federal Labour Court, the DPO may not supervise data processing of the works council.</i>	- Shall ensure that the DC processes personal data in a lawful and correct manner and in accordance with good practices and also points out any inadequacies. <i>- can cover only one sector of activity (e.g. HR)</i>	Shall supervise the processing of personal data in accordance with the provisions laid down in the Data Protection Act When there is a code of conduct, the supervision also covers this code.	Ensure compliance of data processing to the data protection rules. <i>Can cover only one sector of activity (e.g. HR).</i>
	Maintain a	Yes :	Yes. Access to the registry	Yes.	Yes:	Yes:

	Registry of data processing carried out by the DC	<ul style="list-style-type: none"> - must be done within three months from the date of the appointment; - anybody can access to the registry on demand. 	<p>is available to anybody on request.</p>	<p>The register shall contain at least the information that a notification would have contained</p> <ul style="list-style-type: none"> -The access to the registry is available to anybody on request; - is at the disposal of the Authority only on request 	<p><i>-if the notifications are done to the DPO; available to anybody on request free of charge.</i></p>	<ul style="list-style-type: none"> - has to be communicated to the Authority every 4 months
	Mandatory duties	<ul style="list-style-type: none"> - informs the DC of the violations of data protection rules - makes recommendations to the DC to ensure compliance of the data processing to Data Protection Law - receives requests and complaints and transmits the ones which are out of its mission to the DC - is consulted about any new data processing before launch 	<ul style="list-style-type: none"> - shall monitor the proper use of data processing programs to process personal data. For this purpose, the DPO shall be informed in good time of projects for the automated processing of personal data; - takes appropriate measures to familiarize persons employed in the processing of personal data with the Data protection provisions - shall be the contact person for data subjects (complaint handling) - shall carry out prior checking for automated data processing presenting special risks, in particular when sensitive data is processed or if the data processing is intended to assess the data subject's personality and abilities, performance or behaviour (profiling) -shall make the information about the automated data processing available to anyone (on request). 	<ul style="list-style-type: none"> - shall assist registered persons to obtain rectification when there is a reason to suspect that the personal data processed are incorrect or incomplete - <i>Is an intermediary between the DC and the authority (contact dedicated to DP within the Authority)</i> - <i>receives claims and complaints relating to data processing**.</i> 	<ul style="list-style-type: none"> - shall consult the DPA in case of a doubt related to his/her power to submit recommendations to the DC with a view to improving the protection of the data being processed. - <i>consulted concerning all new data processing</i> - <i>can make recommendations to the DC (the DC is not obliged to follow this recommendation)</i> - <i>can be an intermediary of communication between the DC and the Authority (each DPO has his own contact within the Authority)</i> - <i>receive notifications of data processing from the DC</i> -<i>receive the requests and claims relating to data processing</i> - <i>inform</i> - <i>develop the internal rules relating to data protection</i> - <i>provide advice on technologies and protection.</i> 	<ul style="list-style-type: none"> - supervises the compliance to Data Protection Law - informs the DC of the prior formalities to perform in order to ensure compliance.

			<ul style="list-style-type: none"> - provides appropriate involvement in security breach notification - examines technical and organisational measures used to carry out a data processing* - supervises employees in charge of a data processing* - verifies that prior information and data protection rights of data subjects are respected*. 			
	Activity reporting	Yes, prepares an annual report of his activities: <ul style="list-style-type: none"> - presented to the DC - made available to the Authority (p. 	<i>Advisable but not required by law :</i> -communicated to the head of the company	No	Yes; annual report on activities and findings (<i>it is advisable to send a copy to the Authority</i>)	
	Optional duties	- may assist in drafting prior notices, internal	- may assist in drafting guidelines, codes of conduct		<i>DPO may mediate between the DC and the Authority</i>	

		<i>codes of conduct ...</i>	<i>related to data protection *</i> - may assist in drafting forms & contracts appropriate for data protection...;*		<i>May submit recommendations to the DC with a view to improving the protection of the data processed. [May advise the DC; - may assist in the development of rules and standards; - may be a source of information for employees and relations of the DC; - may handle complaints and questions; - may guide the process of obtaining an overview of dataprocessings; - may advice on technology and datasecurit;]</i>	
Appointment	Qualifications	- Must have the qualifications required to perform his duties; - no certification; - skills appropriate to the size and the activity of the DC , skills in: computing and law, consulting and management, mediation, education, knowledge of the sector of activity of the DC.	- Must have specialized knowledge: - specific knowledge of data protection law*; - sufficient knowledge of technical standards*; - basic knowledge of economy* - specific knowledge of the structures and of the data processing operations* The necessary level of specialized knowledge is determined in light of the data processing carried out by the DC and the protection required by the personal data collected or used by the DC - must be reliable for the performance of the duties concerned -DC must allow and pay for adequate education of DPO.	- Required qualifications to exercise his mission (e.g. the DP must be able to familiarize himself to the data protection legislation et with the way the DC processes personal data)** - certification: no.	-Must possess adequate knowledge for performing his duties - required qualifications to perform his duties (e.g. knowledge of the organism, the data processing of the organism, the interests involved, a knowledge of data protection law, independence); - Must be sufficiently reliable. Reliability is reflected in the obligation to observe secrecy and the ability to balance against each other the various interests involved and to do so from a position of independence ***.	The applicant must be accredited by the Authority justifying a university degree in law, economics, business management, natural science or information technology. The applicant must provide a written application justifying of the required skills or that he has no conflict of interest with the DC The Authority checks, on the basis of the documents provided, the qualifications of the DPO and provides its opinion no later than 3 months from the receipt of the request (to become a DPO). Exception: lawyers, auditors, accountants or doctors are accredited without any need of accreditation by the Authority. DPO must maintain and prove to

						the DPO once a year that he has taken measures to perform his knowledge (Règlement Grand Ducal)
Internal / external / joint	<ul style="list-style-type: none"> - <u>internal</u> : yes - <u>external</u> : yes, except when more than 50 persons are in charge or have a direct access to the processing or categories of automatic processing for which a DPO is appointed (this limitation does not apply when the DC: <ul style="list-style-type: none"> - is a company which controls/ is controlled by other companies (the DPO can be an employee of the DC or of one of the controlled companies, - is a member of a GIE, the DPO can be an employee of one of the GIE members, - is a member of a professional body: the DPO can be a member of this professional body). - <u>joint</u> : yes - <u>Lawyer</u> : yes - <u>Legal entity</u> : No, an individual must be appointed within the entity. 	<ul style="list-style-type: none"> - <u>internal</u> : yes - <u>external</u>: yes for public and private bodies. For Public bodies: with the consent of their supervisory authority, they may appoint an employee from another public body as their DPO. <ul style="list-style-type: none"> - <u>lawyer</u>: possible. - <u>joint</u>: <i>Business groups :DPO can be responsible for affiliates as well but generally needs local assistants</i> Public bodies: one DPO may be appointed for several areas where the structure of the public body so requires. * 	<ul style="list-style-type: none"> - <u>internal</u>: yes - <u>external</u>: yes - <u>joint</u>: yes - <u>lawyer</u>: yes <p><i>-legal entity: No, DPO must be an individual</i></p>	<ul style="list-style-type: none"> - <u>internal</u>: yes. - <u>joint</u> : yes - <u>external</u>: no - <u>legal entity</u>: no. <p><i>Must be an individual. ***</i></p>	<ul style="list-style-type: none"> - <u>internal</u>: yes (since 2007 the DPO can be an employee of the DC) - <u>external</u>: yes (initially (since 2002) DPO was only external) - <u>joint</u>: -yes <p><u>Legal entity</u>: this legal entity must internally appoint a person who has the qualities required by the law.</p>	
Formalities	- notification to the staff representative which	- notification to the Authority: not required	- the appointment of the DPO shall be notified to	-notification to the Authority. The appointment is effective only	- notification to the Authority.	

		<p>has competence (works council or elected representatives of employees);</p> <ul style="list-style-type: none"> - then notification to the Authority. <p>The appointment is effective after a delay of one month from the receipt of the notification by the Authority.</p>	<ul style="list-style-type: none"> - <i>notification to staff representatives: not needed*</i> - the appointment must be in writing <p>Private bodies must appoint a DPO within 1 month of commencing their activities.</p>	<p>the Authority</p> <ul style="list-style-type: none"> - it is mandatory to inform the Authority of the appointment to benefit from a relief of notifications - <i>notification to staff representatives is not needed.</i> 	<p>after the DC has notified the Authority. The Authority shall maintain an up to date list of registered DPO.</p>	<p>If the Authority refuses the appointment of the DPO, the DC has three days to appoint another.</p> <p><i>-notification to the Works council not mandatory.</i></p>
Work conditions	Independence	<p>Yes:</p> <ul style="list-style-type: none"> - no instruction from the DC - no conflict of interest : DPO cannot be the DC or his legal representative <i>and the DPO can not exercise any other function which would create a conflict of interest with his DPO mission.</i> 	<p>Yes:</p> <ul style="list-style-type: none"> -no instructions from the DC - directly subordinate to the head of the public or private body - DPOs shall be free to use their specialized knowledge in the area of data protection - DPOs must not face any disadvantage for performing their duties - <i>conflicts of interest: the DPO cannot be the DC, the manager of the IT or RH departments. The DPO can work on information security sector or legal issues.*</i> 	<p>Yes:</p> <ul style="list-style-type: none"> - <i>no instruction from the DC</i> - <i>the DPO cannot be the DC nor its legal representative.</i> 	<p>Yes:</p> <ul style="list-style-type: none"> - may not receive any instructions from the DC - shall sustain no disadvantage as a consequence of performing his duties. 	<p>Yes:</p> <ul style="list-style-type: none"> - no conflict of interest .
	Status	<p><i>DPO is not a protected employee according to Labour law but:</i></p> <ul style="list-style-type: none"> - he can not be sanctioned by the employer for the mere performance of his 	<p>DPO is a protected employee.</p>	<p><i>DPO is NOT a protected employee</i> but cannot be sanctioned for having denounced the DC to the Authority (Law relative to the protection of employment).</p>	<p><i>DPO is a protected employee: DPO enjoys the same protection against dismissal as that offered to members of a works council. As a result, his employment cannot be terminated without the prior consent of the district court. ***</i></p>	<p><i>DPO is NOT a protected employee</i> but cannot be sanctioned for having performed his duties.</p>

		<p>mission</p> <ul style="list-style-type: none"> - in case of dismissal, the DC must consult the Authority and provide the Authority with the reason for dismissal to enable the Authority to provide an opinion. The DC must also inform the DPO that the DPO can also present his arguments to the Authority and then the DC must wait for the Authority DPA before the dismissal is effective. - He can report to the Authority any difficulty faced in the performance of his mission. 				
	Means	<p>The DC must provide the DPO with the useful information to produce and update the registry of processing.</p> <p>The DPO must be consulted on data processing projects.</p> <p><i>The DC must define with the DPO the trainings needed by the DPO so that the DPO can have the appropriate skills to exercise his mission.</i></p>	<p>The DC shall provide advanced training measures and shall assume the expense of such measures.</p> <p>Public and private bodies shall support DPOs in performing their duties and shall provide assistants, premises, furnishings, equipment and other resources as needed to perform these duties</p> <p><i>The DPO has the right to ask for any information and can investigate on any</i></p>		<p>The DC shall give the DPO the opportunity to perform his duties properly.</p> <p>The DC shall make sure that DPO has the authority to perform its duties. The investigative power of the DPO must be equivalent to what is regulated by public law for supervisors provided for in the General Administrative Regulations Act.</p> <p><i>The DPO has the authority to enter various areas, investigate cases and request information and access to information ***.</i></p>	<p>The DPO has :</p> <ul style="list-style-type: none"> -an investigation power in order to ensure the supervision of the data processing compliance to the Data Protection Act; - a right to be informed and to inform the DC of the measures to take to ensure compliance with the data protection rules; - must be provided by the DC with the time necessary to ensure its duties

			<i>document or information*.</i>			
	Availability					Must be provided by the DC with the time necessary to ensure its duties
Relations with the Authority	Notification of appointment	Yes. Notification by mail or via the Website of the Authority. The content of the notification is defined in the Decree of 2005.	No.	Yes. <i>The Authority shall keep the DPO register updated in its annual report.</i>	Yes. The Authority must maintain up to date the registry of DPOs.	Yes. The identity of the DPO must be notified to the Authority.
	Reporting to the Authority	The DPO can report to the Authority the difficulties faced in the performance of his duties subject that he had previously informed the DC of these difficulties.	In case of a doubt during the prior checking of a sensitive data processing, DPO may consult the competent Authority or the Federal Commissioner for Data protection and Freedom of Information (in case of a sensitive data processing carried out by a postal or telecommunication company). The DPO may consult the Authority in case of a doubt concerning the lawfulness of a data processing.	Shall notify to the Authority when the DPO has reasons to suspect that the DC contravenes the provisions applicable for processing personal data and if rectification is not implemented as soon as is practicable after being pointing out. Shall consult the Authority in the event of a doubt about how the rules applicable to data processing shall be applied.	The DPO is not intended to be an informant nor a whistleblower.	Shall contact the Authority in case of doubt concerning the compliance of a data processing.
	Questions to the DPO by the Authority	Yes The Authority can ask for information to the DPO at any moment.	Yes <i>The Authority can ask for information to the head of a company which in general asks the DPO to take in charge this request*.</i>	Yes <i>The Authority can ask information to the DPO.-</i>	Yes <i>The Authority can ask questions to the DPO. But the DPO may not have to respond. He/she responds in his (optional) role of intermediary with between the DC and the Authority.</i>	Yes
Termination / Resignation	At the request of the Authority	Yes (in case of a breach of his duties).	Yes (for DPO of private bodies).	No-	--	Yes (if the DPO does not have the qualities required – or if the DPO has a conflict of interest). Must be replaced within 3 days

						from the objection of the Authority.
	By the DC	<p>Yes:</p> <ul style="list-style-type: none"> - in case of a failure in the performance of the DPO's duties: after having requested the opinion of the Authority by a letter explaining the grievances against the DPO and obtained its opinion (The Authority has one month renewable once, to provide its opinion and the dismissal cannot be pronounced before the end of this time limits) - for any other reason: after notification to the Authority (stating the reasons of the discharge). 	<p>Yes.</p> <p>However, the DPO can be terminated <i>only for important reasons</i>. After the appointment as DPO has been revoked, employment may not be terminated for a year following the end of appointment, unless the DC has just cause to terminate without notice.</p>	<p>Yes.</p> <p>The termination must be notified to the Authority.</p>	<p>Yes.</p> <p>There is no obligation to notify the Authority but it is useful for the Authority to maintain an up-to-date register of DPOs.</p> <p>The termination of the DPOs involves:</p> <ul style="list-style-type: none"> - the prior consent of the district court; - a prior notification to the Authority. 	<p>Yes.</p> <p><i>In the case of a violation of the Law</i></p> <p>Must be replaced within one month if the DC still wants to have a DPO.</p>
	At the DPO initiative	<p>Yes</p> <p>The DC must notify the DPO's resignation to the Authority (stating the reasons of the resignation).</p>	<p>Yes</p> <p>- <i>if DC has agreed.</i></p>	<p>Yes</p> <p>- The termination must be notified to the supervisory authority.</p>	<p>Yes.</p>	<p>Yes</p> <p>Must be replaced within one month if the DC still wants to have a DPO.</p>

<p>Liability</p>	<p>May not be sanctioned as a result of performing his duties.</p> <p>Can be not liable for the violations of the law by the DC.</p> <p><i>Bound to maintain secrecy.</i></p> <p><i>Possibility of criminal liability or liability in tort.</i></p>	<p>May not be penalized for performing his duties.</p> <p>-Bound to maintain secrecy concerning the identity of data subjects and the circumstances enabling data subjects to be identified unless he is released from this obligation by the data subject.</p> <p>Where in the course of their activities DPOs become aware of data for which the head of a public or private body or a person employed by such body has the right to refuse to give evidence, this right shall also apply to DPOs and their assistants. Where the right of DPOs to refuse to give evidence applies, their files and other documents shall not be subject to seizure.</p> <p><i>Cannot be liable in case of a violation of the law except in the case of an intentional violation or severe negligence*.</i></p> <p><i>Cannot be considered liable in the cases where he has informed the head of the company of serious violations et when the head of the company has ignored this information*.</i></p>	<p><i>Bound to maintain secrecy.</i></p> <p><i>Cannot be liable of a violation of the Law committed by the DC**.</i></p>	<p>Bound to maintain secrecy. DPO has to treat as confidential any information disclosed to him in connection with a complaint or request but data subjects, unless the data subjects have given their consent.</p> <p>Shall sustain no disadvantage as a consequence of performing his duties.</p>	<p>Can not be sanctioned for having performed his duties.</p> <p>Bound to secrecy.</p> <p><i>Can be sanctioned for having not performed his duties if a data processing carried out by the DC is not compliant with data protection law (Objection of the Authority to the continuance of the DPO).</i></p>
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Glossary:

Authority: Supervisory Authority

DPO: data protection official

DC: data controller

Italics: information which does not result directly from the law but from an interpretation of the law.

Credits

A first version of this document was drafted in French by Pascale Gelly, Avocat, with the assistance of Elisabeth Quillatre for AFCDP's annual event in 2009. It has since then been drafted in English and updated by Pascale Gelly, Board member of AFCDP (French association of DPOs) in charge of International Affairs, with the assistance of Caroline Doulcet for CEDPO in 2011.

CEDPO thanks for kindly contributing to the review of this document :

- Patricia Jonason, University of Södertörns Högskola (Stockholm) for Sweden ;
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- Gérard Lommel, President of the CNPD (Supervisory Authority of Luxembourg) for Luxembourg;
- Jan de Zeeuz, Chairman of NGFG, the Dutch Association of Data Protection Officers

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Bibliography

Texts of Law

Websites of Supervisory Authorities:

- France: page of the Website dedicated to DPO: <http://www.cnil.fr/la-cnil/nos-relais/correspondants/>
- Germany: http://www.bfdi.bund.de/EN/DataProtectionActs/DataProtectionActs_node.html.
- Sweden: <http://www.datainspektionen.se/in-english/legislation/the-personal-data-act/>; <http://www.regeringen.se/content/1/c6/07/43/63/0ea2c0eb.pdf>
- The Netherlands: http://www.dutchdpa.nl/Pages/en_ind_wetten_wbp.aspx
- Luxembourg: <http://www.cnpd.public.lu/fr/legislation/droit-lux/index.html>



Other

* Germany: "Improving self regulation through (law based) Corporate Data Protection Officials"-Report by Christoph Klug, published in Privacy Laws & Business International Newsletter, June 2002 issue n° 6 (revised version at www.gdd.de).

**Sweden: Report of comparison of laws relating to the DPO ("Etude de droit comparé sur les correspondants à la protection des données" de la CNIL) <http://www.cnil.fr/en-savoir-plus/fiches-pratiques/fiche/article/etude-de-droit-compare-sur-les-correspondants-a-la-protection-des-donnees/>

*** Netherlands: Website of the Dutch Data protection Authority: http://www.dutchdpa.nl/Pages/en_inf_contr_Data_Prot_Officer.aspx#6

**COMPARATIVE ANALYSIS OF DATA PROTECTION OFFICIALS
ROLE AND STATUS IN THE EU AND MORE - II
A CEDPO CONTRIBUTION**

Countries	Belgium 	Lithuania	Latvia 
Data Protection Officer	Belgium	Lithuania	Latvia
Title/name	Préposé à la protection des données - Aangestelde voor gegevensbescherming.	Person or unit responsible for data protection.	Personas datu aizsardzības speciālista.
Date of creation	<p>Data Protection Act 1992: no general provisions directly related to a DPO. A DPO can only be appointed by DCs if this is determined by the King.</p> <p>DPO: 1992. DPO created only in the context of the European Center of Missing and Sexually Exploited Children.</p> <p>DPO: 2002. DPO created in the context of a Federal Knowledge Center for Health Care.</p> <p>DPO: 2002. DPO created in the context of a Central Database for School Careers.</p> <p>DPO: 2007. DPO created in the context of the Cross Road bank of the Social Security.</p> <p>DPO: 2010. DPO created in the context of Intelligence and Security Services (including security of the State).</p>	DPO: 2009	<p>DPO 0.1: 2007</p> <p>DPO 0.2: 2009</p> <p>DPO 0.3 2010</p>

	<p>DPO: 2010. DPO created in the context of the Cross Road Bank for Vehicles.</p> <p>DPO: 2011. DPO created in the context of the Cross Road Bank for Driver's Licences.</p>		
Number of DPO	This information is not available.	<i>None.</i>	2222 licences registered in State data protection inspectorate.
Professional associations	This information is not available.	<i>None.</i>	No.
Legal sources/texts	<p>The Law of December 8, 1992 (version 1/08/2007) provides provisions relating to the possibility for the King to determine that data controllers have to appoint a DPO (article 17bis). At the moment, such appointment is only explicitly mentioned in the context of the European Center of Missing and Sexually Exploited Children (article 3, §6).</p> <p>Art. 6 of the Royal Decree of July 7, 2002 : A DPO must be appointed in the context of a central Database for School Careers. Employees of the department of Education have access to and have permission to use the identification number of persons enrolled in Register of State.</p> <p>Art. 274 of the Law of December 22, 2002: The Knowledge Center for Health care must appoint a DPO.</p> <p>Art. 38, §5 of the Law of March 1, 2007 concerning diverse dispositions (in dispositions related to the data base banque-carrefour for social security).</p> <p>Art. 28 of the Law of May 19, 2010 concerning the data base banque-carrefour for vehicles: each relevant management service in charge of the abovementioned database must appoint a DPO.</p>	Law amending the law on legal protection of personal data of June 11, 1996 in its version of January 1 st , 2009.	Personal Data protection Law amended on 1.03.2007 and 12 June 2009 and 06.05.2010.

		<p>Art. 4, §1 of the Royal Decree of October 12, 2010 concerning Intelligence and Security Services: The relevant Minister must appoint a DPO for each intelligence and security service.</p> <p>Art. 22 §1 of the Law of April 14, 2011 concerning Diverse Provisions (in dispositions related to mobility): each relevant federal management service in charge of the national database (i.e. a database gathering information relating to driver's licenses) must appoint a DPO.</p>		
Mandatory / Optional		<p>Mandatory for the European Center for Missing and Sexually Exploited children.</p> <p>Mandatory for central Database for School Careers.</p> <p>Mandatory for Cross Road Bank of the Social Security.</p> <p>Mandatory for the Knowledge Center for Health Care.</p> <p>Mandatory for Cross Road Bank for Vehicles.</p> <p>Mandatory for Intelligence and Security Services.</p> <p>Mandatory for the national Cross Road Bank on Drivers' Licences.</p>	Optional.	Optional.
Legal advantages		N/A	Simplification of procedures: no notification to the Authority for data processing not subject to a prior checking by the Authority (State Data Protection Inspectorate).	Exemption of procedures: no notification to the Authority.
Role	General	The DPO has to ensure the compliance of data processing to the Belgium Data Protection Act and its implementing measures.	The DPO supervises as whether personal data is processed in compliance with the provisions of Data protection legislation.	The DPO organizes controls and supervises the compliance of personal data processing carried out by the data controller with data protection law.
	Maintain a registry of	No information available.	Yes - Make public the processing of personal data	Yes. Register available to data subject on request

	<p>processing carried out by DC</p>		<p>actions carried out by the data controller.</p>	<p>and to the Authority free of charge.</p>
	<p>Mandatory duties</p>	<p>For Database in context of the Intelligence and Security Services:</p> <ul style="list-style-type: none"> - observing compliance with the law for each request of data; - taking all necessary measures to ensure safety of registered information; - providing advice to its director; - executing other tasks entrusted by its director. <p>Database of Knowledge Center for Health Care:</p> <ul style="list-style-type: none"> - advising, documenting, and controlling tasks to ensure compliance with the Belgian data protection law. <p>For Central Database for School Careers:</p> <ul style="list-style-type: none"> - creating and implementing a technical security plan to secure the integrity of the hardware and the files, and take measures to secure the personal data against loss, destruction, forging... ; - controlling access through login and passwords ; - encrypting incoming and outgoing data transfers; and - ensuring proportionality of the data base and deletion of data which are no longer necessary. 	<p>DPO:</p> <ul style="list-style-type: none"> - initiates the preparation of the notifications to the Authority of data processing subject to an authorization - monitors the processing of personal data carried out by the data controller's employees - presents proposals findings to the data controller regarding establishment of data protection and data processing measures and supervises implementation and use of these measures - undertakes measures to eliminate any violations in the processing of personal data without delay - instructs employees authorised to process personal data on the provisions of the data protection law and other rules on personal data protection - initiates the preparation of applications to the Authority of the inquiries regarding processing and protection of personal data - assists the data subjects in exercising their rights - notifies the Authority in writing upon finding that the DC processes personal data violating the legal provisions and refuses to rectify these violations. 	<p>Annual report to the Authority.</p>

	Activity reporting	The European Center for Missing and Sexually Exploited Children must report to the Authority how the data processing authorized by the Authority are carried out. The DPO in the context of Intelligence and Security Services must report to its director.	<i>None</i>	Activity report submitted to the data controller annually.
	Optional duties	<i>None</i>	<i>None</i>	<i>No data</i>
Appointment	Qualifications	DPO of the European Center for Missing and Sexually Exploited Children: Management and data protection knowledge. No further specifications.	No qualification requirements.	A natural person can be appointed as DPO if she/he has higher education in jurisprudence, information technology or similar field and has been trained according to the order specified by the Cabinet of Ministers.
	Internal / external / joint	- <u>internal</u> : Yes: Intelligence and Security Services). Possible: Crossroad Banks for Driver's Licences, Vehicles and Social Security; Knowledge Center for Health Care and Central Database for School Careers. - <u>external</u> : Not specified by law. - <u>joint</u> : No. - <u>Avocat</u> : No. - <u>Legal entity</u> : Not specified by law.	- <u>internal</u> : possible - <u>external</u> : possible - <u>legal entity</u> : possible The DPO can be a person or a unit responsible for data protection.	- <u>internal</u> : no - <u>external</u> : yes - <u>joint</u> : no - <u>lawyer</u> : possible - <u>legal entity</u> : yes, by authorized natural person. Cannot be a processor.
	Formalities	DPO for Crossroad Bank for Drivers' Licences: Notification of the identity of the DPO to the Authority and to the relevant federal management service ("service de gestion"). DPO in Intelligence and Security Services: DPO appointed by relevant Minister after recommendation of the relevant director of the intelligence or security service. DPO for the Crossroad Bank for Vehicles: Notification of the identity of the DPO to sectoral committee and to the management service (s).	Notification to the Authority	Yes - The DC shall register the DPO with the Authority. The Authority may postpone the registration if all required information has not been provided to the Authority. The Authority takes the decision on the registration of the DPO within 15 days after all the required information has been provided. The Authority does not register the DPO if he/she does not meet the requirements of the law or if the

		DPO for the Crossroad Bank for Social Security: Notification of the identity of the DPO to Department of Social Security of the Sectoral Committee of Social Security and Health.		DC has sent an application to the Authority in order to exclude the DPO from the DPOs register; - In the period of one month after the registration of DPO the DC has to submit an application for the exclusion of the Personal data processing from the register of personal data processings.
Work conditions	Independence	Article 17bis of the Law of December 8, 1992: the DPO exercises its mission with independence. Article 3, §6 of the Law of December 8, 1992: the DPO cannot be dismissed nor replaced because of the execution of his mission.	Yes. The DC must provide the DPOs with the conditions to perform their functions independently.	<i>No data.</i>
	Status	There is no legal provision about employee protection in the data protection law. However, the DPO of the European Center for Missing and Sexually Exploited children cannot be dismissed nor replaced for having performed his mission (article 3,§6 of the Law of December 8, 1992).	Not a protected employee.	Not a protected employee.
	Means	This information is not available.	The DC must provide the DPO with complete information about the planned data processing and the intended use of automatic means of data processing and set a reasonable term to present an opinion on the intended personal data processing.	The DC grants the necessary tools for the DPO, provides the necessary information and foresees the time within the working hours when the officer could perform also the duties of DPO.
	Availability	<i>No data.</i>	<i>No data.</i>	<i>No data.</i>
Relations with the Authority	Notification of appointment	DPO for the Crossroad Bank for drivers' licences : Notification of the identity of the DPO to the Authority (and to the relevant federal management service).	Yes The DC must notify the Authority of appointment of the DPO for data protection within 30 calendar days.	Yes. The Authority maintains a register of DPOs.
	Reporting to the Authority	The European Center for Missing and Sexually Exploited Children must report to the Authority (" <i>Commission de la protection de la vie privée</i> ") how the data processing authorized by the Authority are carried out.	DPO notifies the Authority in writing upon finding that the DC processes personal data violating the provisions of this Law and other legal acts on data protection and uses to rectify these violations.	<i>No data.</i>

		DPO for the Crossroad Bank for drivers' licences: DPO will report to the Authority in case of abuse.		
	Questions to the DPO by the Authority	This information is not available.	<i>No data.</i>	<i>No data.</i>
Termination / Resignation	At the request of the Authority	There is no termination or resignation provision in the relevant rules on data protection.	No, but if the DPO does not perform its duties as required by law the DC is obliged to notify its data processing to the Authority.	Yes. The Authority can exclude the DPO from the register if: <ul style="list-style-type: none"> - the DC has requested the exclusion of the DPO from the register; - if in the period of 1 month after the registration of DPO the DC has not submitted an application for the exclusion of the personal data processing from the register of personal data processing; - in case of violations of the law concerning personal data processing that is in the scope competence of the DPO.
	By the DC	There is no provision in the relevant rules on data protection.	Yes. The DC must notify the Authority of withdrawal of the DPO for data protection within 30 calendar days.	Yes. - the DC can send to the Authority an application for exclusion of the DPO from the register .
	At the DPO initiative	There is no provision in the relevant rules on data protection.	Yes, <i>it is like resignation/termination of civil or labour contract.</i>	<i>No data.</i>
Liability		The DPO has an obligation of secrecy (Law of December 8, 1992, Article 3, §6 in the context of the European Center for Missing and Sexually Exploited Children). Any breach of the obligation of secrecy is punishable with imprisonment of 8 days to 6 months and with a fine of 2,5€ to 12€.	The DPO can not be sanctioned (administrative and criminal liability) for having performed his duties: can not be held responsible of a violation of the law by the DC, but is liable before the DC (civil or labour liability).	DPO has to retain and not disclose without the legal ground the personal data also after the termination of the employment relationship or resigning from the office.

Glossary:

Authority: Supervisory Authority
DPO: data protection official

DC: data controller

Italics: information which does not result directly from the law but from an interpretation of the law.

Credits

A first version of this document was initially drafted in French by Pascale Gelly, Board member of AFCDP in charge of International Affairs (Association of French DPO) with the assistance of Elisabeth Quillatre for AFCDP's annual event in 2009. It has then been drafted in English and updated by Pascale Gelly with the assistance of Caroline Doulcet for CEDPO in 2011.

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Lithuania: <http://www.ada.lt/index.php?action=page&lng=en&id=10060>

Latvia: <http://www.dvi.gov.lv/eng/legislation/pdp/>

<http://www.dvi.gov.lv/eng/pdp/files/Guidelines%20for%20the%20Notification%20of%20Personal%20Data%20Processing.pdf>

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**COMPARATIVE ANALYSIS OF DATA PROTECTION OFFICIALS
ROLE AND STATUS IN THE EU AND MORE - III
A CEDPO CONTRIBUTION**

Countries	 Switzerland	 Malta	 Estonia	 Hungary	 Slovakia
Data Protection Officer					
Title/name	Conseiller à la protection des données (Datenschutzberater/responsabile della protezione dei dati).	Rapprezentant ta' data personali Data protection representative.	Isikuandmete kaitse eest vastutav isik (Person responsible for protection of personal data).	Belső adatvédelmi felelős (internal data protection officer).	Dohľad nad ochranou osobných údajov (personal data protection official).
Date of creation	DP 1.0 :2009		DPO 1.0: 2007	DPO 1.0: 2004 DPO 2.0: 2007	DP 1.0.: 2002
Number of DPO			Public register of DPO-s available at: https://www.aki.ee/diatregister/RegistriDokument/Otsi?o=False		
Professional associations	Verein Unternehmens-Datenschutz VUD http://www.vud.ch/				
Legal sources/texts	Articles 11a section 5 lit.E, and 23, 28 of the Federal Law of June 19,1992 amended (LPD) - Articles 12a and 2b of the Ordinance (Ordonnance) of June 14, 1993 amended (OLPD).	Sections 30 to 35 of the DP Act Cap 440, ACT XXVI of 2001 as amended by ACT XXXI of 2002.	Sections 27, 30, and 31 of Personal Data Protection Act (RT I 2007, 24, 127) (Isikuandmete kaitse seadus) Entry into force on 01.01.2008. Unofficial translation (of RT I 2007, 24, 127 version) available at: http://www.legaltext.ee/et/andmebaas/paaraframe.asp?loc=text&lk=et&sk=en&dok=XXXX041.htm&query=isikuandmete&tyyp=X&ptyyp=RT&pg=1&fr=no .	Articles 28 and 31A of the Act LXIII of 1992 (1992. évi LXIII. törvény a személyes adatok védelméről és a közérdekű adatok nyilvánosságáról) amended.	Sections 19, 25, 29 and 30 of the DP Act n°428/2002 amended.

Mandatory / Optional		<ul style="list-style-type: none"> - Optional for private bodies and public bodies; - Mandatory for federal bodies but with less strict duties (<i>does not control the compliance with the rules et does not maintain an inventory of databases</i>). 	Optional.	Optional.	Mandatory: <ul style="list-style-type: none"> - in case of processing of data files of national authorities or of national labour or criminal data files - in financial institutions, - in telecommunications services providers, - in public utility services providers. 	Mandatory: <ul style="list-style-type: none"> - if more than 5 employees (if the DC fails to do so, a fine from SKK 30.000 to 3.000.000 can be imposed) Optional <ul style="list-style-type: none"> - if less than 6 employees
Legal advantages		Simplification of procedures: the DC does not have to notify to the Authority. <i>For data transfers outside E.U based on model contract clauses or BCRs, a mere notification to the Authority.</i>	Simplification of procedures: exemption from mandatory registration except when Authority prior checking is required (sensitivity).	Simplification of procedures: exemption from mandatory registration of processing of sensitive data with the Authority.		Simplification of procedures: exemption from mandatory notification except for : <ul style="list-style-type: none"> -sensitive data processing; - data transfers.
Role	General	DPO: <ul style="list-style-type: none"> - supervises data processing - provides advise on corrective actions in case of a violation of data protection rules - <i>should concern all the data processing carried by the DC except if the Authority agrees that the DPO supervises only data processing of a particular sector of activity.</i> 	Ensures that personal data is processed in a correct and lawful manner and in accordance with good practice.	Monitors the compliance of the DC for processing personal data in accordance with Personal Data Protection Act and other legislations.		Supervises observation of statutory provision in the processing of personal data.
	Maint	Yes :	Yes:		Yes	Yes:

	ain a registry of processing carried out by DC	<ul style="list-style-type: none"> - available to the Authority - available to the data subjects on request 	<ul style="list-style-type: none"> - available to any person on request. 			<ul style="list-style-type: none"> - available to anybody on request.
	Mandatory duties	<p><i>Generally, the DPO:</i></p> <ul style="list-style-type: none"> - <i>takes the measures necessary to perform his duties</i> - <i>provides advise and inform the DC and its staff by providing guidelines</i> - <i>provides his opinion on projects relating to data protection.</i> <p>For federal bodies, the DPO:</p> <ul style="list-style-type: none"> - provides advise to organisms responsible and users - ensures sensitization and training to staff - participate to the implementation of the data protection measures necessary - is an intermediary of communication between the DC and the Authority. 	<p>Duty to report inadequacies to DC.</p> <p>Assistance to data subjects in the exercise of their rights.</p>	<p>Monitors the processing of personal data carried out by DC.</p> <p>Informs DC of violations and if the DC does not immediately take measures to remediate the violation, then DPO shall immediately inform the Authority of the violation.</p> <p>If a DPO is in doubt as to which requirements are applicable to the processing of personal data or which security measures must be applied regarding the processing of personal data, then the DPO must obtain the opinion of the Authority in such matter before the processing of personal data has begun.</p>	<p>Contributes to or assist in making decisions related to data processing and to the enforcement of the rights of data subjects.</p> <p>Monitors compliance with data protection requirements.</p> <p>Investigates reports submitted to him, and call on the DC or data processor to discontinue any unlawful data processing observed by him.</p> <p>Draws up the internal data protection and data security rules.</p> <p>Ensures the training of the staff in data protection.</p>	<p>Assesses whether any danger of violation of the rights and freedoms of data subjects arises from their processing before commencement of the processing.</p> <p>Notifies the DC in writing (otherwise a fine up to SKK 100.000 can be imposed) without undue delay of any determination of violation of the rights and freedoms of data subjects before commencement of the processing or of determination of a breach of statutory provisions in the course of the processing of personal data.</p> <p>Supervises the fulfilment of the DC's basic</p>

						<p>obligations related to data protection</p> <p>Advises data subjects on their rights and obligations.</p> <p>Supervises the implementation of technical, organisational and personal measures (including the elaboration of Security Project or documents related to data protection).</p> <p>Supervises the selection of the processor (including draft of a written contract or written authorization for the processor</p> <p>Supervises the transborder personal data flow.</p> <p>Submits filing systems for a special registration and announcement of alterations and deregistration of filing systems from the special registration.</p> <p>Ensures the</p>
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						processing of requests of data subjects related to the application of their rights.
	Activity reporting	<p><i>Yes.</i></p> <p><i>DPO must regularly make a reporting of its activities to the DC.</i></p>			-	
	Optional duties					
Appointment	Qualifications	<p>Defined in a general manner. DPO must have the professional knowledge required:</p> <ul style="list-style-type: none"> - certification: no; - <i>knowledge of the data protection legislation, the technical standards, the functioning of the</i> 		<p><i>No specific professional requirements. However, DPO must understand and have knowledge of the Personal Data Protection Act and of his/her responsibilities.</i></p>	<p>Higher education degree in law, public administration or information technology, or a qualification equivalent thereto</p>	<p>Full legal capacity</p> <ul style="list-style-type: none"> - meets the preconditions of integrity (irreproachable citizen, who was not sentenced, by a final decision, for a deliberate crime or who was not

		<i>DC and its data processing.</i>				sentenced to imprisonment without suspension: proven by an extract from the Criminal Register not older than three months).
	Internal / external / joint	<ul style="list-style-type: none"> - <u>internal</u> : possible - <u>external</u> : possible - <u>joint</u> : possible - <u>Avocat</u> : possible - <u>Legal entity</u> : possible - the mission can be performed by a team which tasks are clearly defined 	<ul style="list-style-type: none"> - <u>internal</u> : - <u>external</u>: - <u>joint</u>: 	<ul style="list-style-type: none"> - <u>internal</u>: possible - <u>external</u>: possible - <u>joint</u>: possible - <u>lawyer</u>: possible - <u>legal entity</u>: possible 	<ul style="list-style-type: none"> - <u>internal</u>: ? - <u>external</u>: ? - <u>joint</u>: ? - <u>lawyer</u>: ? - <u>legal entity</u>: ? 	<ul style="list-style-type: none"> - <u>internal</u>: ? - <u>external</u>: ? - <u>joint</u>: ? - <u>lawyer</u>: ? - <u>legal entity</u>: no <p>The DC shall authorize a DPO or several DPO in writing.</p>
	Formalities	<ul style="list-style-type: none"> - notification to the Authority (<i>it is advisable to notify to the Authority the identity of the DPO but it is not required by the law</i>) - <i>notification to the Works council not required.</i> 	Notification to the Authority.	<p>Notification to the Authority (immediately after the appointment).</p> <p>Upon appointment of DPO, the Authority shall be immediately informed of the person's name and contact details.</p>	Notification to the Authority (prior to the DC commencement of activity).	Notification (without undue delay: at the latest within 30 days).
Work conditions	Independence	<p>Yes</p> <ul style="list-style-type: none"> - no instruction of the DC - no conflict of interest "can not exercise functions not compatible with his duties." <p><i>Incompatibility: a member of the head of the company, a member of the HR department or of the management of information technologies or of sensitive data processing.</i></p> <p><i>Compatibility: computer security, legal department.</i></p>		<p>Yes</p> <p>DPO is independent in his/her activities from the DC.</p> <p><i>It is DC's responsibility to ensure the independence of DPO. The purpose of this is that the DPO can effectively and without hindrances fulfil his/her duties.</i></p>		<p>Yes</p> <ul style="list-style-type: none"> - if the DC failed to enable, disturbed, frustrated or otherwise obstructed the DPO's tasks, a fine from SKK 30.000 to 3.000.000 can be imposed - a natural person who is a statutory authority of the DC and who is entitled to act on behalf of the statutory authority cannot perform the

						function of DPO.
	Status	<i>DPO is not a protected employee but he can be sanctioned to have performed his mission</i>		<i>DPO is not a protected employee. Can be sanctioned for having performed his/her obligations wrongfully.</i>		Status of the entitled person of the DC.
	Means	Has access to files, data processing and to information necessary to perform his duties. <i>Is provided with the necessary resources to perform his duties (human resources, infrastructures, equipment).</i>		Monitors registry which includes the data to be otherwise submitted to the Authority by the DC. <i>In case DPO is DC's employee, he/she is provided with necessary resources to fulfil his/her duties.</i>		DC shall provide a professional training of the DPO (if the DC fails to do so, a fine from SKK 30.000 to 3.000.000 can be imposed). The DC shall accept the DPO legitimate proposals.
	Availability					
Relations with the Authority	Notification of appointment	Yes. When the DC wishes to be not subject to notification legal requirement, it must appoint a DPO.	Yes	Yes: - shall immediately notify the Authority of appointment of DPO - application shall include name and contact details.	Yes: - shall include the name and contact information	Yes: - without undue delay - shall include several details on the DPO
	Reporting to the Authority	<i>DPO is not allowed to report to the Authority in case of a difficulty on the performance of his duties.</i> <i>However DPO can ask for advise to the Authority.</i>	Yes: - the Authority must be informed if DC has not rectified a violation asap after notice by DPO.	Yes : - if the DPO informs the DC of a violation and the DC does not immediately take action to remediate the violation, then DPO shall immediately inform the Authority of the violation; - If a DPO is in doubt as to which requirements are applicable to the processing of personal data or which security measures must be applied regarding the processing of personal data, then the DPO must obtain the opinion of the Authority in such matter before the processing of personal data has begun.		Yes: - necessary cooperation - if the DPO informs the DC of a violation discovered upon the processing and the DC fails to rectify the situation without undue delay

	Questions to the DPO by the Authority	<i>Yes The Authority can make a request to access to the data processing registry</i>		<i>DPO has an obligation to cooperate with the Authority.</i>		
Termination / Resignation	At the request of the Authority	<i>No (but if the DPO does not perform his/her duties as required by law the DC is obliged to notify its data processing to the Authority)</i>		<i>No, but Authority can for example suspend, prohibit the DC's processing of personal data. If the DPO does not perform his duties, DC has to register data processing with the Authority.</i>		<i>Yes The Authority is entitled to impose to the DC to authorize a different DPO, provided that it is proven that the DPO originally authorized failed to fulfil or did not fulfil sufficiently his obligations, or assessed incorrectly or applied incorrectly in practice the rights and obligations imposed on the DC (without undue delay).</i>
	By the DC	<i>Yes DPO can be replaced at any moment</i>	<i>Yes Notification to the Authority required.</i>	<i>Yes DC must immediately inform the Authority of termination of the DPO's functions.</i>		
	At the DPO initiative	<i>Yes -if the DPO has a mandate -if the DPO is salaried: - in case of a resignation - if the continuation of his mission has become unacceptable.</i>		<i>As an employee, DPO can terminate the employment contract. External DPO may, depending on the conditions, terminate the services contract.</i>		
Liability		<i>DPO cannot: - be sanctioned for having</i>		<i>DPO cannot be sanctioned for having performed his duties lawfully and</i>		<i>Notification of deficiencies or a</i>

	<i>performed his duties - be held responsible of a violation of the law by the DC</i>		<i>cannot be held responsible of a violation of the law by the DC.</i>		request by the DPO, in connection with the fulfilment of his obligations, must not become an instigation or a reason for the DC's action that could damage the DPO.
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Glossary:

Authority: Supervisory Authority

DPO: data protection official

DC: data controller

Italics: information which does not result directly from the law but from an interpretation of the law.

Credits

A first version of this document was initially drafted in French by Pascale Gelly, Avocat, with the assistance of Elisabeth Quillatre for AFCDP's annual event in 2009. It has then been drafted in English and updated and by Pascale Gelly, Board member of AFCDP (French DPO association) in charge of International Affairs, and Caroline Doucet for CEDPO in 2011.

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Estonia: <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXX041&keel=en&pg=1&ptyyp=RT&tyyp=X&query=isikuandmete+kaitse>

Hungary: <http://abiweb.obh.hu/dpc/index.php?menu=gyoker/relevant/national>

Slovakia: http://www.dataprotection.gov.sk/buxus/generate_page.php?page_id=528

CEDPO can be contacted at info@cedpo.eu

**COMPARATIVE ANALYSIS OF DATA PROTECTION OFFICIALS
ROLE AND STATUS IN THE EU AND MORE - IV
A CEDPO CONTRIBUTION**

Countries	 Spain
Data Protection Officer	
Title/name	<i>Responsable de seguridad</i>
Date of creation	No general provisions relating to a DPO as such. One or several security officers must be appointed when certain categories of data are processed.
Number of DPO	
Professional associations	Asociación Profesional Española de Privacidad (www.a pep.es).
Legal sources/texts	<p>The Spanish Data Protection Act (<i>Ley Orgánica 15/1999, de protección de datos de carácter personal</i>) does not expressly mention the DPO as such.</p> <p>The regulations developing the Spanish Data Protection Act (<i>Real Decreto 1720/2007</i>) provide for a “security officer” when certain categories of data are processed.</p> <ol style="list-style-type: none"> 1) files related to criminal or administrative offences; 2) files related to the rendering of creditworthiness services; 3) files controlled by the tax authorities and relating to the exercise of taxation powers; 4) files controlled by financial institutions for purposes related to the provision of financial services; 5) files controlled by the social security management agencies and general services, and relating to the exercise of their powers, and those controlled by the industrial accident mutual insurance societies; 6) files containing a set of personal data that provide a definition of the characteristics or identity of citizens and which permit the evaluation of

		<p>specific aspects of their identity or behaviour;</p> <p>7) files containing a set of personal data that provide a definition of the characteristics or identity of citizens and which permit the evaluation of specific aspects of their identity or behaviour;</p> <p>8) files containing personal data referring to ideology, trade union membership, religion, beliefs, racial origin, health or sexual life (exceptions: (α) sensitive data if limited to monetary transfers to organisations to which the data subjects are associated or are members of; (β) sensitive data incidentally contained in non-automated files or processing and have no relationship with its purpose; and (γ) data exclusively referring to the level of disability or the mere declaration of the data subject's disabled status, if limited to fulfilling public duties).</p> <p>9) files containing or referring to data collected for security forces without the consent of the data subjects;</p> <p>10) files containing data related to gender-based violence; and</p> <p>11) files whose controllers provide electronic communications services or operate public electronic communications networks regarding traffic and location data.</p>
Mandatory / Optional		<p>A DPO as such is optional. The security officer is mandatory when the above-mentioned categories of data are processed.</p>
Legal advantages		None.
Role	General	To ensure the compliance with the security measures that are specifically set forth in Royal Decree 1720/2007 (Title VIII).
	Maintain a registry of processing carried out by DC	N/A. The appointment of a security officer does not eliminate the need to satisfy registration requirements, which is vested on the data controller.

		A security officer's main duty is to monitor compliance with the security measures regarding the above-mentioned categories of data. Among others, he/she will analyse the audit reports and provide the data controller with the conclusions thereof in order to allow the data controller to adopt the appropriate corrective measures. A security officer who controls access to sensitive data must review access records on a monthly basis and draft a report on these reviews and the problems detected.
	Activity reporting	Yes, but to the data controller (or the data processor) only (but not to the Spanish DPA).
	Optional duties	N/A
Appointment	Qualifications	Not expressly regulated. However, in view of his/her tasks, it must be ensured that he/she has experience in data protection security and legal matters and that he/she is familiar with the corresponding organisation and IT systems.
	Internal / external / joint	The security officer(s) may be an employee of the data controller or the data processor or he/she may be a third party. <ul style="list-style-type: none"> - <u>internal</u>: possible - <u>external</u>: possible - <u>joint</u>: possible - <u>Avocat</u>: possible - <u>Legal entity</u>: possible
	Formalities	The appointment must be recorded in the security document and may be general for all databases and processing or it may be specific and depend on the information systems used.
Work conditions	Independence	Not expressly regulated.
	Status	Not expressly regulated.
	Means	Not expressly regulated.
	Availability	Not expressly regulated.
Relations with the Authority	Notification of appointment	No. Although the appointment of a security officer need not be notified to the Spanish DPA, it must nevertheless be clearly recorded in the security document.
	Reporting to the Authority	No
	Questions to the DPO by the	No

	Authority	
Termination / Resignation	At the request of the Authority	No
	By the DC	Yes
	At the DPO initiative	Yes
Liability		An appointment as a security officer does not waive the liability of the data controller or data processor. The security officer's liability is not expressly regulated. If he/she is an employee, the same liability as any other employer if he/she breaches his/her labour duties would apply. If he/she is a services provider, the liability shall be determined as provided for in the agreement and, otherwise, in accordance with general rules of law.

Glossary:

Authority: Supervisory Authority
DPO: data protection official
DC: data controller

Italics: information which does not result directly from the law but from an interpretation of the law.

Credits

A first version of this document was initially drafted in French by Pascale Gelly, Board member of AFCDP in charge of International Affairs (Association of French DPO) with the assistance of Elisabeth Quillatre for AFCDP's annual event in 2009. It has then been drafted in English and updated by Pascale Gelly with the assistance of Caroline Doulcet for CEDPO in 2011.

CEDPO thanks:

- Cecilia Alvarez Vice President in charge of International Affairs for APEP who drafted the contribution for Spain

Bibliography

Legal Texts

Websites of the Supervisory Authorities

CEDPO can be contacted at info@cedpo.eu