

## PRIVACY AND EU DATA PROTECTION

*Seminar VIII.*

### The Data Protection Officer (“DPO”)

*prof. dr. Gerrit-Jan Zwenne*

October 2<sup>nd</sup>, 2019



### But first...

A newspaper offers a new special online subscription:

*a 25 percent discount will be given subscribers that consent to the provision of their reading preferences to an advertisement agency*

According to a consumer interest group, the GDPR does not allow this.

What do you think?

### Also...

- what are special data and why are the specific rules for such data?
- in the context of purpose specification and purpose limitation, what is the «compatibility test»...?
- what is the accountability principle? how can controllers and processors comply with that principle?

### what is a data protection officer or DPO..?

- someone (m/f) in the organization of a controller or processor
- who informs and advises that controller or processor on data protection compliance, and particularly on DPIA's
- **and who monitors compliance with applicable DP-law**
- and cooperates with DPA's and acts as contact-point

*not a committee or commission, but an individual*

*could be an employee, could be from an external organization*

*not part of management(!)*

*but not necessarily a whistleblower*

## who should appoint a data protection officer?

- public authority or body (but not courts to the extent...)
- core activities consist of processing operations that require systematic large-scale monitoring of data subjects
- core activities consist of large-scale processing of special data and criminal data

The number of data subjects concerned - either as a specific number or as a proportion of the relevant population

- volume of data and/or the range of different data items being processed
- duration, or permanence, of the data processing activity
- geographical extent of the processing activity

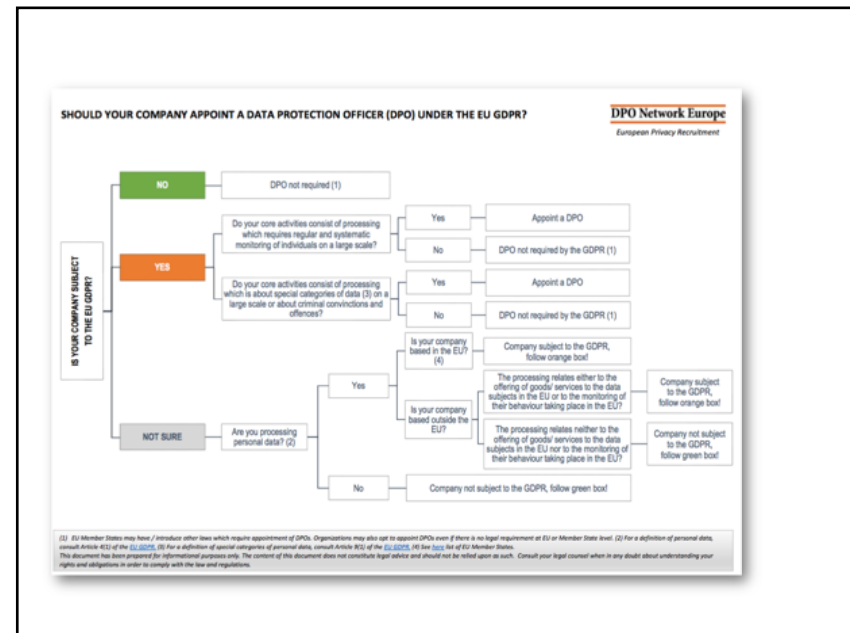
determined under national law... universities, bar associations?

'primary activities, i.e. not relating ancillary activities'

key operations to achieve the controller's or processor's goals

Therefore, not salary administration, unless that is the core-activity of a process or (e.g. Workday)

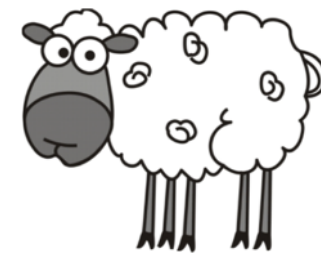
hospitals, public transport, fastfood delivery, search engines, telco's, banks etc.





what are the tasks of a data protection officer?

- informing and advising a controller or processor on data protection compliance, and particularly on DPIA's
- monitoring compliance with applicable DP-law
- and cooperation with DPA's and acting as contact-point



## what are the requirements for a DPO?



- expertise and professional qualities, and the ability to fulfill his or her tasks
  - on DP-law, on the organization of the controller or processor, on data flows, ICT, etc.
  - all of the above, and well-positioned in the organization of the controller or processor
- independent
  - exclude or provide for solutions in case of conflicts of interest

### QUESTIONS

- *could lawyer working in private practise be a DPO?*
- *is a controller allowed to designate the Data Governance Officer as DPO?*



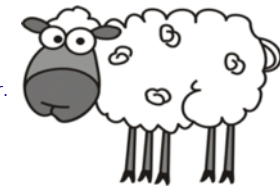
DPO must be in a position to efficiently communicate with data subjects and cooperate with the supervisory authorities

This also means that this communication must take place in the **language or languages** used by the supervisory authorities and the data subjects concerned.

should have **expertise** in national and European data protection laws and practices and an in-depth understanding of the GDPR

knowledge of the business sector and of the organisation of the controller is **useful**.

should also have **sufficient understanding** of the processing operations carried out, as well as the information systems, and data security and data protection needs of the controller.





## why a data protection officer?

because of

- DPO-obligation (art. 37(1) GDPR)
- accountability-obligation (art. 5(2) GDPR)
- DPA's expectations
- data subjects' expectations
- customers' expectations
- suppliers' expectations
- ...



questions?

[g.j.zwenne@law.leidenuniv.nl](mailto:g.j.zwenne@law.leidenuniv.nl)