Survey on the function of Data Protection Coordinators at the European Commission

General Report

Brussels, 25 January 2013

Contents

Summary

Over the past few years, some large institutions have established networks of Data Protection Coordinators (DPC) with a view to them acting as a relay for the Data Protection Officer locally. The European Commission launched its own network in 2002. In June 2012, the EDPS began a survey regarding the function of DPC at the Commission. This general report draws conclusions from that survey, which was based on a questionnaire relating to the status of DPC and on the mechanisms – connected with the DPC – put in place by the Directorates-General (DG) in order to comply with Regulation (EC) No 45/2001.

This report forms part of a much wider survey which the EDPS wishes to conduct into the function of DPC within the European institutions. To that end, the EDPS wishes to undertake the same type of survey in the European institutions and agencies which have established a network of DPCs and, with the help of the stakeholders concerned, to draw up a document which gives structure to that function.

In more specific terms, the findings of the survey reveal a great disparity between the resources allocated to the function by the DGs (between 5% and 100% of a DPC's time is assigned to his/her function as DPC). However, all DPCs have a common series of basic tasks[1] which they are required to perform irrespective of the time available to do so. Accordingly, one of the first conclusions reached in the report is the need to establish minimum criteria to be satisfied by the DGs in order to preserve the useful nature of the role. In its conclusions, the report makes reference *inter alia* to: the appointment decision (mentioning the minimum duration of the term of office), the specific reference to the role of DPC in his/her job description, the guarantee of the resources necessary in terms of time to attend meetings of the DPCs' network and the inclusion of DPC responsibilities in his/her appraisal.

In addition, the report provides an update on the good practices developed in certain DGs, such as creating a mailbox to be used to consult the DPC, developing an Intranet page devoted to data protection, making sure the role of DPC is visible in the organisational chart or structuring the DPC's access to his superiors and ensuring that s/he is kept informed effectively.

The report also sets out areas for consideration and debate to be shared with the DPCs. Accordingly, the different combinations of possible functions and their advantages or possible conflicts of interest could be discussed, as well as the role of the assistant to the DPC.

Finally, the report further makes clear that the function of DPC is also one element of the current data protection reform: the role embodied by the DPC in terms of the accountability of his/her DG, on the one hand, and his/her mission in relation to the documentation of processing operations, on the other hand, all whilst supplementing the significant role played by the DPO in this regard.

[1] These tasks are laid down in Article 14 of the implementing rules concerning the tasks, duties and powers of the Commission's Data Protection Officer.

1. Introduction

Article 14 of the implementing rules concerning the tasks, duties and powers of the Commission's Data Protection Officer (DPO)[2] lays down provisions governing the function of **Data Protection Coordinator** (**DPC**) in the various Directorates-General (DG) and Services of the European Commission. Those coordinators, arranged in a network, play a crucial role in implementing the principles of data protection laid down in Regulation (EC) No 45/2001[3] ('the Regulation'). The role of DPC supplements that of the Data Protection Officer, for whom the DPC acts as a 'relay' locally. The DPC is a pragmatic role which is closest to the reality of the institution's practices.

In large institutions or those in which activities are spread over several sites, the DPC – together with the European Data Protection Supervisor (EDPS) and the DPO – is the third link in the data protection chain and guarantor of compliance with the Regulation.

In practice, this role has existed within the Commission since 2002. After ten years of existence, the objective of this survey and the resultant report is therefore to give a clear picture of the function and to identify trends within the Commission. The report will attempt to offer a better definition of the function, share good practices of the role as updated by the survey, launch new areas for consideration and debate vis-à-vis the function, increase the visibility of the role and, why not, create vocations.

This survey is particularly timely since the function of coordinator and its networked structure is tending to expand and become established in other large European institutions and agencies[4]. A future survey of the latter and a comparison of the results will give a detailed view of the role of coordinator within the European institutions and enable a document on the function of DPC within those institutions to be drawn up in conjunction with the stakeholders concerned.

Finally, the EDPS wishes to use this report to express its support for that function, which contributes to good governance, shed light on its specific and effective aspects and demonstrate the added value that it represents for the DGs. The DPCs whose function is recognised internally will contribute to making the DGs more accountable in relation to data protection, a key concept in the current data protection reform.

[2] Commission Decision adopting implementing rules concerning the Data Protection Officer pursuant to Article 24(8) of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies, C(2008) 2304 final.

[3] Regulation (EC) No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001 L 8, p. 1.

[4] European Parliament, General Secretariat of the Council, European Central Bank, European Investment Bank, European External Action Service, Court of Auditors.

2. Brief history and method

Although the function of Data Protection Coordinator was formalised only at a late stage in relation to the entry into force of the Regulation, in practice there are, however, early signs of the existence of coordinators within the European Commission. Indeed, some DGs[5] had appointed a person responsible for data protection matters prior to the appointment of the Commission's first DPO. In addition, as early as 2002, only shortly after that DPO's appointment, a note from the Secretariat-General to the Directors-General following their monthly meeting constitutes proof that the decision was taken at the meeting to appoint a DPC within each DG[6]. The notion of a coordinator and a network of coordinators therefore in fact very quickly became part of the data protection landscape at the Commission.

However, it was not until 2008 and the adoption of the supplementary implementing rules concerning the tasks, duties and powers of the DPO that the function of coordinator was formalised. The Regulation is silent on the function of the DPC itself, but does state in Article 24(6) that '[t]he Community institution or body which appointed the Data Protection Officer shall provide him or her with the staff and resources necessary to carry out his or her duties'. The related personnel may be supplemented by an assistant or a deputy and also, where the size of the institution so demands, a network of DPCs.

Article 14 of the implementing rules is wholly devoted to the function of coordinator. It sets out the conditions governing appointment to the role and the responsibilities which fall under the function. The compilation of the questionnaire on the status of DPCs was inspired by this article. Composed of two strands (the status of DPC and the mechanisms in place at DG/Service level), this questionnaire was sent to the Directors-General and copied to the DPCs on 11 June 2012[7].

The EDPS was pleased to see that all the DGs and Services in question replied to the questionnaire. However, the accuracy of the responses and the changes of DPCs over the period of the survey made it difficult to produce exact statistics. The survey may therefore be said to have its limits. Questions worded in too open a manner in certain cases also resulted in overly vague answers. Finally, the survey into the function looks at the current situation but does not always consider the background to that situation[8].

However, it was possible on the basis of the sample studied (33 DPCs) to identify general trends at the Commission and to suggest good practices and areas for consideration and debate.

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[5] The former DG ADMIN, but also DG MARKT.

[6] The preparatory note for that meeting of the Directors-General also makes clear that OLAF has appointed an independent DPO and that the Secretariat-General, DG ADMIN and DG AIDCO have already appointed a DPC. In conclusion, the note states that the tasks of the DPC include the coherent implementation of the Regulation, the establishment of an inventory of processing operations involving personal data within his/her DG, the assistance of controllers in the process of notifying the DPO and the representation of the DG within the network of coordinators, run by the DPO.

[7] This personal data processing operation on the function of DPC was notified to the DPO of EDPS.

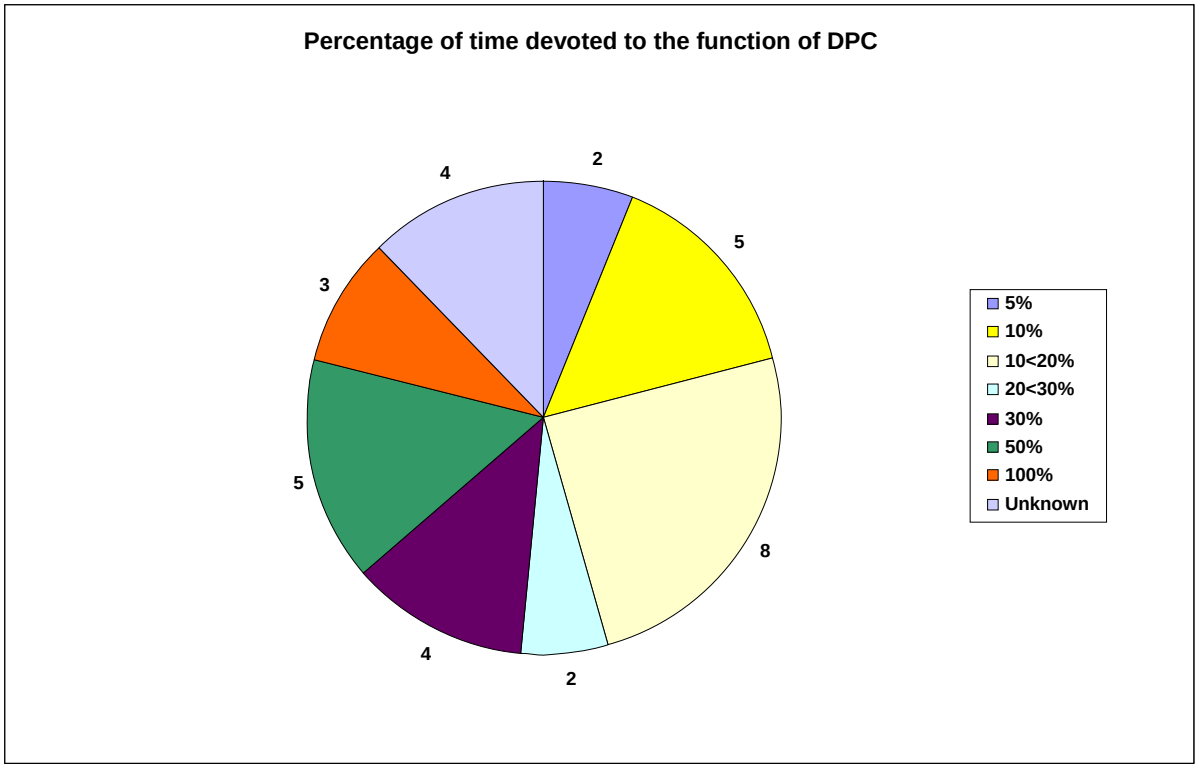
[8] For example, information regarding the terms of office of DPCs who preceded the current DPC.

3. The status of DPC

3.1 Two categories of DPC

There are two distinct categories of DPC: those for whom data protection is the main activity and those for whom it is a secondary activity or, at least, not the DPC's sole activity. There are, of course, a range of different scenarios in that second group – between 5% and 50% of the DPC's time may be devoted to data protection – but overall that division between main task and secondary task is useful for the purposes of the analysis. Certain practices carried out by full-time DPCs cannot be applied to the second category of DPCs.

As a general rule, the DGs or Services which have a full-time DPC are those which 'produce' more operations involving the processing of personal data (those on whose initiative data are processed, such as DG HR in connection with administrative procedures). In other cases, the DG's location and the variety of its activities requires greater investment[9]. Finally, a DG or a Service may carry out an activity which is more specifically linked to the processing of personal data, for example because it processes a large quantity of personal data as part of its main activity. This is the case with the EPSO, whose day-to-day activity requires the management of a large volume of personal data. The EPSO has to face specific issues in relation to data security and offer guarantees vis-à-vis the rights of the individuals concerned. However, the EPSO has chosen to share DG HR's DPC.



The time devoted to the function of DPC ranges from 5% to 100%. The figure above shows, for example, that for 3 officials the DPC function accounts for 100% of their role, whereas for 2 officials that function represents 5%.

[9] This is the case with the JRC, which is spread over several sites.

The fact that the two categories are not comparable on certain points does not mean that this is a case of a 'two-speed' function. In all cases, even where data protection is a secondary activity, the minimum criteria must be observed in order to ensure the continuity of the function – to guarantee its existence over the long term – and to prevent the creation of a function which becomes devoid of substance, which is no longer able to operate effectively. The DPC has a supervisory role within his/her DG which, if s/he operates effectively, may prevent related risks and be a major advantage in the development and implementation of internal administrative procedures and measures. Consulting the DPC in good time – i.e. sufficiently early in the process of developing new measures – often means that time is saved and also that resources may be saved as a result (for example when choosing the appropriate technology). The DPC plays a positive role in the general functioning of the DG. The DPCs whose function is recognised internally will contribute to making the DGs more accountable in relation to data protection and thus contribute to ensuring good governance. In addition, the tasks laid down in Article 14 are common to all DPCs and, as a result, require the same minimum level of investment.

3.2 Appointment and profile of the DPC

Appointment of the DPC

Article 14(1) of the implementing rules states that a DPC must be appointed in each DG or Service. Based on a written agreement, several DGs or Services may, however, have the same DPC; this is the case with the EPSO and DG HR and the DGs HOME and JUST[10].

According to the findings of the survey, some DGs have not developed a process by which an official appointment decision is adopted[11]. That appointment decision may undoubtedly be regarded as an additional administrative burden for the DGs and Services in which data protection is far from being a priority. However, although that decision may appear superfluous, it nevertheless seems to be a good practice with a view to institutionalising the function, making it visible and ensuring its continuity over time. It forms part of the minimum criteria which each DG/Service of the Commission should adopt.

Finally, pursuant to Article 14, the term of office of the DPC must be of unlimited duration. That requirement appears to be observed by all DGs and Services without exception. This is, of course, a positive factor from the perspective of the independence of the function and the DPC's related expertise, although, in order to perform his/her role, the term of office should have a minimum duration.

The survey reveals that some terms of office are of a fairly long, or even very long, duration. 12 DPCs have been in post for 5 years or more, and a further 11 for between 1 and 5 years. The remainder of the DPCs, i.e. just under a third of them, have just been replaced. However, that does not mean that their predecessor's term of office was not long or very long.

[10] Including the DGs and Services who share the same DPC, there are a total of 33 DPCs.
[11] By contrast, others also adopt an official appointment decision for the assistants to the DPC.

Profile of the DPC

Article 14(3) states that the DPC must be chosen at an appropriate hierarchical level, on the basis of his high professional ethics, his knowledge and experience of the functioning of his DG or Service and his motivation for the function. Unlike the competences required for the function of DPO, no specific legal knowledge relating to data protection is necessary. However, Article 14(3) does also state that the DPC must have an understanding of information systems principles. It should be noted that Article 14 further states that, in order to acquire specific competences linked to the function, the DPC must undergo training within 6 months of his appointment.

The data protection training may be ensured in particular by the DPO and the attendance of meetings of DPCs, on the one hand, and by the EDPS, on the other hand. The EDPS currently devotes part of its resources to the training of DPOs, DPCs and controllers. In the case of DPCs, such training also enables a link to be formed between the DPCs and the EDPS.

Accordingly, the text providing guidance on the selection of DPCs focuses on knowledge of the situation within the DG (and therefore including the information systems) and not on data protection itself. That recommendation is consistent with the responses to the questionnaire. First, the method of selecting a DPC from within the DG/Service fosters the dimension of 'internal affairs' and, second, it appears that the post cannot be transferred from one DG to another. When looking to fill a post, the DGs do not look for a person who has already performed that role and has therefore developed specific competences in the relevant area, but rather someone who has experience of the DG and its organisation. In addition, the DGs in which the percentage of time granted to the function is less than 30% probably focus their selection criteria on the competences required for the remaining 70% of the individual's work.

The role of DPC does not yet therefore appear to be identified as a career in itself, as a skillset which can be exported into a parallel service or DG. The only specific knowledge required is of a more technical nature, namely knowledge of the information systems[12]. Opening up the selection process for the post beyond the Service or DG in question would perhaps contribute to putting the career on a more professional footing. However, it must be pointed out that it is a relatively recent function in the institutional landscape and that the substantial differences in terms of the time granted to data protection by the DGs do not always make the posts interchangeable.

N.B.: an EDPS official has recently been appointed to that post, an initial indication of emphasis being given to competences relating to data protection.

[12] This more technical aspect of the function perhaps has its origins in the profile of the Commission's first DPO, which was in fact linked to information technology.

In their responses to the questionnaire, some DGs set out the criteria which guided the selection of the DPC. Mention is made of the following: sound knowledge of the information systems, a good overall understanding of the functioning of the DG and extensive knowledge of the DG's activities.

However, one DG does refer to the individual's competence and experience in relation to data protection as selection criteria.

Hierarchical level of the DPC

With regard to the appropriate hierarchical level, the Regulation appears to state that it is a post requiring a certain level in the hierarchy. This may be explained by several factors. A higher grade as a permanent status ensures the greater independence of the function, as well as sometimes clearer access to information and better communication with superiors within the DG (see point 4.3). However, the survey's findings show a great variety between the grades: from AST 3 to AD 13.

Description of the function of DPC

The description of the function of DPC is available in the SYSPER 2 database. The job description is standardised: it covers the activities of advising on, identifying and notifying processing operations and cooperating with the networks of Document Manager Officers (DMOs) and that of the corresponding 'requests for access to documents'.

That description of the function is included in most DPC job descriptions but not all. Some descriptions make no mention whatsoever of data protection.

The description of the function still appears to be a minimum criterion to be satisfied by the DG with regard to its DPC. Indeed, it appears to be difficult to get someone to carry out tasks not specified in his/her job description or to ask that person's superior to evaluate the person in his/her role of DPC without relevant criteria to guide that appraisal (see point 4.3 on the appraisal of the DPC).

3.3 A shared function

Conflicting priorities

Combining the function of DPC with other activities may give rise to conflicting priorities, in particular in terms of the time granted to the function. For example, attendance of meetings of the DPCs' network, which is deemed to be mandatory by the majority, may – according to the survey – fall by the wayside if other priorities so require it. Just under a third of the DGs and Services appear unconvinced by the mandatory nature of such attendance.

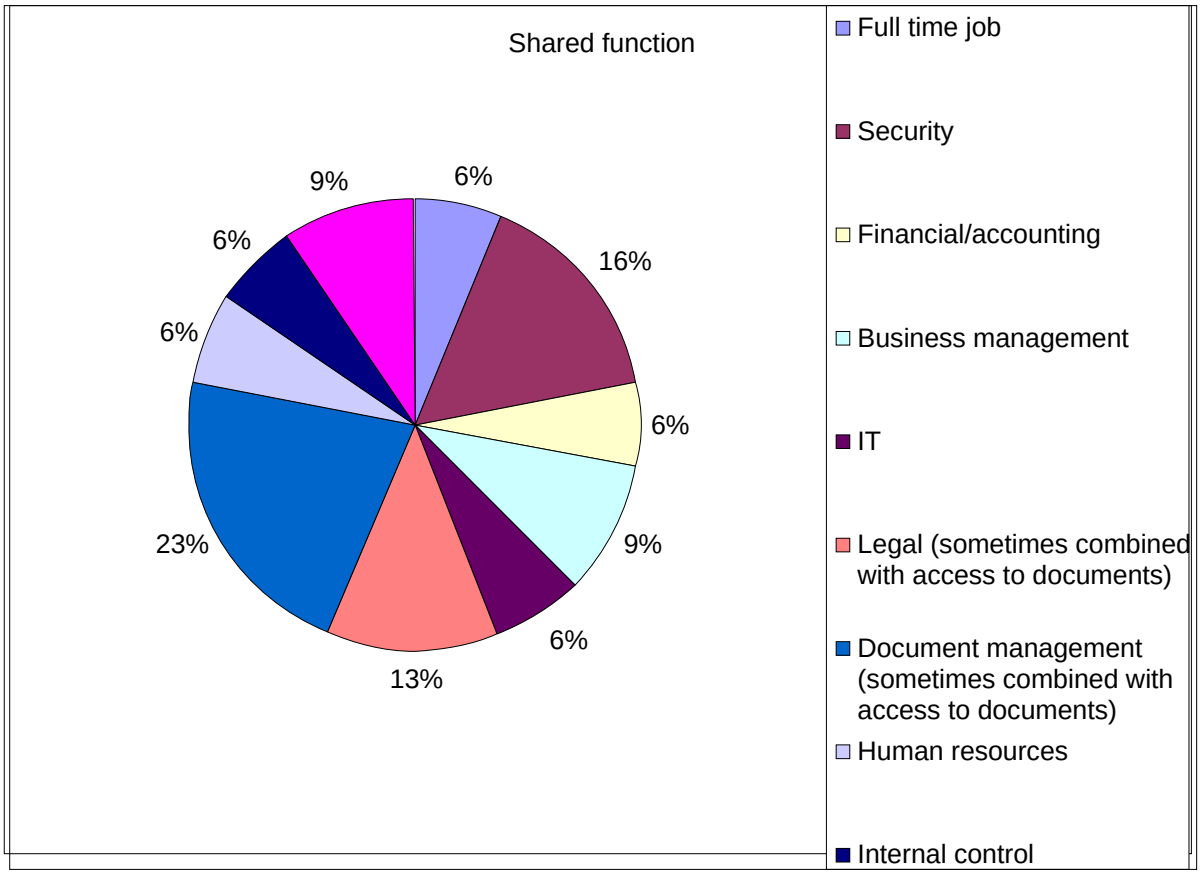
However, the attendance of the DPC at meetings of the network should be regarded as one of the minimum criteria which must be met, even where the time assigned to the function of DPC is 5% or less (see point 3.5 on the importance of

the work of the network). The DPC must enjoy the support of his/her superiors in this regard.

The absence of certain DPCs from meetings of the network on account of other priorities may be seen as an indication of the management of their priorities – or, better put, those of their DG – in general terms. If those meetings are ignored, it is more than likely that the other activities of a DPC will take priority over those relating to data protection. The EDPS is well aware that the importance accorded to data protection is minimal in the case of some DGs, and that little time must in fact be devoted to it in those cases. The EDPS wishes to point out that a minimum basis of activities must be devoted to data protection in order to ensure the continued usefulness of the role within the DG.

Combination of functions and conflicts of interest

Article 14(2) also provides for the combination of the function of DPC with other functions. Although the function may be combined with any other function, it is clear that certain job profiles are more common that others: this is the case with those of Document Manager Officers, those responsible for requests for access to documents and the local security officer. It should be borne in mind in this regard that the description of the function available in SYSPER 2 requires, amongst other tasks, that the DPC guarantees cooperation with other networks, such as the DMO network and the corresponding 'access to document' networks. This may explain why these functions are frequently combined.



The function of DMO is most often combined with that of DPC: 23% of DPCs combine those two functions.

Some combinations of functions appear to offer clear advantages, namely document management and access to documents. This is undoubtedly food for thought. The competences required for certain 'shared' functions may without doubt bolster those necessary for the function of DPC and vice versa. Accordingly, consideration should be given, in conjunction with the DPCs, to the extent to which their shared functions do and do not help them to perform the role of DPC. Without falsely formalising career paths, it may be interesting to note the good combinations.

Thus, it is for example conceivable that the function of DMO gives a better understanding of how data are stored and their quality. Being responsible for requests for access to documents and for data protection undoubtedly enables the individual concerned to acquire a balanced approach in cases of conflict between those two fundamental rights.

By contrast, some functions may present potential for conflicts of interest, and therefore make it difficult to maintain the impartiality of the function. In general terms, conflicts of interest can arise where the individual is responsible for processing operations as part of his/her original function, where s/he initiates such operations, for example in human resources or in security.

That being said, no particular emphasis is placed on independence and a lack of conflict in Article 14[13], by contrast to the provisions in Regulation (EC) No 45/2001 applicable to the DPO or in the Staff Regulations of Officials [of the European Commission]. It is understood that independence and a lack of conflicts of interest are difficult to guarantee in some DGs in which the DPC wears several hats, as is the case with the DPO in many agencies of the European Union. That being said, the large institutions have a certain advantage as compared with the small agencies with limited staff numbers, since the former have a wide choice as regards the selection of the DPC. The DPC should never be the relevant controller in his/her original function, and if the unit to which s/he is attached is responsible for processing operations the DPC must be in no way involved. Consideration of the independence of and potential conflicts of interest faced by the DPC is all the more interesting since it guides the DGs when making that choice.

3.4 The assistant to the DPC

In some cases, the DGs and Services of the Commission have appointed assistants to the DPCs, either officially or informally. Of the 33 DPCs, 21 do not have an assistant. However, some of them report that they have a 'back-up' DPC (5) or a Deputy DPC (2). These categories appear to be more akin to the second category of assistant described below.

The survey reveals three different situations. Firstly, and particularly in the case of the DPCs whose main activity is data protection, the assistant provides support in terms of time and resources (s/he is sometimes full-time) to the DPC and forms a team with the DPC (e.g. JRC) in the same way as the Commission's DPO forms a team with his/her assistants.

Secondly, in the case of DPCs for whom it is a secondary activity, the assistant is sometimes regarded as a back-up for the DPC. There is therefore no division of tasks strictly speaking and the two roles appear to be interchangeable. Some assistants attend meetings of the DPCs' network in the place of the DPC. In this second scenario, there is a real risk of an apparent loss of knowledge and a lack of continuity in the function. It appears that the function of DPC is viewed by the DG or Service concerned as an administrative duty.

Thirdly and finally, 'representation' and more formal activities are reserved for the DPC and the assistant's tasks are more restricted. In such circumstances, the two functions have been structured and considered and operate in a complementary fashion. This category is close to the first, even though the time assigned to the functions is more restricted.

This is once again an open question which merits future consideration, underpinned by the experience acquired by the DPCs, in order to establish the best possible model depending on the characteristics of the DG or Service.

3.5 Importance of the work within the network

[13] Reference may however be made to the 'high professional ethics' required under Article 14.

Article 14(6) provides that '[t]he DPC shall participate in the regular meetings of the DPCs' network, chaired by the DPO, to ensure coherent implementation and interpretation of the Regulation in the Commission and to discuss subjects of common interest'.

The survey reveals that the network is viewed positively and is useful to the DPCs. It represents a major source of support for a function that may be regarded as isolated within the DGs and Services. The network enables knowledge and also practical experiences to be shared. It helps to create a feeling of belonging. Although the DPC goes to receive training and exchange ideas and experiences in the course of those meetings, s/he also attends to acquire knowledge which s/he will then pass on within his/her DG. N.B.: the selection criteria for DPCs are not based on knowledge of data protection. The training of the DPC by the DPO and his/her peers is therefore of great importance.

In turn, in order to ensure that it functions effectively and that benefits are drawn from its existence, the network needs the regular presence of each DPC at its meetings. The attendance of all DPCs is essential in this regard.

4. Internal compliance mechanisms

4.1 The role of the DPC

Inventory of processing operations and notification to the DPO

The tasks and responsibilities described in Article 14 show that knowledge of the institutional setting in which the DPCs operate is important to the performance of their mission. Indeed, a great deal of work takes place at local level in terms of the identification of data processing operations and their controllers[14] and the establishment of notifications together with those same controllers.
The DPC must keep up to date the inventory of his/her DG's processing operations and the identification of the controllers responsible for such operations. This task requires regularly updated knowledge of the DG. The act of documenting the processing operations is one of the foundations which enable the DPC, and therefore his/her DG, to be in 'control' of procedures involving the processing of data in a DG[15]. Such identification and the updating of the inventory are crucial to ensure the DG's compliance with the Regulation and contribute to developing a culture of data protection with the DG.

It must be borne in mind that the role of the DPC is part of a centralised system headed by the DPO. A DPC who does not perform his/her role locally therefore prevents the DPO from carrying out his/her role centrally.

Article 14 also requires that the DPC define the appropriate risk level for processing operations. In order to be useful to the organisation, the criteria used to define the risk level must be determined centrally and applied harmoniously and consistently within the DGs. Close collaboration between the DPO and his/her network is therefore also essential in this regard.

In the performance of his tasks, and unlike in the case of the DPO, although the DPC must obtain any information necessary from the controller, he does not however have access to personal data processed under the responsibility of the controller.

Advisory role

The DPC helps controllers to comply with their legal obligations. In the execution of his/her mission, the DPC may ask the DPO for a recommendation, advice or an opinion. It is certainly possible that some DGs may contact the DPO directly with their requests for advice, but that question was not raised in the questionnaire. This cannot pose a problem, provided that the DPC was kept informed of the consultation. The questionnaire does however mention that the DPC is kept well informed where his/her DG consults the EDPS. The majority of DGs appear to be of the view that this is indeed the case.

[14] Article 14(4)(b) states that the DPC is to assist the Director-General or the Head of Service with such identification.
[15] The importance of this documentation of processing operations is laid down in Article 28 of the proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM(2012) 11 final, 25 January 2012.

The survey reveals that most DGs say that they consult their DPC in order to develop new administrative measures involving the management of personal data and new information systems, or to implement recommendations made by the EDPS. The DGs state that they consult their DPC on all matters relating to data protection. This is clearly a mechanism of which the EDPS approves; the effective consultation of the DPC on such matters reinforces the sound administration and good governance of the DGs. This consultation of the DPC is in line with the EDPS' policy on consultation in the field of supervision[16]. If such consultation is documented, it also reinforces the accountability of the DGs and their capacity to demonstrate – *inter alia* to the EDPS – the measures adopted in relation to data protection[17].

It is apparent from the findings of the survey that some DPCs complain about being involved at too late a stage in the development of administrative measures or new information systems involving personal data. Others want to increase the percentage of time devoted to data protection given the increase in requests and consultations in this area.

According to the findings of the survey, this advisory/consultation function is not limited to the controllers. The people concerned by data processing operations are increasingly consulting the DPC directly. With a view to ensuring the continuity of that advisory function and the accessibility of the DPC, some DGs have created electronic mailboxes via which anyone, controllers and the people concerned alike, may consult the DPC. The EDPS considers the creation of such mailboxes to be a useful practice. As mentioned above, several DGs are reporting an increase in the number of consultations of the DPC and the need for an appropriate management tool.

Some DPCs have even kept an inventory of those consultations and can put an annual figure on such activity. The EDPS also considers this initiative to be an example of good practice, which *inter alia* provides a better understanding of the resources necessary to perform the role of DPC. This also forms part of the documentation compiled to enable the DG to demonstrate its actions to ensure compliance with the Regulation. Analysing and categorising requests where many such requests are made would also enable weak points within the organisation to be identified and the training delivered with the organisation to be targeted.

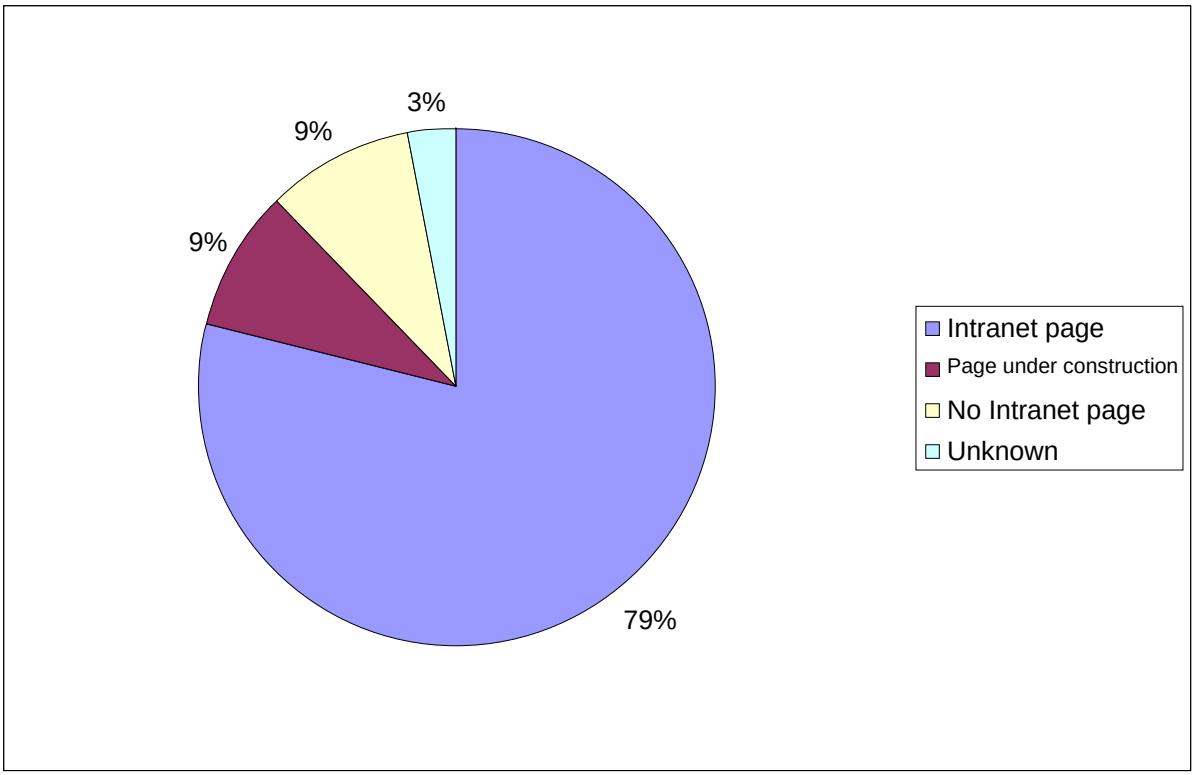
[16] See the document 'Policy on consultations in the field of supervision and enforcement', published on 23 November 2012, and in particular: 'Thus, when an institution or body draws up measures affecting the right to data protection, it should ensure that proper attention is paid to respecting its obligations under the Regulation before the measure is adopted. One of the most effective means of ensuring this is to involve the DPO right at the outset and receive his or her advice.' See: http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/EDPS/Publications/Papers/PolicyP/2012-11-23_Policy_on_consultations_EN.pdf

[17] The principle of accountability is guaranteed by Article 22 of the proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM(2012) 11 final, 25 January 2012.

Promotion of a culture of data protection within the DG

This is a task which is not included in Article 14 and yet seems to be virtually uniformly wide-spread. Various tools are used by the DPCs, of which the most common is an Intranet page.

26 DGs and Services already have an Intranet page devoted to data protection, three DGs have begun to produce such pages, a further three do not have one and one DG made no comment on this subject.



The EDPS has had the opportunity to read some of those pages, which unquestionably represent significant added value as far as disseminating a culture of data protection within the DGs is concerned. The pages are not standardised but rather made personal to each DG. Those pages could benefit from the advice of the DPO and a basic structure which is common to them all, thereby ensuring consistent communication and interpretation of the Regulation within the DGs. They would then be tailored according to the specific features/activities of the DGs and Services.

Many DGs point to 'Data Protection Day' in January as an opportune moment to encourage a culture of data protection at the Commission. This is probably an excellent time to bring together the efforts of the EDPS, the DPO and the DPCs to raise awareness of data protection within the Commission.

The survey also reveals that training for new arrivals and presentations given by the DPCs during meetings with management take place regularly. One DG is even proposing to make data protection training mandatory for 'middle management'. These are all steps which the EDPS clearly wishes to encourage.

Discussion of this aspect of promoting data protection is a timely juncture at which to introduce an important characteristic of the role of DPC: the DPC must be a good 'communicator'. Both in relation to the activities described above and those explained below, the DPC must demonstrate his/her communication skills.

4.2 Reporting and access to information

A DPC who is isolated within his/her DG or Service is unable to carry out his/her role. As has already been explained, his/her role involves maintaining a relationship with the controllers (identification of processing operations, updating of the inventory, contribution to notifying the processing operations to the DPO), with the people concerned (consultation or possible complaints) and with his/her superiors in the DG or Service in order to ensure people are kept informed and held accountable in this regard.

The EDPS was therefore interested, as part of its survey, in how the DPC was able to obtain the information necessary to carry out his/her role and the communication channels which he could use to inform his/her DG.

Accordingly, the EDPS asked the DGs about the position of their DPC in the organisational chart, the function of the person to whom the DPC reported and whether the contact with those people was organised on a regular basis.

Since the wording in the survey was too vague, conclusive findings could not be drawn from the question regarding the position in the organisational chart. The question about reporting reveals two trends. The DPCs either report to their immediate head of unit or, if they are themselves the head of unit or sector, to the director or director-general. The hierarchical level of the person to whom they report is based on their grade. In some cases, the DGs mention several people: head of unit and director or director and director-general.

The organisation of such reporting is often not formalised. Some DPCs report during unit meetings, others only meet their superior to discuss data protection issues on a very sporadic basis as and when required. Others again have structured their communication with their hierarchical superiors in the form of regular meetings held at different levels (unit, Directorate, Directorate-General).

The organisation of internal communications may also contribute to keeping the DPC informed too. Indeed, some DPCs regularly attend their DG's strategy meetings. This raises an important aspect of the communication between DPCs and their hierarchical superiors. That communication must be two-way and meetings with hierarchical superiors are just as much opportunities for the DPCs to be updated on recent developments within the DGs. It is also this information which enables them to carry out their role.

4.3 Appraisal of the DPC

Once again, most DPCs (29 out of 33) replied that the role of DPC is included in their appraisal.

The appraisal of the DPC is also one of the minimum criteria to be satisfied by the DG. The appraisal covers, *inter alia*, one aspect of Article 14 which has not yet been considered: the DPC's motivation for the function. Indeed, it seems to be difficult for an individual to be motivated to carry out tasks which will have no impact on his/her career development.

Beyond the issue of personal motivation, the appraisal is an opportunity for an interesting discussion in which the DPC can explain the difficulties s/he faces as well as his/her needs, accomplishments and related objectives. It may also be used as a means of raising awareness amongst hierarchical superiors.

Finally, the DPC must also be accountable for the performance of his role. The appraisal is likewise conducted on the basis of that accountability of the DPC.

Accordingly, as explained above, it is important that the role of DPC appears in the individual's job description in order to provide a starting point for his/her hierarchical supervisor to conduct his/her appraisal.

The DPO could be consulted by the DPC's reporting officer with regard to the relevant part of the DPC's activity, with such consultation being mandatory or optional at the request of the DPC.

5. Conclusion

The survey and the resultant report have given an initial insight into the function of DPC at the Commission. As stated above, the EDPS wishes to supplement those data at a later stage by surveying other institutions and agencies of the European Union which have also established networks of DPCs.

This initial stage of the survey into the function has revealed that even where the role of the DPC was reduced to a minimum in terms of the time devoted to it, some criteria still had to be met by the DG or Service in order to guarantee the useful nature and continuity of the function. This is the case with the appointment decision (mentioning the minimum duration of the term of office), the specific reference to the role of DPC in the individual's job description (see appraisal), the resources needed in terms of time to attend meetings of the DPCs' network, the necessary inclusion of the role of DPC in the individual's appraisal and, centrally, the definition of the criteria establishing the risk level of processing operations.

It has also been possible to update some of the useful practices developed in the DGs. For example, creating a mailbox for the DPC, developing an Intranet page devoted to data protection, ensuring the visibility of the DPC in the organisational chart, structuring access to hierarchical superiors according to need (organisation of meetings) and ensuring that the DPC is kept informed and consulted effectively are all regarded as good practices.

Finally, the survey has revealed that certain aspects deserved closer consideration. Accordingly, the different combinations of possible functions and their advantages and possible conflicts of interest could be discussed with the DPCs, as well as the role and tasks of the assistant to the DPC.

In conclusion, this report forms part of the current data protection reform. The role embodied by the DPO in terms of the accountability of his/her DG and his/her contribution vis-à-vis the documentation of processing operations may also take place locally, thanks to the additional intervention of the DPC. In addition, the EDPS also wishes to use this report to support the role of the DPC and to demonstrate the advantages to be had from obtaining a better understanding of that function and ensuring its existence over the long term, with a view to developing the function, making it a more common feature in large institutions and inviting the smallest institutions to consider the advantages for them of having a network of DPCs, even if only on a modest scale.

Annex 1: Article 14 of the implementing rules concerning the tasks, duties and powers of the Commission's Data Protection Officer

Article 14
Data Protection Coordinators

1. A DPC shall be appointed in each Directorate-General or Service by the Director-General or the Head of Service. Based on a written agreement, several Directorates-General, Services or Offices may, for reasons of coherence or efficiency, decide to appoint a common DPC or share the services of an already appointed DPC

2. The function of DPC can be combined with other functions as appropriate. To acquire the necessary competences for the functions, he must undergo the compulsory training for DPCs within six months of his appointment

3. The term of office of the DPC shall not be limited. He should be chosen, at the appropriate hierarchical level, on the basis of his high professional ethics, his knowledge and experience of the functioning of his Directorate-General and his motivation for the function. He should have an understanding of information systems principles.

4. Without prejudice to the responsibilities of the DPO, the DPC shall:

    (a) establish an inventory of processing operations in the Directorate-General, keep it up to date, and help to define an appropriate risk level for each of the processing operations; he shall use the online Inventory Management System for DPCs put in place for those purposes by the DPO on his website on the Commission's Intranet;

    (b) assist the Director-General or Head of Service to identify the respective Controllers;

    (c) have the right to obtain from the Controllers necessary and adequate information. This shall not include the right to access personal data processed under the responsibility of the Controller.

5. Without prejudice to the responsibilities of the Controller, the DPC shall:

    (a) assist the Controllers in complying with their legal obligations;

    (b) help the Controllers to establish notifications;

    (c) input the simplified notifications into the online notification system of the DPO.

6. The DPC shall participate in the regular meetings of the DPCs' network, chaired by the DPO, to ensure coherent implementation and interpretation of the Regulation in the Commission and to discuss subjects of common interest.

7. In the execution of his tasks the DPC can ask the DPO for a recommendation, advice or an opinion.