

## 17 Data Protection Management System

*Art. 5 and 24 GDPR demand the establishment of a data protection management system (DPMS).*

Although GDPR does not state explicitly that a DPMS has to be installed, it is commonly agreed that a DPMS will serve the purpose of demonstrating that processing is performed in accordance with the GDPR.

*Who is responsible for this establishment of a DPMS? (Designated data protection officer?)*

The controller is responsible to fulfil the duties of accountability and thus the duty to demonstrate compliance with the GDPR. The tasks of a data protection officer are laid down in Article 39 GDPR. It is not the genuine responsibility of the data protection officer to establish a DPMS. However Article 39 para. 1 (b) GDPR states that it is one of the tasks of the data protection officer to monitor compliance with the GDPR, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in processing operations, and the related audits.

As Monitoring is one of the main aspects of a DPMS it may however be advisable to entrust the task of establishing a DPMS to the data protection officer. It is legally permissible to assign further tasks to the data protection officer since the wording of Article 39 only defines the minimum number of tasks (“The data protection officer shall have at least the following tasks:”).

*The specifics of the Data Protection Management System are not comprehensively described in the GDPR. Can the drafting and review of a data protection concept or a legal opinion be regarded here as the implementation of a Data Protection Management System?*

No. A data protection management system is characterised by the fact that it ensures continuous monitoring and adaptation of data processing processes. These follow the concept of a PDCA-cycle (Plan-Do-Check-Act). A one-off review, or obtaining a legal opinion, can be an important step in such an approach.