~~ARTICLE 29 DATA PROTECTION WORKING PARTY~~ 17/EN

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THE WORKING PARTY ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA

set up by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995, having regard to Articles 29 and 30 ~~paragraphs 1(a) and 3 of that Directive~~thereof, having regard to its Rules of Procedure,

HAS ADOPTED THE PRESENT ~~DOCUMENT~~ GUIDELINES:

This Working Party was set up under Article 29 of Directive 95/46/EC. It is an independent European advisory body on data protection and privacy. Its tasks are descr bed in Article 30 of Directive 95/46/EC and Article 15 of Directive 2002/58/EC.

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Introduction

1. These guidelines provide practical guidance and interpretative assistance from the Article 29 Working Party (WP29) on the new obligation of transparency concerning the processing of personal data under the General Data Protection Regulation (the "GDPR"). Transparency is an overarching obligation under the GDPR applying to three central areas: (1) the provision of information to data subjects related to fair processing; (2) how data controllers communicate with data subjects in relation to their rights under the GDPR; and (3) how data controllers facilitate the exercise by data subjects of their rights . Insofar as compliance with transparency is required in relation to data processing under Directive (EU) 2016/680 , these guidelines also apply to the interpretation of that principle. These guidelines are, like all WP29 guidelines, intended to be generally applicable and relevant to controllers irrespective of the sectoral, industry or regulatory specifications particular to any given data controller. As such, these guidelines cannot address the nuances and many variables which may arise in the context of the transparency obligations of a specific sector, industry or regulated area. However, these guidelines are intended to enable controllers to understand, at a high level, WP2g's interpretation of what the transparency obligations entail in practice and to indicate the approach which WP29 considers controllers should take to being transparent while embedding fairness and accountability into their transparency measures.

2. Transparency is a long established feature of the law of the EU . It is about engendering trust in the processes which affect the citizen by enabling them to understand, and if necessary, challenge those processes. It is also an expression of the principle of fairness in relation to the

processing of personal data expressed in Article 8 of the Charter of Fundamental Rights of the European Union. Under the GDPR (Article 5(1)(a)), in addition to the requirements that data must be processed lawfully and fairly, transparency is now included as a fundamental aspect of these principles. Transparency is intrinsically linked to fairness and the new principle of accountability under the GDPR. It also follows from Article 5.2 that the controller must always be able to demonstrate that personal data are processed in a transparent manner in relation to the data subject. Connected to this, the accountability principle requires transparency of processing operations in order that data controllers are able to demonstrate compliance with their obligations under the GDPR .

3. In accordance with Recital 171 of the GDPR, where processing ~~which~~ is already under way prior to 25 May 2018, a data controller should ensure that it is compliant with its transparency obligations as of 25 May 2018 (along with all other obligations under the GDPR). This means that prior to 25 May 2018, data controllers should revisit all information provided to data subjects on processing of their personal data (for example in privacy statements/ notices etc.) to ensure that they adhere to the requirements in relation to transparency which are discussed in these guidelines. Where changes or additions are made to such information, controllers should make it clear to data subjects that these changes have been effected in order to comply with the GDPR. WP29 recommends that such changes or additions be actively brought to the attention of data subjects but at a minimum controllers should make this information publically available (e.g. on their website). However, if the changes or additions are material or substantive, then in line with paragraphs 29 to 32 below, such changes should be actively brought to the attention of the data subject.

~~3.~~4. Transparency, when adhered to by data controllers, empowers data subjects to hold data controllers and processors accountable and to exercise control over their personal data by, for example, providing or withdrawing informed consent and actioning their data subject rights . The concept of transparency in the GDPR is user-centric rather than legalistic and is realised by way of specific practical requirements on data controllers and processors in a number of articles. The practical (information) requirements are outlined in Articles 12 - 14

of the GDPR. However, the quality, accessibility and comprehensibility of the information is as important as the actual content of the transparency information, which must be provided to data subjects.

~~4.~~5. The transparency requirements in the GDPR apply irrespective of the legal basis for processing and throughout the life cycle of processing. This is clear from Article 12 which provides that transparency applies at the following stages of the data processing cycle:

- before or at the start of the data processing cycle, i.e. when the personal data is being collected either from the data subject or otherwise obtained;
- throughout the whole processing period, i.e. when communicating with data subjects about their rights; and
- at specific points while processing is ongoing, for example when data breaches occur or in the case of material changes to the processing.

The meaning of transparency

~~5.~~6. Transparency is not defined in the GDPR. Recital 39 of the GDPR is informative as to the meaning and effect of the principle of transparency in the context of data processing:

"It should be transparent to natural persons that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed. The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language be used. That principle concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed..."

Elements of transparency under the GDPR

~~6.~~7. The key articles in relation to transparency in the GDPR, as they apply to the rights of the data subject, are found in Chapter III (Rights of the Data Subject). Article 12 sets out the general rules which apply to: the provision of information to data subjects (under Articles 13 - 14); communications with data subjects concerning the exercise of their rights (under Articles 15 - 22); and communications in relation to data breaches (Article 34). In particular Article 12 requires that the information or communication in question must comply with the following rules:

- it must be concise, transparent, intelligible and easily accessible (Article 12.1);
- clear and plain language must be used (Article 12.1);
- the requirement for clear and plain language is of particular importance when providing information to children (Article 12.1);
- it must be in writing "or by other means, including where appropriate, by electronic means" (Article 12.1);
- where requested by the data subject it may be provided orally (Article 12.1) ; and
- it generally must be provided free of charge (Article 12.5).

"Concise, transparent, intelligible and easily accessible"

~~7.~~8. The requirement that the provision of information to, and communication with, data subjects is done in a "concise and transparent" manner means that data controllers should present the information/ communication efficiently and succinctly in order to avoid information fatigue. This information should be clearly differentiated from other non-~~.~~-privacy related information such as contractual provisions or general terms of use. In an online context, the use of a layered privacy statement/ notice will enable a data subject to navigate to the particular section of the privacy statement / notice which they want to immediately access rather than having to scroll through large amounts of text searching for particular issues.

~~8.~~9. The requirement that information is "intelligible" means that it should be understood by an average member of the intended audience. ~~This means that the controller needs to first identify the intended audience and ascertain the average member's level of understanding. As the intended audience may, however, differ from the actual audience, the controller should also regularly check whether the information/ communication is still tailored to the actual audience (in particular where it comprises children), and make adjustments if necessary. Controllers can demonstrate their compliance with the transparency principle by testing the~~Intelligibility is closely linked to the requirement to use clear and plain language. An accountable data controller will have knowledge about the people they collect information about and it can use this knowledge to determine what that audience would likely understand. For example, a controller collecting the personal data of working professionals can assume its audience has a higher level of understanding than a controller that obtains the personal data of children. If controllers are uncertain about the level of intelligibility and transparency of the information and effectiveness of user interfaces/ notices/ policies etc., they can test these, for example, through ~~user panels~~mechanisms such as user panels, readability testing, formal and informal interactions and dialogue with industry groups, consumer advocacy groups and regulatory bodies, where appropriate, amongst other things.

~~9.~~10. A central consideration of the principle of transparency outlined in these provisions is that the data subject should be able to determine in advance what the scope and consequences of the processing entails~~. As a best practice, in particular~~ and that they should not be taken by surprise at a later point about the ways in which their personal data has been used. This is also an important aspect of the principle of fairness under Article 5.1 of the GDPR and indeed is linked to Recital 39 which states that "[n]atural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data..." In particular, for complex, technical or unexpected data processing, ~~the~~ WP29's position is that~~ controllers should not only provide~~, as well as providing the prescribed information under Articles 13 and ~~14, but~~14 (dealt with later in these guidelines), controllers should also separately spell out in unambiguous language what the most important consequences of the processing will be: in other words, what kind of effect will the specific processing described in a privacy statement/ notice actually have on a data subject? ~~Such a description of the consequences of the processing should not simply rely on innocuous and predictable "best case" examples of data processing, but should~~In accordance with the principle of accountability and in line with Recital 39, data controllers should assess whether there are particular risks for natural persons involved in this type of processing which should be brought to the attention of data subjects. This can help to provide an overview of the types of processing that could have the highest impact on the fundamental rights and freedoms of data subjects in relation to the protection of their personal data.

~~10.~~11. The "easily accessible" element means that the data subject should not have to seek out the information; it should be immediately apparent to them where and how this information can be accessed, for example by providing it directly to them, by linking them to

it, by clearly signposting it or as an answer to a natural language question (for example in an online layered privacy statement/ notice, in FAQs, by way of contextual pop-ups which activate when a data subject fills in an online form, or in an interactive digital context through a chatbot interface~~ etc.).~~ , etc. These mechanisms are further considered below, including at paragraphs 33 to 40).

'"Clear and plain language"

~~11.~~12. With written information (and where written information is delivered orally, or by audio/ audiovisual methods, including for vision-impaired data subjects), best practices for clear writing should be followed. A similar language requirement (for "plain, intelligible language") has previously been used by the EU legislator and is also explicitly referred to in the context of consent in Recital 42 of the GDPR . The requirement for clear and plain language means that information should be provided in as simple a manner as possible, avoiding complex sentence and language structures. The information should be concrete and definitive; it should not be phrased in abstract or ambivalent terms or leave room for different ~~interpretations. In particular the purposes of, and legal basis for, processing the personal data should be clear.~~

Good Practice Examples14

- "We will retain your shopping history and use details of the products you have previously purchased to make suggestions to you for other products which we believe you will also be interested in " (it is clear that what types of data will be processed, that the data subject will be subject to targeted advertisements for products and that their data will be used to enable this);

- "We will retain and evaluate information on your recent visits to our website and how you move around different sections of our website for analytics purposes to understand how people use our website so that we can make it more intuitive" (it is clear what type of data will be processed and the type of analysis which the controller is going to undertake); and

- "We will keep a record of the articles on our website that you have clicked on and use that information to target advertising on this website to you that is relevant to your interests, which we have identified based on articles you have read" (it is clear what the personalisation entails and how the interests attributed to the data subject have been identified).

~~12. Language qualifiers such as "may", "might", "some", "often" and "possible" should also be avoided. Paragraphs and sentences should be well structured, utilising bullets and indents to signal hierarchical~~

relationships. Writing should be in the active instead of the passive form and excess nouns should be avoided. The information provided to a data subject should not contain overly legalistic, technical or specialist language or terminology. Where the information is translated into one or more other languages, the data controller should ensure that all the translations are accurate and that the phraseology and syntax makes sense in the second language(s) so that the translated text does not have to be deciphered or re-interpreted. (A translation in one or more other languages should be provided where the controller targets data subjects speaking those languages.)

Providing information to children~~-~~ and other vulnerable people

~~13.~~14. Where a data controller is targeting children or is, or should be, aware that their goods/ services are particularly utilised by children (~~and potentially~~including where the controller is relying on the consent of the child) , it should ensure that the vocabulary, tone and style of the language used is appropriate to and resonates with children so that the child addressee of the information recognises that the message/ information is being directed at them. A useful example of child-centred language used as an alternative to the original legal language can be found in the "UN Convention on the Rights of the Child in Child Friendly Language".

15. WP2g's position is that transparency is a free-standing right which applies as much to children as it does to adults. WP29 emphasises in particular that children do not lose their rights as data subjects to transparency simply because consent has been given/ authorised by the holder of parental responsibility in a situation to which Article 8 of the GDPR applies. While such consent will, in many cases, be given or authorised on a once-off basis by the holder of parental responsibility, a child (like any other data subject) has an ongoing right to transparency throughout the continuum of their engagement with a data controller. This is consistent with Article 13 of the UN Convention on the Rights of the Child which states that a child has a right to freedom of expression which includes the right to seek, receive and impart information and ideas of all kinds. It is important to point out that, while providing for consent to be given on behalf of a child when under a particular age, Article 8 does not provide for transparency measures to be directed at the holder of parental responsibility who gives such consent. Therefore, data controllers have an obligation in accordance with the specific mentions of transparency measures addressed to children in Article 12.1 (supported by Recitals 38 and 58) to ensure that where they target children or are aware that their goods or services are particularly utilised by children of a literate age, that any information and communication should be conveyed in clear and plain language or in a medium that children can easily understand. For the avoidance of doubt however, WP29 recognises that with very young or pre-literate children, transparency measures may also be addressed to holders of parental responsibility given that such children will, in most cases, be unlikely to understand even the most basic written or non-written messages concerning transparency.

16. Equally, if a data controller is aware that their goods/ services are availed of by (or targeted at) other vulnerable members of society, including people with disabilities or people who may have difficulties accessing information, the vulnerabilities of such data subjects should be taken into account by the data controller in its assessment of how to ensure that it complies with its transparency obligations in relation to such data subjects . This relates to

the need for a data controller to ~~identify~~assess its audience's likely level of understanding, as discussed above at paragraph ~~8.~~9.

"In writing or by other means"

~~14.~~17. Under Article 12.1, the default position for the provision of information to, or communications with, data subjects is that the information is in writing . (Article 12.7 also provides for information to be provided in combination with standardised icons and this issue is considered in the section on visualisation tools at paragraphs ~~42 – 45~~49 to 53). However, the GDPR also allows for other, unspecified "means" including electronic means to be used. WP2g's position with regard to written electronic means is that where a data controller maintains (or operates, in part or in full, through) a website, WP29 recommends the use of layered privacy statements/ notices, which allow website visitors to navigate to particular aspects of the relevant privacy statement/ notice that are of most interest to them (see more on layered privacy statements/ notices at paragraph ~~30).~~ 35 to 37). However, the entirety of the information addressed to data subjects should also be available to them in one single place or one complete document (whether in a digital or paper format) which can be easily accessed by a data subject should they wish to consult the entirety of the information addressed to them. Importantly, the use of a layered approach is not confined only to written electronic means for providing information to data subjects. As discussed at paragraphs 35 to 36 and 38 below, a layered approach to the provision of information to data subjects may also be utilised by employing a combination of methods to ensure transparency in relation to processing.

18. Of course, the use of digital layered privacy statements/ notices is not the only written electronic means that can be deployed by controllers. Other electronic means include "just-in-time" contextual pop-up notices, 3D touch or hover-over notices, and privacy dashboards. ~~Additional non~~Non-written electronic means which may be ~~provided~~used in addition to a layered privacy statement/ notice might include videos and smartphone or ~~IoT~~IoT voice alerts. "Other means", which are not necessarily electronic, might include, for example, cartoons, infographics or flowcharts. Where transparency information is directed at children specifically, controllers should consider what types of measures may be particularly accessible to children (e.g. these might be comics/ cartoons, pictograms, animations, etc. amongst other measures).

~~15.~~19. It is critical that the method(s) chosen to provide the information is/are appropriate to the particular circumstances, i.e. the manner in which the data controller and data subject interact or the manner in which the data subject's information is collected. For example, only providing the information in electronic written format, such as in an online privacy statement/ notice may not be appropriate/ workable where a device that captures personal data does not have a screen (e.g. IoT devices/ smart devices) to access the website / display such written information. In such cases, appropriate alternative additional means should be considered, for example providing the privacy statement/ notice in hard copy instruction manuals or providing the URL website address (i.e. the specific page on the website) at which the online privacy statement/ notice can be found in the hard copy instructions or in the packaging. Audio (oral) delivery of the information could also be additionally provided if the screenless device has audio capabilities. WP29 has previously made recommendations around transparency and provision of information to data subjects in its Opinion on Recent Developments in the Internet of Things (such as the use of QR codes printed on internet of things objects, so that when scanned, the QR code will display the required transparency information). These recommendations remain applicable under the GDPR.

"..the information may be provided orally"

~~16.~~20. Article 12.1 specifically contemplates that information may be provided orally to a data subject on request, provided that their identity ~~information~~ is proven by other ~~(i.e. non-oral)~~ means. In other words, the means employed should be more than reliance on a mere assertion by the individual that they are a specific named person and the means should enable the controller to verify a data subject's identity with sufficient assurance. The requirement to verify the identity of the data subject before providing information orally only applies to information relating to the exercise ~~of the~~by a specific data subject~~'s~~ of their rights~~, as outlined in~~ under Articles 15 to 22 and 34. This precondition to the provision of oral information cannot apply to the provision of general privacy information as outlined in Articles 13 and 14, since information required under Articles 13 and 14 must also be made accessible to future users / customers (whose identity a data controller would not be in a position to verify). Hence, information to be provided under

Articles 13 and 14 may be provided by oral means without the controller requiring a data subject's identity to be proven.

~~17.~~21. The oral provision of information required under ~~Article~~Articles 13 and 14 does not necessarily mean oral information provided on a person-to-person basis (i.e. in person or by telephone). Automated oral information may be provided in addition to written means. For example, this may apply in the context of persons who are visually impaired when interacting with information society service providers, or in the context of screenless smart devices, as referred to above at paragraph ~~15.~~19. Where a data controller has chosen to provide information to a data subject orally, or a data subject requests the provision of oral information or communications, WP2g's position is that the data controller should allow the data subject to re-listen to pre-recorded messages. This is imperative where the request for oral information relates to visually impaired data subjects or other data subjects who may have difficulty in accessing or understanding information in written format. The data controller should also ensure that it has a record of, and can demonstrate (for the purposes of complying with the accountability requirement): (i) the request for the information by oral means, (ii) the method by which the data subject's identity was verified (where applicable - see above at paragraph ~~16~~20) and (iii) the fact that information was provided to the data subject.

"Free of charge"

~~18.~~22. Under Article 12.5, data controllers cannot generally charge data subjects for the provision of information under Articles 13 and 14, or for communications and actions taken under Articles 15 - 22 (on the rights of data subjects) and Article 34 (communication of personal data breaches to data subjects). This aspect of transparency also means that any information provided under the transparency requirements cannot be made conditional upon financial transactions, for example the payment for, or purchase of, services or goods.

Information to be provided to the data subject - Articles 13 & 14

Content

~~19.~~23. The GDPR lists the categories of information that must be provided to a data subject in relation to the processing of their personal data where it is collected from the data subject (Article 13) or obtained from another source (Article 14). The table in the ~~Schedule~~Annex to these guidelines summarises the categories of information that must be provided under Articles 13 and 14. It also considers the nature, scope and content of these requirements. For clarity, WP2g's position is that there is no difference between the status of the information to be provided under sub-article 1 and 2 of Articles 13 and 14 respectively. All of the information across these sub-articles is of equal importance and must be provided to the data subject.

"Appropriate measures"

~~20.~~24. As well as content, the form and manner in which the information required under Articles 13 and 14 should be provided to the data subject is also important. The notice containing such information is frequently referred to as a data protection notice, privacy notice, privacy policy, privacy statement or fair processing notice. The GDPR does not prescribe the format or modality by which such information should be provided to the data subject but does make it clear that it is the data controller's responsibility to take "appropriate measures" in relation to the provision of the required information for transparency purposes. This means that the data controller should take into account all of the circumstances of the data collection and processing when deciding upon the appropriate modality and format of the information provision. In particular, appropriate measures will need to be assessed in light of the product/ service user experience. This means taking account of the device used (if applicable), the nature of the user interfaces/ interactions with the data controller (the user "journey") and the limitations that those factors entail. As noted above at paragraph ~~14,~~17. WP29 recommends that where a data controller has an online presence, an online layered privacy statement/ notice should be provided.

~~21.~~25. In order to help identify the most appropriate modality for providing the information, in advance of "going live", data controllers may wish to trial different modalities by way of user testing (e.g. hall tests, or other standardised tests of readability or accessibility) to seek feedback on how accessible, understandable and easy to use the proposed measure is for users. (See also further comments above on other mechanisms for carrying out user testing at paragraph 9). Documenting this approach should also assist data controllers with their accountability obligations by demonstrating how the tool/ approach chosen to convey the information is the most appropriate in the circumstances.

~~22. Being accountable as regards transparency applies not only at the point of collection of personal data but throughout the processing life cycle, irrespective of the information or communication being conveyed. This is the case, for example, when changing the contents/ conditions of existing privacy statements/ notices. The controller should adhere to the same principles when communicating both the initial privacy statement/ notice and any subsequent changes to this statement. Since most existing customers or users will only glance over communications of changes to privacy statements/ notices, the controller should take all measures necessary to ensure that these changes are communicated in such a way that ensures that most recipients will actually notice them. This means for example that a notification of changes should always be communicated by way of an appropriate modality (e.g. email/ hard copy letter etc.) specifically devoted to those changes (e.g. not together with direct marketing content), with such a communication meeting the Article 12 requirements of being concise, intelligible, easily accessible and using clear and plain language. References in the privacy statement/ notice to the effect that the data subject should regularly check the privacy statement/notice for changes or updates are considered not only insufficient but also unfair in the context of Article 5.1(a). Further guidance in relation to the timing for notification of changes to data subjects is considered below at paragraph ~~26.~~~~

Timing for provision of information

~~23.~~26. Articles 13 and 14 set out information which must be provided to the data subject at the commencement phase of the processing cycle . Article 13 applies to the scenario where the data is collected ~~directly~~ from the data subject. This includes personal data that:

- a data subject consciously provides to a data controller (e.g. when completing an online form); or

- a data controller collects from a data subject by observation (e.g. using automated data capturing devices or data capturing software such as cameras, network equipment, ~~wifi~~Wi-Fi tracking, RFID or other types of sensors).

Article 14 applies in the scenario where the data have not been obtained from the data subject. This includes personal data which a data controller has obtained from sources such as:

- third party data controllers;

- publicly available sources;

- data brokers; or

- other data subjects.

~~24.~~27. As regards timing of the provision of this information, providing it in a timely manner is a vital element of the transparency obligation and the obligation to process data fairly. Where Article 13 applies, under Article 13.1 the information must be provided "at the time when personal data are obtained". In the case of indirectly obtained personal data under Article 14, the timeframes within which the required information must be provided to the data subject are set out in Article 14.3 (a) to (c) as follows:

- The general requirement is that the information must be provided within a "reasonable period" after obtaining the personal data and no later than one month, "having regard to the specific circumstances in which the personal data are processed" (Article 14.3(a)).

- The general one-month time limit in Article 14.3(a) may be further curtailed under Article 14.3(b), which provides for a situation where the data are being used for communication with the data subject. In such a case, the information must be provided at the latest at the time of the first communication with the data subject. If the first communication occurs prior to the one -month time limit after obtaining the personal data, then the information must be provided at the latest at the time of the first communication with the data subject notwithstanding that one month from the point of obtaining the data has not expired. If the first communication with a data subject occurs more than one month after obtaining the personal data then Article 14.3(a) continues to apply, so that the Article 14 information must be provided to the data subject at the latest within one month after it was obtained.

- The general one-month time limit in Article 14.3(a) can also be curtailed under Article 14.3(c) which provides for a situation where the data are being disclosed to another recipient (whether a third party or not) . In such a case, the information must be provided at the latest at the time of the first disclosure. In this scenario, if the disclosure occurs prior to the one-month time limit, then the information must be provided at the latest at the time of that first disclosure, notwithstanding that one month from the point of obtaining the data has not expired. Similar to the position with Article 14.3(b), if any disclosure of the personal data occurs more than one month after obtaining the personal data, then Article 14.3(a) again continues to apply, so that the Article 14 information must be provided to the data subject at the latest within one month after it was obtained.

~~25.~~28. Therefore, in any case, the maximum time limit within which Article 14 information must be provided to a data subject is one month. However, the ~~requirements~~principles of fairness and accountability under the GDPR require data controllers to always consider the reasonable expectations of data subjects, the effect that the processing may have on them and their ability to exercise their rights in relation to that processing, when deciding at what point to provide the Article 14 information. Accountability requires controllers to demonstrate the rationale for their decision and justify why the information was provided at the time it was. In practice, it may be difficult to meet these requirements when providing information at the 'last moment'. In this regard, Recital 39 stipulates, amongst other things, that data subjects should be "made aware of the risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing"~~'~~. Recital 60 also refers to the requirement that the data subject be informed of the existence of the processing operation and its purposes in the context of the principles of fair and transparent processing. For all of these reasons, WP29's position is that, wherever possible, data controllers should, in accordance with the principle of fairness, provide the information to data subjects well in advance of the stipulated time limits. Further comments on the appropriateness of the timeframe between notifying data subjects of the processing operations and such processing operations actually taking effect are set out in ~~the paragraph immediately below.~~paragraphs 30 to 31 and 48.

Changes to Article 13 and Article 14 information

29. Being accountable as regards transparency applies not only at the point of collection of personal data but throughout the processing life cycle, irrespective of the information or communication being conveyed. This is the case, for example, when changing the contents of existing privacy statements/ notices. The controller should adhere to the same principles when communicating both the initial privacy statement/ notice and any subsequent substantive or material changes to this statement/ notice. Factors which controllers should consider in assessing what is a substantive or material change include the impact on data subjects (including their ability to exercise their rights), and how unexpected/ surprising the change would be to data subjects. Changes to a privacy statement/ notice that should always be communicated to data subjects include inter alia: a change in processing purpose; a change to the identity of the controller; or a change as to how data subjects can exercise their rights in relation to the processing. Conversely, an example of changes to a privacy statement/ notice which are not considered by WP29 to be substantive or material include corrections of misspellings, or stylistic/ grammatical flaws. Since most existing customers or users will only glance over communications of changes to privacy statements/ notices, the controller should take all measures necessary to ensure that these changes are communicated in such a way that ensures that most recipients will actually notice them. This means, for example, that a notification of changes should always be communicated by way of an appropriate modality (e.g. email, hard copy letter, pop-up on a webpage or other modality which will effectively bring the changes to the attention of the data subject) specifically devoted to those changes (e.g. not together with direct marketing content), with such a communication meeting the Article 12 requirements of being concise, transparent, intelligible, easily accessible and using clear and plain language. References in the privacy statement/ notice to the effect that the data subject should regularly check the privacy statement/notice for changes or updates are considered not only insufficient but also unfair in the context of Article 5.1(a). Further guidance in relation to the timing for notification of changes to data subjects is considered below at paragraph 30 to 31.

Timing of notification of changes to Article 13 and Article 14 information

~~26.~~30. The GDPR is silent on the timing requirements (and indeed the methods) that apply for notifications of changes to information that has previously been provided to a data subject under Article 13 or 14 (excluding an intended further purpose for processing, in

which case information on that further purpose must be notified prior to the commencement of that further processing as per Articles 13.3 and 14.4 - see below at paragraph ~~41~~45). However, as noted above in the context of the timing for the provision of Article 14 information, the data controller must again have regard to the fairness and accountability principles in terms of any reasonable expectations of the data subject, or the potential impact of those changes upon the data subject. If the change to the information is indicative of a fundamental change to the nature of the processing (e.g. enlargement of the categories of recipients or introduction of transfers to a third country) or a change which may not be fundamental in terms of the processing operation but which may be relevant to and impact upon the data subject, then that information should be provided to the data subject well in advance of the change actually taking effect and the method used to bring the changes to the data subject's attention should be explicit and effective. This is to ensure the data subject does not "miss" the change and to allow the data subject a reasonable timeframe for them to (a) consider the nature and impact of the change and (b) exercise their rights under the GDPR in relation to the change (e.g. to withdraw consent or to object to the processing).

~~27.~~31. Data controllers should carefully consider the circumstances and context of each situation where an update to transparency information is required, including the potential impact of the changes upon the data subject and the modality used to communicate the changes, and be able to demonstrate how the timeframe between notification of the changes and the change taking effect satisfies the principle of fairness to the data subject. Further, WP29's position is that, consistent with the principle of fairness, when notifying such changes to data subjects, a data controller should also explain what will be the likely impact of those changes on data subjects. However, compliance with transparency requirements does not "whitewash" a situation where the changes to the processing are so significant that the processing becomes completely different in nature to what it was before. WP29 emphasises that all of the other rules in the GDPR, including those relating to incompatible further processing, continue to apply irrespective of compliance with the transparency obligations.

~~28.~~32. Additionally, even when transparency information (e.g. contained in a privacy statement/ notice) does not materially change, it is likely that data subjects who have been using a service for a significant period of time will not recall the information provided to them at the outset under Articles 13 and/or 14. ~~For those situations, where the data processing occurs on an ongoing basis, in order to ensure fairness of the processing, the controller should re-acquaint data subjects~~WP29 recommends that controllers facilitate data subjects to have continuing easy access to the information to re-acquaint themselves with the scope of the data processing~~, for example by way of reminder~~. In accordance with the accountability principle, controllers should also consider whether, and at what intervals, it is appropriate for them to provide express reminders to data subjects as to the fact of the privacy statement/ notice ~~notified at appropriate intervals~~and where they can find it.

Modalities - format of information provision

~~29.~~33. Both ~~Article~~Articles 13 and 14 refer to the obligation on the data controller to "provide the data subject with all of the following information…" The operative word here is "provide". This means that the data controller must take active steps to furnish the information in question to the data subject or to actively direct the data subject to the location of it (e.g. by way of a direct link, use of a QR code, etc.). The data subject must not have to ~~take active steps to seek the~~actively search for information covered by these articles ~~or find it~~ amongst other information, such as terms and conditions of use of a website or app. The example at paragraph ~~10 illustrates this point.~~11 illustrates this point. As noted above at paragraph 17, WP29 recommends that the entirety of the information addressed to data subjects should also be available to them in one single place or one complete document

(e.g. whether in a digital form on a website or in paper format) which can be easily accessed should they wish to consult the entirety of the information.

Layered approach in a digital environment and layered privacy statements/ notices

~~30.~~35. In the digital context, in light of the volume of information which is required to be provided to the data subject, a layered approach may be followed by data controllers where they opt to use a combination of methods to ensure transparency. WP29 recommends in particular that layered privacy statements/ notices should be used to link to the various categories of information which must be provided to the data subject, rather than displaying all such information in a single notice on the screen, in order to avoid information fatigue. Layered privacy statements/ notices can help resolve the tension between completeness and understanding, notably by allowing users to navigate directly to the section of the statement/ notice that they wish to read. It should be noted that layered privacy statements/ notices are not merely nested pages that require several clicks to get to the relevant information. The design and layout of the first layer of the privacy statement/ notice should be such that the data subject has a clear overview of the information available to them on the processing of their personal data and where/ how they can find that detailed information within the layers of the privacy statement/ notice. It is also important that the information contained within the different layers of a layered notice is consistent and that the layers do not provide conflicting information. ~~With regard to the substantive information which may be included in the first layer of the~~

36. As regards the content of the first modality used by a controller to inform data subjects in a layered approach (in other words the primary way in which the controller first engages with a data subject), or the content of the first layer of a layered privacy statement/ notice, WP~~2g's position is that this should always~~29 recommends that the first layer/ modality should include the details of the purposes of processing, the identity of controller and a description of the data subject's rights. (Furthermore this information should be directly brought to the attention of a data subject at the time of collection of the personal data e.g. displayed as a data subject fills in an online form.) The importance of providing this information upfront arises in particular from Recital 39.34 While controllers must be able to demonstrate accountability as to what further information they decide to prioritise, WP2g's position is that, in line with the fairness principle, in addition to the information detailed above in this paragraph, the first layer/ modality should also contain information on the processing which has the most impact on the data subject and processing which could surprise ~~the data subject~~them. Therefore, the data subject should be able to understand from information contained in the first layer/ modality what the consequences of the processing in question will be for the data subject (see also above at paragraph ~~9~~10).

~~31.~~37. In a digital context, aside from providing an online layered privacy statement/ notice, data controllers may also choose to use additional transparency tools (see further examples considered below) which provide tailored information to the individual data subject which is specific to the position of the individual data subject concerned and the goods/ services which that data subject is availing of. It should be noted however that while WP29 recommends the use of online layered privacy statements/ notices, this recommendation does not exclude the development and use of other innovative methods of compliance with transparency requirements.

Layered approach in a non-digital environment

38. A layered approach to the provision of transparency information to data subjects can also be deployed in an offline/ non-digital context (i.e. a real-world environment such as person-to- person engagement or telephone communications) where multiple modalities may be deployed by data controllers to facilitate the provision of information. (See also

paragraphs 33 to 37 and 39 to 40 in relation to different modalities for providing the information.) This approach should not be confused with the separate issue of layered privacy statements/ notices. Whatever the formats that are used in this layered approach, WP29 recommends that the first "layer" (in other words the primary way in which the controller first engages with the data subject) should generally convey the most important information (as referred to at paragraph 36 above), namely the details of the purposes of processing, the identity of controller and the existence of the rights of the data subject, together with information on the greatest impact of processing or processing which could surprise the data subject. For example, where the first point of contact with a data subject is by telephone, this information could be provided during the telephone call with the data subject and they could be provided with the balance of the information required under Article 13/ 14 by way of further, different means, such as by sending a copy of the privacy policy by email and/ or sending the data subject a link to the controller's layered online privacy statement/ notice.

"Push"and "pull"notices

~~32.~~39. Another possible way of providing transparency information is through the use of "push" and "pull" notices. Push notices involve the provision of "just-in-time" transparency information notices while "pull" notices facilitate access to information by methods such as permission management, ~~transparency~~privacy dashboards and "learn more" tutorials. These allow for a more user-centric transparency experience for the data subject.

• A privacy dashboard is a single point from which data subjects can view 'privacy information' and manage their privacy preferences by allowing or preventing their data from being used in certain ways by the service in question. This is particularly useful when the same service is used by data subjects on a variety of different devices as it gives them access to and control over their personal data no matter how they use the service. Allowing data subjects to manually adjust their privacy settings via a privacy dashboard can also make it easier for a privacy statement/ notice to be personalised by reflecting only the types of processing occurring for that particular data subject. Incorporating a privacy dashboard into the existing architecture of a service (e.g. by using the same design and branding as the rest of the service) is preferable because it will ensure that access and use of it will be intuitive and may help to encourage users to engage with this information, in the same way that they would with other aspects of the service. This can be an effective way of demonstrating that 'privacy information' is a necessary and integral part of a service rather than a lengthy list of legalese.

• A just-in-time notice is used to provide specific 'privacy information' in an ad hoc manner, as and when it is most relevant for the data subject to read. This method is useful for providing information at various points throughout the process of data collection; it helps to spread the provision of information into easily digestible chunks and reduces the reliance on a single privacy statement/ notice containing information that is difficult to understand out of context. For example, if a data subject purchases a product online, brief explanatory information can be provided in pop-ups accompanying relevant fields of text. The information next to a field requesting the data subject's telephone number could explain for example that this data is only being collected for the purposes of contact regarding the purchase and that it will only be disclosed to the delivery service.

Other types of "appropriate measures"

~~33.~~40. Given the very high level of internet access in the EU and the fact that data subjects can go online at any time, from multiple locations and different devices, as stated above, WP29's position is that an "appropriate measure" for providing transparency information in the case of data controllers who maintain a digital/ online presence, is to do so through an

electronic privacy statement/ notice. However, based on the circumstances of the data collection and processing, a data controller may need to additionally (or alternatively where the data controller does not have any digital/online presence) use other modalities and formats to provide the information. Other possible ways to convey the information to the data subject arising from the following different personal data environments may include~~:~~ the following modes applicable to the relevant environment which are listed below. As noted previously, a layered approach may be followed by controllers where they opt to use a combination of such methods while ensuring that the most important information (see paragraph 36 and 38) is always conveyed in the first modality used to communicate with the data subject.

a. Hard copy/ paper environment, for example when entering into contracts by postal means: written explanations, leaflets, information in contractual documentation, cartoons, ~~infographic,~~infographics or flowcharts;

b. Telephonic environment: oral explanations by a real person to allow interaction and questions to be answered~~,~~ or automated or pre-recorded information with options to hear further more detailed information;

c. Screenless smart technology/ ~~IoT~~IoT environment such as ~~wifi~~Wi-Fi tracking analytics: icons, QR codes, voice alerts, written details incorporated into paper set-up instructions, ~~or~~ videos incorporated into digital set-up instructions, written information on the smart device, messages sent by SMS or email, visible boards containing the information, public signage~~,~~ or public information campaigns;

d. Person to person environment, such as responding to opinion polls, registering in person for a service: oral explanations~~,~~ or written explanations provided in hard or soft copy format;

e. “Real-life" environment with CCTV/ drone recording: visible boards containing the information, public signage, public information campaigns~~,~~ or newspaper/ media notices.

Information on profiling and automated decision-making

~~34.~~41. Information on the existence of automated decision-making, including profiling, as referred to in Articles 22.1 and 22.4, together with meaningful information about the logic involved and the significant and envisaged consequences of the processing for the data subject, forms part of the obligatory information which must be provided to a data subject under Articles 13.2(f) and 14.2(g). ~~The~~ WP29 has produced guidelines on automated individual decision -making and profiling which should be referred to for further guidance on how transparency should be given effect in the particular circumstances of profiling. It should be noted that, aside from the specific transparency requirements applicable to automated decision-making under Articles 13.2(f) and 14.2(g), the comments in these guidelines relating to the importance of informing data subjects as to the consequences of processing of their personal data, and the general principle that data subjects should not be taken by surprise by the processing of their personal data, equally apply to profiling generally (not just profiling which is captured by Article 22), as a type of processing.

Other issues - risks, rules and safeguards

~~35.~~42. Recital 39 of the GDPR also refers to the provision of certain information which is not explicitly covered by ~~Article~~Articles 13 and Article 14 (see recital text above at paragraph ~~25~~28). The reference in this recital to making data subjects aware of the risks, rules and safeguards in relation to the processing of personal data is connected to a number of other issues. These include data protection impact assessments (DPIAs). As set out in the WP29

Guidelines on DPIAs , data controllers may consider publication of the DPIA (or part of it), as a way of fostering trust in the processing operations and demonstrating transparency and accountability, although such publication is not obligatory. Furthermore, adherence to a code of conduct (provided for under Article 40) may go towards demonstrating transparency, as codes of conduct may be drawn up for the purpose of specifying the application of the GDPR with regard to: fair and transparent processing;: information provided to the public and to data subjects; and information provided to, and the protection of, children, amongst other issues.

36.43. Another relevant issue relating to transparency is data protection by design and by default (as required under Article 25). These principles require data controllers to build data protection considerations into their processing operations and systems from the ground up, rather than taking account of data protection as a last -minute compliance issue. Recital 78 refers to data controllers implementing measures that meet the requirements of data protection by design and by default including measures consisting of transparency with regard to the functions and processing of personal data.

37.44. Separately, the issue of joint controllers is also related to making data subjects aware of the

risks, rules and safeguards. Article 26.1 requires joint controllers to determine their respective responsibilities for complying with obligations under the GDPR in a transparent manner, in particular with regard to the exercise by data subjects of their rights and the duties to provide the information under Articles 13 and 14. Article 26.2 requires that the essence of the arrangement between the data controllers must be made available to the data subject. In other words, it must be completely clear to a data a subject as to which data controller he or she can approach where they intend to exercise one or more of their rights under the GDPR .

Information related to further processing

38.45. Both ArticleArticles 13 and Article 14 contain a provision that requires a data controller to inform a data subject if it intends to further process their personal data for a purpose other than that for which it was collected/ obtained. If so, "the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2". These provisions specifically give effect to the principle in Article 5.1(b) that personal data shall be collected for specified, explicit and legitimate purposes, and further processing in a manner that is incompatible with these purposes is prohibited. The second part of Article 5.1(b) states that further processing for archiving purposes in the public interest, scientific or historical research purposes or for statistical purposes, shall, in accordance with Article 89.1, not be considered to be incompatible with the initial purposes. Where personal data are further processed for purposes that are compatible with the original purposes (Article 6.4 informs this issue), Articles 13.3 and 14.4 apply. The requirements in these articles to inform a data subject about further processing promotes the position in the GDPR that a data subject should reasonably expect that at the time and in the context of the collection of personal data that processing for a particular purpose may take place . In other words, a data subject should not be taken by surprise at the purpose of processing of their personal data.

39. Article46. Articles 13.3 and 14.4, insofar as they refer to the provision of "any relevant further information as referred to in paragraph 2", may be interpreted at first glance as leaving some element of appreciation to the data controller as to the extent of and the particular categories of information from the relevant sub-paragraph 2 (i.e. Article 13.2 or 14.2 as applicable) that should be provided to the data subject. (Recital 61 refers to this as

"other necessary information".) However the default position is that all such information set out in that sub-article should be provided to the data subject unless one or more categories of the information does not exist or is not applicable.

~~40. WP2~~g~~'s position is~~47. WP29 recommends that, in ~~adherence to the principle of transparency expressed in Article 12 and the essential requisites of accountability and fairness under the GDPR, data controllers should provide~~order to be transparent, fair and accountable, controllers should consider making information available to data subjects ~~with further information~~in their privacy statement/ notice on the compatibility analysis carried out under Article 6.4 where a legal basis other than consent or national/ EU law is relied on for the new processing purpose. (~~in~~In other words, an explanation as to how the processing for the other purpose(s) is compatible with the original purpose). This is to allow data subjects the opportunity to consider the compatibility of the further processing and the safeguards provided and to decide whether to exercise their rights e.g. the right to restriction of processing or the right to object to processing ~~amongst others.~~ , amongst others. Where controllers choose not to include such information in a privacy notice/ statement, WP29 recommends that they make it clear to data subjects that they can obtain the information on request.

~~41.~~48. Connected to the exercise of data subject rights is the issue of timing. As emphasised above, the provision of information in a timely manner is a vital element of the transparency requirements under Articles 13 and 14 and is inherently linked to the concept of fair processing. Information in relation to further processing must be provided "prior to that further processing". WP~~29~~2g's position is that a reasonable period should occur between the notification and the processing commencing rather than an immediate start to the processing upon notification being received by the data subject. This gives data subjects the practical benefits of the principle of transparency, allowing them a meaningful opportunity to consider (and potentially exercise their rights in relation to) the further processing. What is a reasonable period will depend on the particular circumstances. The principle of fairness requires that the more intrusive (or less expected) the further processing, the longer the period should be. Equally, the principle of accountability requires that data controllers be able to demonstrate how the determinations they have made as regards the timing for the provision of this information are justified in the circumstances and how the timing overall is fair to data subjects. (See also the previous comments in relation to ascertaining reasonable timeframes above at paragraphs ~~26~~30 to ~~28~~32.)~~.~~

Visualisation tools

~~42.~~49. Importantly, the principle of transparency in the GDPR is not limited to being effected simply

through language communications (whether written or oral). The GDPR provides for visualisation tools (referencing in particular, icons, certification mechanisms, and data protection seals and marks) where appropriate. Recital 58 indicates that the accessibility of information addressed to the public or to data subjects is especially important in the online environment.

Icons

~~43.~~50. Recital 60 makes provision for information to be provided to a data subject "in combination" with standardised icons, thus allowing for a multi-layered approach. However, the use of icons should not simply replace information necessary for the exercise of a data subject's rights nor should they be used as a substitute to compliance with the data controller's obligations under Articles 13 and 14. Article 12.7 provides for the use of such icons stating that:

"The information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where icons are presented electronically they shall be machine-readable".

~~44.~~51. As Article 12.7 states that "Where the icons are presented electronically, they shall be machine- readable", this suggests that there may be situations where icons are not presented electronically , for example icons on physical paperwork, IoT devices or IoT device packaging, notices in public places about ~~wifi~~Wi-Fi tracking, QR codes and CCTV notices.

~~45.~~52. Clearly, the purpose of using icons is to enhance transparency for data subjects by potentially reducing the need for vast amounts of written information to be presented to a data subject. However, the utility of icons to effectively convey information required under Articles 13 and 14 to data subjects is dependent upon the standardisation of symbols/ images to be universally used and recognised across the EU as shorthand for that information. In this regard, the GDPR assigns responsibility for the development of a code of icons to the Commission but ultimately the European Data Protection Board may, either~~,~~ at the request of the Commission~~,~~ or of its own accord, provide the Commission with an opinion on such icons . WP29 recognises that, in line with Recital 166, the development of a code of icons should be centred upon an evidence-based approach and in advance of any such standardisation it will be necessary for extensive research to be conducted in conjunction with industry and the wider public as to the efficacy of icons in this context.

Certification mechanisms, seals and marks

~~46.~~53. Aside from the use of standardised icons, the GDPR (Article 42) also provides for the use of data protection certification mechanisms, data protection seals and marks for the purpose of demonstrating compliance with the GDPR of processing operations by data controllers and processors and enhancing transparency for data subjects. WP29 will be issuing guidelines on certification mechanisms in due course.

Exercise of data subjects' rights

~~47.~~54. Transparency places a triple obligation upon data controllers insofar as the rights of data subjects under the GDPR are concerned, as they must :

- provide information to data subjects on their rights (as required under Articles 13.2(b) and 14.2(c));

- comply with the principle of transparency (i.e. relating to the quality of the communications as set out in Article 12.1) when communicating with data subjects in relation to their rights under Articles 15 to 22 and 34; and

- facilitate the exercise of data subjects' rights under Articles 15 to 22.

~~48.~~55. The GDPR requirements in relation to the exercise of these rights and the nature of the information required are designed to meaningfully position data subjects so that they can vindicate their rights and hold data controllers accountable for the processing of their personal data. Recital 59 emphasises that "modalities should be provided for facilitating the exercise of the data subject's rights" and that the data controller should "also provide means

for requests to be made electronically, especially where personal data are processed by electronic means". The modality provided by a data controller for data subjects to exercise their rights should be appropriate to the context and the nature of the relationship and interactions between the controller and a data subject. To this end, a data controller may

wish to provide one or more different modalities for the exercise of rights ~~which~~that are reflective of the different ways in which data subjects interact with that data controller.

Exceptions to the obligation to provide information

Article 13 exceptions

~~49.~~56. The only exception to a data controller's Article 13 obligations where it has collected personal data directly from a data subject occurs "where and insofar as, the data subject already has the information"~~42.~~.53 The principle of accountability requires that data controllers demonstrate (and document) what information the data subject already has, how and when they received it and that no changes have since occurred to that information that would render it out of date. Further, the use of the phrase "insofar as" in Article 13.4 makes it clear that even if the data subject has previously been provided with certain categories from the inventory of information set out in Article 13, there is still an obligation on the data controller to supplement that information in order to ensure that the data subject now has a complete set of the information listed in Articles 13.1 and 13.2. The following is a best practice example concerning the limited manner in which the Article 13.4 exception should be construed.

Article 14 exceptions

~~50.~~57. Article 14 carves out a much broader set of exceptions to the information obligation on a data controller where personal data has not been obtained from the data subject. These exceptions should, as a general rule, be interpreted and applied narrowly. In addition to the circumstances where the data subject already has the information in question (Article 14.5(a)) , Article 14.5 also allows for the following exceptions:

- The provision of such information is impossible or would involve a disproportionate effort ~~or~~, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, or where it would make the achievement of the objectives of the processing impossible or seriously impair them;

- The data controller is subject to a national law or EU law requirement to obtain or disclose the personal data and that the law provides appropriate protections for the data subject's legitimate interests ; or

- An obligation of professional secrecy (including a statutory obligation of secrecy) which is regulated by national or EU law means the personal data must remain confidential.

Proves impossible, disproportionate effort and serious impairment of objectives

~~51.~~58. Article 14.5(b) allows for 3 separate situations where the obligation to provide the information set out in Articles 14.1, 14.2 and 14.4 is lifted:

(i) Where it proves impossible (in particular for archiving, scientific/ historical research or statistical purposes);

(ii) Where it would involve a disproportionate effort (in particular for archiving, scientific/ historical research or statistical purposes); or

(iii) Where providing the information required under Article 14.1 would make the achievement of the objectives of the processing impossible or seriously impair them.

'Proves impossible"

~~52.~~59. The situation where it "proves impossible" under Article 14.5(b) to provide the information is an all or nothing situation because something is either impossible or it is not; there are no degrees of impossibility. Thus if a data controller seeks to rely on this exemption it must demonstrate the factors that actually prevent it from providing the information in question to data subjects. If, after a certain period of time, the factors that caused the "impossibility" no longer exist and it becomes possible to provide the information to data subjects then the data controller should immediately do so. In practice, there will be very few situations in which a data controller can demonstrate that it is actually impossible to provide the information to data subjects. The following example demonstrates this.

Impossibility of providing the source of the data

~~53.~~60. Recital 61 states that "where the origin of the personal data cannot be provided to the data subject because various sources have been used, general information should be provided". The lifting of the requirement to provide data subjects with information on the source of their personal data applies only where this is not possible because different pieces of personal data relating to the same data subject cannot be attributed to a particular source. For example, the mere fact that a database comprising the personal data of multiple data subjects has been compiled by a data controller using more than one source is not enough to lift this requirement if it is possible (although time consuming or burdensome) to identify the source from which the personal data of individual data subjects derived. Given the requirements of data protection by design and by default , transparency mechanisms should be built into processing systems from the ground up so that all sources of personal data received into an organisation can be tracked and traced back to their source at any point in the data processing life cycle (see paragraph ~~36~~43 above).

'Disproportionate effort"

~~54.~~61. Under Article 14.5(b), as with the "proves impossible" situation, "disproportionate effort" may also apply, in particular, for processing "for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the safeguards referred to in Article 89(1)". Recital 62 also references these objectives as cases where the provision of information to the data subject would involve a disproportionate effort and states that in this regard, the number of data subjects, the age of the data and any appropriate safeguards adopted should be taken into consideration. Given the emphasis in Recital 62 and Article 14.5(b) on archiving, research and statistical purposes with regard to the application of this exemption, WP2g's position is that this exception should not be routinely relied upon by data controllers who are not processing personal data for the purposes of archiving in the public interest, for scientific or historical research purposes or statistical purposes. WP29 emphasises the fact that where these are the purposes pursued, the conditions set out in Article 89.1 must still be complied with and the provision of the information must constitute a disproportionate effort.

~~55.~~62. In determining what may constitute either impossibility or disproportionate effort under Article 14.5(b), it is relevant that there are no comparable exemptions under Article 13 (where personal data is collected from a data subject). The only difference between an Article 13 and an Article 14 situation is that in the latter, the personal data is not collected from the data subject. ~~Two consequences flow from this:~~

- ~~the exception cannot be routinely relied upon by data controllers who are not processing personal data for the purposes of archiving in the public interest, for scientific or historical research purposes or statistical purposes ; and~~ ~~it~~It therefore follows that impossibility or disproportionate effort ~~only arise~~typically arises by virtue of circumstances which do not apply if the personal data is collected from the data subject. In other words, the

impossibility or disproportionate effort must be directly connected to the fact that the personal data was obtained other than from the data subject.

Example

A large metropolitan hospital requires all patients for day procedures, longer-term admissions and appointments to fill in a Patient Information Form which seeks the details of two next-of-kin (data subjects). Given the very large volume of patients passing through the hospital on a daily basis, it would involve disproportionate effort on the part of the hospital to provide all persons who have been listed as next-of-kin on forms filled in by patients each day with the information required under Article 14.

~~56.~~63. The factors referred to above in Recital 62 (number of data subjects, the age of the data and any appropriate safeguards adopted) may be indicative of the types of issues that contribute to a data controller having to use disproportionate effort to notify a data subject of the relevant Article 14 information.

~~57~~ 64. Where a data controller seeks to rely on the exception in Article 14.5(b) on the basis that provision of the information would involve a disproportionate effort, it should carry out a balancing exercise to assess the effort involved for the data controller to provide the information to the data subject against the impact and effects on the data subject if he or she was not provided with the information. This assessment should be documented by the data controller in accordance with its accountability obligations. In such a case, Article 14.5(b) specifies that the controller must take appropriate measures to protect the data subject's rights ~~and~~, freedoms and legitimate interests~~, including~~. This applies equally where a controller determines that the provision of the information proves impossible, or would likely render impossible or seriously impair the achievement of the objectives of the processing. One appropriate measure, as specified in Article 14.5(b), that controllers must always take is to make the information publicly available. A controller can do this in a number of ways, for instance by putting the information on its website, or by proactively advertising the information in a newspaper or on posters on its premises. Other appropriate measures, in addition to making the information publicly available, will depend on the circumstances of the processing, but may include: undertaking a data protection impact assessment; applying pseudonymisation techniques to the data; minimising the data collected and the storage period; and implementing technical and organisational measures to ensure a high level of security. Furthermore, there may be situations where a data controller is processing personal data which does not require the identification of a data subject (for example with pseudonymised data). ~~(~~In such cases, Article 11.1 may also be relevant as it states that a data controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purposes of complying with the GDPR.~~)~~

Serious impairment of objectives

~~58.~~65. The final situation covered by Article 14.5(b) is where a data controller's provision of the information to a data subject under Article 14.1 is likely to make impossible or seriously impair the achievement of the processing objectives. To rely on this exception, data controllers must demonstrate that the provision of the information set out in Article 14.1 alone would nullify the objectives of the processing. Notably, reliance on this aspect of Article 14.5(b) pre-supposes that the data processing satisfies all of the principles set out in Article 5 and that most importantly, in all of the circumstances, the processing of the personal data is fair and that it has a legal basis.

Obtaining or disclosing is expressly laid down in law

~~59.~~66. Article 14.5(c) allows for a lifting of the information requirements in Articles 14.1, 14.2 and 14.4 insofar as the obtaining or disclosure of personal data "is expressly laid down by Union or Member State law to which the controller is subject". This exemption is conditional upon the law in question providing "appropriate measures to protect the data subject's legitimate interests". Such a law must directly address the data controller and the obtaining or disclosure in question should be mandatory upon the data controller. Accordingly, the data controller must be able to demonstrate how the law in question applies to them and requires them to either obtain or disclose the personal data in question. While it is for Union or Member State law to frame the law such that it provides "appropriate measures to protect the data subject's legitimate interests", the data controller should ensure (and be able to demonstrate) that its obtaining or disclosure of personal data complies with those measures. Furthermore, the data controller should make it clear to data subjects that it obtains or discloses personal data in accordance with the law in question, unless there is a legal prohibition preventing the data controller from doing so. This is in line with Recital 41 of the GDPR, which states that a legal basis or legislative ~~measures~~measure should be clear and precise, and its application should be foreseeable to persons subject to it, in accordance with the case law of the Court of Justice of the EU and the European Court of Human Rights. However, Article 14.5(c) will not apply where the data controller is under an obligation to obtain data directly from a data subject, in which case Article 13 will apply ~~and~~. In that case, the only exemption under the GDPR ~~applicable for~~exempting the controller from providing the data subject with information on the processing will be that under Article 13.4 (i.e. where and insofar as the data subject already has the information). However, as referred to below at paragraph 68, at a national level, Member States may also legislate, in accordance with Article 23, for further specific restrictions to the right to transparency under Article 12 and to information under Articles 13 and 14.

Confidentiality by virtue of a secrecy obligation

~~60.~~67. Article 14.5(d) provides for an exemption to the information requirement upon data controllers where the personal data "must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy". Where a data controller seeks to rely on this exemption, it must be able to demonstrate that it has appropriately identified such an exemption and to show how the professional secrecy obligation directly addresses the data controller such that it prohibits the data controller from providing all of the information set out in Articles 14.1, 14.2 and 14.4 to the data subject.

Restrictions on data subject rights ~~under Article 23~~

~~61.~~68. Article 23 provides for Member States (or the EU) to legislate for further restrictions on the scope of the data subject rights in relation to transparency and the substantive data subject rights where such measures respect the essence of the fundamental rights and freedoms and are necessary and proportionate to safeguard one or more of the ten objectives set out in Article 23.1(a) to (j). Where such national measures lessen either the specific data subject rights or the general transparency obligations, which would otherwise apply to data controllers under the GDPR, the data controller should be able to demonstrate how the national provision applies to them. As set out in Article 23.2(h), the legislative measure must contain a provision as to the right of the data subject to be informed about a restriction on

their rights, unless so informing them may be prejudicial to the purpose of the restriction. Consistent with this, and in line with principle of fairness, the data controller should also inform data subjects that they are relying on (or will rely on, in the event of a particular data subject right being exercised) such a national legislative restriction to the exercise of data subject rights, or to the transparency obligation, unless doing so would be prejudicial to the purpose of the ~~restriction~~legislative restriction. As such, transparency requires data

controllers to provide adequate upfront information to data subjects about their rights and any particular caveats to those rights which the controller may seek to rely on, so that the data subject is not taken by surprise at a purported restriction of a particular right when they later attempt to exercise it against the controller. In relation to pseudonymisation and data minimisation, and insofar as data controllers may purport to rely on Article 11 of the GDPR, WP29 has previously confirmed in Opinion 3/ 2017 that Article 11 of the GDPR should be interpreted as a way of enforcing genuine data minimisation without hindering the exercise of data subject rights, and that the exercise of data subject rights must be made possible with the help of additional information provided by the data subject.

69. Additionally, Article 85 requires Member States, by law, to reconcile data protection with the right to freedom of expression and information. This requires, amongst other things, that Member States provide for appropriate exemptions or derogations from certain provisions of the GDPR (including from the transparency requirements under Articles 12 - 14) for processing carried out for journalistic, academic, artistic or literary expression purposes, if they are necessary to reconcile the two rights.

Transparency and data breaches

~~62.~~70. WP29 has produced separate Guidelines on Data Breaches but for the purposes of these guidelines, a data controller's obligations in relation to communication of data breaches to a data subject must take full account of the transparency requirements set out in Article 12. The communication of a data breach must satisfy the same requirements, detailed above (in particular for the use of clear and plain language), that apply to any other communication with a data subject in relation to their rights or in connection with conveying information under Articles 13 and 14.

~~Schedule~~

Annex

Information that must be provided to a data subject under Article 13 or Article 14

Required Information Type	~~Relevant article (if personal~~ data collected~~ directly from data subject)~~	Relevant article (if personal data not obtained~~ from the data subject)~~	~~WP29 Comments on~~ information requirement
The identity and contact details of the controller and, ~~where applicable, their representative47~~	Article 13.1(a) ~~Article~~14.1(a)	~~This information should allow for~~ easy identification of the	

Relevant article (if personal data not obtained from the data subject)

Relevant article (if personal data collected directly from data subject)

WP29 Comments on information requirement

This information should allowfor easy identification of the

Article 13.1(a) Article 14.1(a)

where applicable, their controller and preferably allow

representative59 for different forms of communications with the data controller (e.g. phone number, email, postal address, etc.)

Contact details for the data Article Article See WP29 Guidelines on Data

protection officer, where applicable ~~Article~~13.1(b) ~~Article~~14.1(b) ~~See WP29 Guidelines on Data~~ Protection Officers~~48~~60

The purposes and legal basis ~~for the processing~~ Article~~13.1(c)~~ Article~~14.1(c)~~ In addition to setting out the

for the processing 131(c) 14.1(c) purposes of the processing for which the personal data is intended, the relevant legal basis relied upon under Article 6 ~~or Article 9 must be specified.~~must be specified. In the case of special categories of personal data, the relevant provision of Article 9 (and where relevant, the applicable Union or Member State law under which the data is processed) should be specified. Where, pursuant to Article 10, personal data relating to criminal convictions and offences or related security

~~Where legitimate interests (Article 6.1(f)) is the legal basis for the processing, the legitimate interests pursued by the data controller or a third party~~ ~~Article~~

~~13.1(d) Article~~

~~14.2(b) The specific interest in question must be identified for the benefit of the data subject. As a matter of best practice, the data controller should also provide the data subject with the information from the balancing test, which should have been carried out by the data~~

~~47~~59 As defined by Article 4.17 of the GDPR (and referenced in Recital 80), "representative" means a natural or legal person established in the EU who is designated by the controller or processor in writing under Article 27 and represents the controller or processor with regard to their respective obligations under the GDPR. This obligation applies where, in accordance with Article 3.2, the controller or processor is not established in the EU but processes the personal data of data subjects who are in the EU, and the processing relates to the offer of goods or services to, or monitoring of the behaviour of, data subjects in the EU.

~~48~~60 Guidelines on Data Protection Officers, WP243 rev.01, last revised and adopted on 5 April 2017

measures based on Article 6.1 is processed, where applicable the relevant Union or Member State law under which the processing is carried out should be specified.

Where legitimate interests (Article 6.1(f)) is the legal basis for the processing, the legitimate interests pursued by the data controller or a third party Article

13.1(d) Article

14.2(b) The specific interest in question must be identified for the benefit of the data subject. As a matter of best practice, the controller can also provide the data subject with the information from the balancing test, which must be carried out to allow reliance on Article 6.1(f) as a lawful basis for processing, in advance of any collection of data subjects' personal data. To avoid information fatigue, this can be included within a layered privacy statement/ notice (see paragraph 35). In any case, the WP29 position is that information to the data subject should make it clear that they can obtain information on the balancing test upon request. This is essential for effective transparency where data subjects have doubts as to whether the balancing test has been carried out fairly or they wish to file a complaint with a supervisory authority.

Categories of personal data concerned Not required Article

14.1(d) This information is required in an Article 14 scenario because the personal data has not been obtained from the data subject, who therefore lacks an awareness of which categories of their personal data the data controller has obtained.

Recipients61 (or categories of recipients) of the personal data Article

13.1(e) Article

14.1(e) The term "recipient" is defined in Article 4.9 as "a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not" [emphasis added]. As such, a recipient does not have to be a third party. Therefore, other data controllers, joint controllers and processors to whom data is transferred or disclosed are covered by the term "recipient" and information on such recipients should be provided in addition to information on third party recipients.

The actual (named) recipients of the personal data, or the categories of recipients, must be provided. In accordance with the principle of fairness, controllers must provide information on the recipients that is most meaningful for data subjects. In practice, this will generally be the named recipients, so that data subjects know exactly who has their personal data. If controllers opt to provide the categories of recipients, the information should be as specific as possible by indicating the type of recipient (i.e. by reference to the activities it carries out), the industry, sector and sub-sector and the location of the recipients.

Details of transfers to third countries, the fact of same and the details of the relevant Article

13.1(f) Article 14.1(f) The relevant GDPR article permitting the transfer and the corresponding mechanism (e.g. adequacy decision under Article

61 As defined by Article 4.9 of the GDPR and referenced in Recital 31

safeguards62 (including the existence or absence of a Commission adequacy decision63) and the means to obtain a copy of them or where they have been made available

45/ binding corporate rules under Article 47/ standard data protection clauses under Article 46.2/ derogations and safeguards under Article 49 etc.) should be specified. Information on where and how the relevant document may be accessed or obtained should also be provided e.g. by providing a link to the mechanism used. In accordance with the principle of fairness, the information provided on transfers to third countries should be as meaningful as possible to data subjects; this will generally mean that the third countries be named.

The storage period (or if not possible, criteria used to determine that period) Article

13.2(a) Article

14.2(a) This is linked to the data minimisation requirement in Article 5.1(c) and storage limitation requirement in Article

5.1(e).

The storage period (or criteria to determine it) may be dictated by factors such as statutory requirements or industry guidelines but should be phrased in a way that allows the data subject to assess, on the basis of his or her own situation, what the retention period will be for specific data/ purposes. It is not sufficient for the data controller to generically state that personal data will be kept as long as necessary for the legitimate purposes of the processing. Where relevant, the different storage periods should be stipulated for different

62 As set out in Article 46.2 and 46.3

63 In accordance with Article 45

categories of personal data and/or different processing purposes, including where appropriate, archiving periods.

The rights of the data subject to:

- access;
- rectification;
- erasure;
- restriction on processing;
- objection to processing and
- portability. Article

13.2(b) Article

14.2(c) This information should be specific to the processing scenario and include a summary of what the right involves and how the data subject can take steps to exercise it and any limitations on the right (see paragraph 68 above).

In particular, the right to object to processing must be explicitly brought to the data subject's attention at the latest at the time of first communication with the data subject and must be presented clearly and separately from any other information.64 In relation to the right to portability, see WP29 Guidelines on the right to data portability.65

Where processing is based on consent (or explicit consent), the right to withdraw consent at any time Article

13.2(c) Article

14.2(d) This information should include how consent may be withdrawn, taking into account that it should be as easy for a data subject to withdraw consent as to give it.66

The right to lodge a complaint with a supervisory authority Article

13.2(d) Article

14.2(e) This information should explain that, in accordance with Article 77, a data subject has the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or of an alleged infringement of the GDPR.

Whether there is a statutory or contractual requirement to provide the information or whether it is necessary to Article

13.2(e) Not required For example in an employment context, it may be a contractual requirement to provide certain

64 Article 21.4 and Recital 70 (which applies in the case of direct marketing)

65 Guidelines on the right to data portability, WP 242 rev.01, last revised and adopted on 5 April 2017

66 Article 7.3

enter into a contract or whether there is an obligation to provide the information and the possible consequences of failure. information to a current or prospective employer.

Online forms should clearly identify which fields are "required", which are not, and what will be the consequences of not filling in the required fields.

The source from which the personal data originate, and if applicable, whether it came from a publicly accessible source Not required Article

14.2(f) The specific source of the data should be provided unless it is not possible to do so - see further guidance at paragraph 60. If the specific source is not named then information provided should include: the nature of the sources (i.e. publicly/ privately held sources) and the types of organisation/ industry/ sector.

The existence of automated decision-making including profiling and, if applicable, meaningful information about the logic used and the significance and envisaged consequences of such processing for the data subject Article

13.2(f) Article

14.2(g) See WP29 Guidelines on automated individual decision-making and Profiling.

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