ARTICLE 29 DATA PROTECTION WORKING PARTY

17/EN

WP260

Guidelines on transparency under Regulation 2016/679

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,

having regard to its Rules of Procedure,

HAS ADOPTED THE PRESENT DOCUMENT

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Introduction

1. These guidelines provide practical guidance and interpretative assistance on the new obligation of transparency concerning the processing of personal data under the General Data Protection Regulation[1] (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[2]. Insofar as compliance with transparency is required in relation to data processing under Directive (EU) 2016/680[3], these guidelines also apply to the interpretation of that principle.[4]

2. Transparency is a long established feature of the law of the EU[5]. 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)[6]), in addition to the requirements that data must be processed lawfully and fairly, transparency is now included as a fundamental aspect of these principles.[7] 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 be able to demonstrate that personal data are processed in a transparent manner in relation to the data subject.[8] Connected to this, the accountability

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

[2] These guidelines set out general principles in relation to the exercise of data subjects' rights rather than considering specific modalities for each of the individual data subject rights under the GDPR.

[3] Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

[4] While transparency is not one of the principles relating to processing of personal data set out in Article 4 of Directive (EU) 2016/680, Recital 26 states that any processing of personal data must be "lawful, fair and transparent" in relation to the natural persons concerned.

[5] Article 1 of the TEU refers to decisions being taken "*as openly as possible and as close to the citizen as possible*"; Article 11(2) states that "*The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society";* and Article 15 of the TFEU refers amongst other things to citizens of the Union having a right of access to documents of Union institutions, bodies, offices and agencies and the requirements of those Union institutions, bodies, offices and agencies to ensure that their proceedings are transparent.

[6] "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

[7] In Directive 95/46/EC, transparency was only alluded to in Recital 38 by way of a requirement for processing of data to be fair, but not expressly referenced in the equivalent Article 6(1)(a).

[8] Article 5.2 of the GDPR obliges a data controller to demonstrate transparency (together with the five other principles relating to data processing set out in Article 5.1) under the principle of accountability.

principle requires transparency of processing operations in order that data controllers are able to demonstrate compliance with their obligations under the GDPR[9]. 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.

3. 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[10]. 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. 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. 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:

[9] The obligation upon data controllers to implement technical and organisational measures to ensure and be able to demonstrate that processing is performed in accordance with the GDPR is set out in Article 24.1.

[10] See for example the Opinion of Advocate General Cruz Villalon (9 July 2015) in the Bara case (Case C-201/14) at paragraph 74: *"the requirement to inform the data subjects about the processing of their personal data, which guarantees transparency of all processing, is all the more important since it affects the exercise by the data subjects of their right of access to the data being processed, referred to in Article 12 of Directive 95/46, and their right to object to the processing of those data, set out in Article 14 of that directive".*

"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. 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 must be provided free of charge (Article 12.5).

"Concise, transparent, intelligible and easily accessible"

7. 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. 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. 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 of the information and effectiveness of user interfaces/ notices/ policies etc. through user panels.

9. 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 for complex, technical or unexpected data processing, the WP29 position is that controllers should not only provide the prescribed information under Articles 13 and 14, but 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 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 protection of their personal data.

10. 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 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.).

Example

Every organisation that maintains a website should publish a privacy statement/ notice on the website. A link to this privacy statement/ notice should be clearly visible on each page of this website under a commonly used term (such as "Privacy", "Privacy Policy" or "Data Protection Notice"). Positioning or colour schemes that make a text or link less noticeable, or hard to find on a webpage, are not considered easily accessible.

For apps, the necessary information should also be made available from an online store prior to download. Once the app is installed, the information should never be more than "two taps away". Generally speaking, this means that the menu functionality often used in apps should always include a "Privacy"/ "Data Protection" option.

WP29 recommends as a best practice that at the point of collection of the personal data in an online context a link to the privacy statement/ notice is provided or that this information is made available on the same page on which the personal data is collected.

"Clear and plain language"

11. 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.[11] A similar language requirement (for "plain, intelligible language") has previously been used by the EU legislator[12] and is also explicitly referred to in the context of consent in Recital 42 of the GDPR[13]. 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.

Example

The following phrases are not sufficiently clear as to the purposes of processing:

- "*We may use your personal data to develop new services"* (as it is unclear what the services are or how the data will help develop them);
- "*We may use your personal data for research purposes* (as it is unclear what kind of research this refers to); and
- "*We may use your personal data to offer personalised services"* (as it is unclear what the personalisation entails).

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

[11] See How to Write Clearly by the European Commission (2011), to be found at: https://publications.europa.eu/en/publication-detail/-/publication/c2dab20c-0414-408d-87b5-dd3c6e5dd9a5.

[12] Article 5 of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts

[13] Recital 42 states that a declaration of consent pre-formulated by a data controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms.

13. Where a data controller is targeting children or is, or should be, aware that their goods/ services are particularly utilised by children (and potentially relying on the consent of the child)[14], 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.[15] 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".[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[17]. This relates to the need for a data controller to identify its audience, as discussed above at paragraph 8.

"In writing or by other means"

14. 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[18]. (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). However, the GDPR also allows for other, unspecified "means" including electronic means to be used. WP29'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). Of course, the use of 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-written electronic means which may be provided *in addition* to a layered privacy statement/ notice might

[14] i.e. children of 16 years or older (or, where in accordance with Article 8.1 of the GDPR Member State national law has set the age of consent at a specific age between 13 and 16 years for children to consent to an offer for the provision of information society services, children who meet that national age of consent).

[15] Recital 38 states that "Children merit special protection with regard to their personal data as they may be less aware of the risks, consequences and safeguards concerned and their rights in relation to the processing of personal data". Recital 58 states that "Given that children merit specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand".

[16] https://www.unicef.org/rightsite/files/uncrcchilldfriendlylanguage.pdf

[17] For example, the UN Convention on the Rights of Persons with Disabilities requires that appropriate forms of assistance and support are provided to persons with disabilities to ensure their access to information.

[18] Article 12.1 refers to "language" and states that the information shall be provided in writing, or by other means, including, where appropriate, by electronic means.

include videos and smartphone or IoT voice alerts.[19] "Other means", which are not necessarily electronic, might include, for example, cartoons, infographics or flowcharts.

15. 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[20] (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. 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. The requirement to verify the identity of the data subject before providing information orally only applies to information relating to the exercise of the data subject's rights, as outlined in 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. The oral provision of information required under Article 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. Where a data controller has chosen to provide

[19] These examples of electronic means are indicative only and data controllers may develop new innovative methods to comply with Article 12.

[20] WP29 Opinion 8/2014 adopted on 16 September 2014

information to a data subject orally, or a data subject requests the provision of oral information or communications, WP29'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) and (iii) the fact that information was provided to the data subject.

"Free of charge"

18. Under Article 12.5, data controllers cannot 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.[21]

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

Content

19. 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** 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, WP29'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. 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

[21] By way of illustration, if a data subject's personal data is being collected in connection with a purchase, the information which is required to be provided under Article 13 should be provided prior to payment being made and at the point at which the information is being collected, rather than after the transaction has been concluded. Equally though, where free services are being provided to the data subject, the Article 13 information must be provided prior to, rather than after, sign-up given that Article 13.1 requires the provision of the information "at the time when the personal data are obtained".

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, WP29 recommends that where a data controller has an online presence, an online layered privacy statement/ notice should be provided.

21. 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) to seek feedback on how accessible, understandable and easy to use the proposed measure is for users. 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. 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 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. 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),[22] 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

[22] The use of the words *"if the personal data are to be used for.."* in Article 14.3(b) indicates a specification to the general position with regard to the maximum time limit set out in Article 14.3(a) but does not replace it.

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)[23] which provides for a situation where the data are being disclosed to another recipient (whether a third party or not)[24]. 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. 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 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"*. For all of these reasons, WP29's position is that data controllers should 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.

Timing of notification of changes to Article 13 and 14 information

26. 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

[23] The use of the words *"if a disclosure to anther recipient is envisaged…"* in Article 14.3(c) likewise indicates a specification to the general position with regard to the maximum time limit set out in Article 14.3(a) but does not replace it.

[24] Article 4.9 defines "recipient" and clarifies that a recipient to whom personal data are disclosed does not have to be a third party. Therefore, a recipient may be a data controller, joint controller or processor.

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). 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. 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. 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 with the scope of the data processing, for example by way of reminder of the privacy statement/ notice notified at appropriate intervals.

Modalities - format of information provision

29. Both Article 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. The data subject must not have to take active steps to seek the 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.

Layered privacy statements/ notices

30. In the digital context, in light of the volume of information which is required to be provided to the data subject, WP29 recommends that layered privacy statements/ notices[25] 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 by allowing users to navigate directly to the section of the 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 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 privacy statement/ notice, WP29's position is that this should always contain information on the processing which has the most impact on the data subject and processing which could surprise the data subject. Therefore, the data subject should be able to understand from information contained in the first layer what the consequences of the processing in question will be for the data subject (see also above at paragraph 9).

31. 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.

"Push" and "pull" notices

32. Another 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 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

[25] As noted above, data controllers may also develop new innovative methods for complying with Article 12.

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. 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:

a. Hard copy/ paper environment, for example when entering into contracts by postal means: written explanations, leaflets, information in contractual documentation, cartoons, infographic, flowcharts;
b. Telephonic environment: oral explanations by a real person to allow interaction and questions to be answered, automated or pre-recorded information with options to hear further more detailed information;

c. Screenless smart technology/ IoT environment such as wifi 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, public information campaigns;

d. Person to person environment, such as responding to opinion polls, registering in person for a service: oral explanations, 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, newspaper/ media notices.

Information on profiling and automated decision-making

34. 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[26] which should be referred to for further guidance on how transparency should be given effect in the particular circumstances of profiling.

Other issues – risks, rules and safeguards

35. Recital 39 of the GDPR also refers to the provision of certain information which is not explicitly covered by Article 13 and Article 14 (see recital text above at paragraph 25). 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[27], 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. 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

[26] Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP 251

[27] Guidelines on Data Protection Impact Assessment (DPIA) and determining whether processing is "likely to result in a high risk" for the purposes of Regulation 2016/679, WP 248 rev.1

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. 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[28].

Information related to further processing

38. Both Article 13 and Article 14 contain a provision[29] 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.[30] Where personal data are further processed for purposes that are *compatible* with the original purposes (Article 6.4 informs this issue[31]), 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[32]. In other words, a data subject should not be taken by surprise at the purpose of processing of their personal data.

[28] Under Article 26.3, irrespective of the terms of the arrangement between joint data controllers under Article 26.1, a data subject may exercise his or her rights under the GDPR in respect of and against each of the joint data controllers.

[29] At Articles 13.3 and 14.4, which are in identical terms apart from the word "collected", which is used in Article 13 being replaced with the word "obtained" in Article 14.

[30] See, for example on this principle, Recitals 47, 50, 61, 156, 158; Articles 6.4 and 89

[31] Article 6.4 sets out, in non-exhaustive fashion, the factors which are to be taken into account in ascertaining whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, namely: the link between the purposes; the context in which the personal data have been collected; the nature of the personal data (in particular whether special categories of personal data or personal data relating to criminal offences and convictions are included); the possible consequences of the intended further processing for data subjects; and the existence of appropriate safeguards.

[32] Recitals 47 and 50

39. Article 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. WP29's position is 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 data subjects with further information on the compatibility analysis carried out under Article 6.4[33] where a legal basis other than consent or national/ EU law is relied on for the new processing purpose (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.[34]

41. 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". WP29'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 to 28).

Visualisation tools

42. 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

[33] Also referenced in Recital 50

[34] As referenced in Recital 63, this will enable a data subject to exercise the right of access in order to be aware of and to verify the lawfulness of the processing.

visualisation tools (referencing in particular, icons, certification mechanisms, and data protection seals and marks) where appropriate. Recital 58[35] indicates that the accessibility of information addressed to the public or to data subjects is especially important in the online environment.[36]

Icons

43. 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. 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[37], for example icons on physical paperwork, IoT devices or IoT device packaging, notices in public places about wifi tracking, QR codes and CCTV notices.

45. 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,

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[35] "Such information could be provided in electronic form, for example, when addressed to the public, through a website. This is of particular relevance in situations where the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand whether, by whom and for what purpose personal data relating to him or her are being collected, such as in the case of online advertising."

[36] In this context, controllers should take into account visually impaired data subjects (e.g. red-green colour blindness).

[37] There is no definition of machine-readable in the GDPR but Recital 21 of Directive 2013/37/EU17 defines "machine readable" as:

"a file format structured so that software applications can easily identify, recognize and extract specific data, including individual statements of fact, and their internal structure. Data encoded in files that are structured in a machine-readable format are machine-readable data. Machine-readable formats can be open or proprietary; they can be formal standards or not. Documents encoded in a file format that limits automatic processing, because the data cannot, or cannot easily, be extracted from them, should not be considered to be in a machine-readable format. Member States should where appropriate encourage the use of open, machine-readable formats."

at the request of the Commission, or of its own accord, provide the Commission with an opinion on such icons[38]. 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. 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.[39] WP29 will be issuing guidelines on certification mechanisms in due course.

Exercise of data subjects' rights

47. Transparency places a triple obligation upon data controllers insofar as the rights of data subjects under the GDPR are concerned, as they must[40]:

- provide information to data subjects on their rights[41] (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. 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

[38] Article 12.8 provides that the Commission is empowered to adopt delegated acts under Article 92 for the purpose of determining the information to be presented by the icons and the information for providing standardised icons. Recital 166 (which deals with delegated acts of the Commission in general) is instructive, providing that the Commission must carry out appropriate consultations during its preparatory work, including at expert level. However, the European Data Protection Board (EDPB) also has an important consultative role to play in relation to the standardisation of icons as Article 70.1(r) states that the EDPB shall on its own initiative or, where relevant, at the request of the Commission, provide the Commission with an opinion on icons.

[39] See the reference in Recital 100

[40] Under the Transparency and Modalities section of the GDPR on Data Subject Rights (Section 1, Chapter III, namely Article 12)

[41] Access, rectification, erasure, restriction on processing, object to processing, portability

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 different modalities for the exercise of rights which are reflective of the different ways in which data subjects interact with that data controller.

Good Practice Example

A health service provider uses an electronic form on its website to allow data subjects to submit access requests for personal data online. In addition, it provides paper forms in the receptions of its health clinics so that data subjects can also submit requests in person.

Poor Practice Example

A health service provider has a statement on its website informing all data subjects to contact its customer services department to request access to personal data.

Exceptions to the obligation to provide information

Article 13 exceptions

49. 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]. 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.

Example

An individual signs up to an online email service and receives all of the required Article 13.1 and 13.2 information at the point of sign-up. Six months later the data subject activates a connected instant message functionality through the email service provider and provides their mobile telephone number to do so. The service provider gives the

[42] Article 13.4

data subject certain Article 13.1 and 13.2 information about the processing of the telephone number (e.g. purposes and legal basis for processing, recipients, retention period) but does not provide other information that the individual already has from 6 months ago and which has not since changed (e.g. the identity and contact details of the controller and the data protection officer, information on data subject rights and the right to complain to the relevant supervisory authority). As a matter of best practice however, all of this information should be provided to the data subject again. The new processing for the purposes of the instant messaging service may affect the data subject in a way which would prompt them to seek to exercise a right they may have forgotten about, having been informed six months prior. Providing all the information again helps to ensure the data subject remains well informed about how their data is being used and their rights.

Article 14 exceptions

50. 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 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. 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. 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.

Example
A data subject registers for a post-paid online subscription service. After registration, the data controller collects credit data from a credit-reporting agency on the data subject in order to decide whether to provide the service. The controller's protocol is to inform data subjects of the collection of this credit data within three days of collection, pursuant to Article 14.3(a). However, the data subject's address and phone number is not registered in public registries (the data subject is in fact living abroad). The data subject did not leave an email address when registering for the service or the email address is invalid. The controller finds that it has no means to directly contact the data subject. In this case, however, the controller may give information about collection of credit reporting data on its website, prior to registration. In this case, it would not be impossible to provide information pursuant to Article 14.

Impossibility of providing the source of the data

53. 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[43], 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 above).

[43] Article 25

"Disproportionate effort"

54. 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.

55. 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[44]; and

- it follows that impossibility or disproportionate effort only arise 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.

56. 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.

Example
Historical researchers seeking to trace lineage based on surnames obtain a large dataset relating to 20,000 data subjects. However, the dataset was collected 50 years ago, has not been updated since, and does not contain any contact details. Given the size of the database and more particularly, the age of the data, it would involve disproportionate effort for the researchers to try to trace the data subjects individually in order to provide them with Article 14 information.

[44] Where personal data is processed for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, this must be subject to appropriate safeguards for the rights and freedoms of the data subject as set out in Article 89.1.

57. 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 making the information publicly available. 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. 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.

Example

Bank A is subject to a mandatory requirement under anti-money laundering legislation to report suspicious activity relating to accounts held with it to the relevant financial law enforcement authority. Bank A receives information from Bank B (in another Member State) that an account holder has instructed it to transfer money to another account held with Bank A which appears suspicious. Bank A passes this data concerning its account holder and the suspicious activities to the relevant financial law enforcement authority. The anti-money laundering legislation in question makes it a criminal offence for a reporting bank to "tip-off" the account-holder that they may be subject to regulatory investigations. In this situation, Article 14.5(b) applies because providing the data subject (the account-holder with Bank A) with Article 14 information on the processing of account-holder's personal data received from Bank B would seriously impair the objectives of the legislation, which includes the prevention of "tip-offs". However, general information should be provided to all account-holders with Bank A when an account is opened that their personal data may be processed for anti-money laundering purposes.

Obtaining or disclosing is expressly laid down in law

59. 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 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 the only exemption under the GDPR applicable for 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).

Example

A tax authority is subject to a mandatory requirement under national law to obtain the details of employees' salaries from their employers. The personal data is not obtained from the data subjects and therefore the tax authority is subject to the requirements of Article 14. However, as the obtaining of the personal data by the tax authority from employers is expressly laid down by law, the information requirements in Article 14 do not apply to the tax authority in this instance.

Confidentiality by virtue of a secrecy obligation

60. 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.

> **Example**
>
> A medical practitioner (data controller) is under a professional obligation of secrecy in relation to his patients' medical information. A patient (in respect of whom the obligation of professional secrecy applies) provides the medical practitioner with information about her health relating to a genetic condition, which a number of her close relatives also have. The patient also provides the medical practitioner with certain personal data of her relatives (data subjects) who have the same condition. The medical practitioner is not required to provide those relatives with Article 14 information as the exemption in Article 14.5(d) applies. If the medical practitioner were to provide the Article 14 information to the relatives, the obligation of professional secrecy, which he owes to his patient, would be violated.

Restrictions on data subject rights under Article 23

61. 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[45] 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 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 data controller should inform data subjects that they are relying on such a national legislative restriction to the transparency obligation unless doing so would be prejudicial to the purpose of the restriction.

Transparency and data breaches

62. WP29 has produced separate Guidelines on Data Breaches[46] 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.

[45] As set out in Articles 12 to 22 and 34, and in Article 5 insofar as its provisions correspond to the rights and obligations provided for in Articles 12 to 22.

[46] Guidelines on Personal data breach notification under Regulation 2016/679, WP 250

Schedule

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 representative[47]	Article 13.1(a)	Article 14.1(a)	This information should allow for easy identification of the controller and preferably allow for different forms of communications with the data controller (e.g. phone number, email, postal address etc.)
Contact details for the data protection officer, where applicable	Article 13.1(b)	Article 14.1(b)	See WP29 Guidelines on Data Protection Officers[48]
The purposes and legal basis for the processing	Article 13.1(c)	Article 14.1(c)	In addition to setting out the 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.
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] 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] Guidelines on Data Protection Officers, WP243 rev.01, last revised and adopted on 5 April 2017

			controller to allow reliance on Article 6.1(f) as a lawful basis for processing, in advance of any collection of data subjects' personal data.
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.
Recipients[49] (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 such that a recipient does not have to be a third party. Therefore, 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. In accordance with the principle of fairness, the default position is that a data controller should provide information on the actual (named) recipients of the personal data. Where a data controller opts only to provide the categories of recipients, the data controller must be able to demonstrate why it is fair for it to take this approach. In such circumstances, the information on the categories of recipients should be as specific as possible by indicating the type of recipient (i.e. by reference to the activities it carries out), the

[49] As defined by Article 4.9 of the GDPR and referenced in Recital 31

			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 safeguards[50] (including the existence or absence of a Commission adequacy decision[51]) and the means to obtain a copy of them or where they have been made available	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 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. Where possible, a link to the mechanism used or information on where and how the relevant document may be accessed or obtained should also be provided. In accordance with the principle of fairness, the information should explicitly mention all third countries to which the data will be transferred.
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

[50] As set out in Article 46.2 and 46.3

[51] In accordance with Article 45

			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 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 include a summary of what the right involves and how the data subject can take steps to exercise it. 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[52]. In relation to the right to portability, see WP29 Guidelines on the right to data portability[53].
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[54].
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

[52] Article 21.4 and Recital 70 (which applies in the case of direct marketing)

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

[54] Article 7.3

			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 enter into a contract or whether there is an obligation to provide the information and the possible consequences of failure.	Article 13.2(e)	Not required	For example in an employment context, it may be a contractual requirement to provide certain 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)	Information should include: the nature of the sources (i.e. publicly/ privately held sources; the types of organisation/ industry/ sector; and where the information was held (EU or non-EU) etc.). The specific source of the data should be provided unless it is not possible to do so – see further guidance at paragraph 53.
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[55].

[55] Guidelines on Automated individual decision-making and Profiling for the purposes of Regulation 2016/679, WP 251