

1 Transparency

The principles relating to processing of personal data are set out in Article 5 GDPR. Transparency is one of the main principles of the GDPR.

Which technical and organisational measures must be implemented in order to achieve the required level of transparency⁵?

Is a combination of manual and automatic processes advisable/permisible here (cf. examples GMDS guidelines)?

Can the necessary obligation to prove transparency be realised alternatively by a suitable passage in the data protection concept? (e.g. “within the TTP the TTP employee may carry out the processing according to consent”)

According to Article 5 (1) (a) GDPR personal data shall be processed in a transparent manner in relation to the data subject (‘transparency’). On the one hand this principle is intended to prevent the clandestine processing of per-

5 Examples are system documentation, rules for applying for, assigning and changing authorizations, logging of: Call of programs, use of automated retrieval procedures, setup of users, call of administration tools, creation of rights profiles, attempts of unauthorized login, import and modification of application software, attempts of exceeding authorizations, changes to file organization, input/change of data, implementation of data backup measures, data transmissions, deletion of data.

sonal data; on the other hand, it leads to comprehensive information obligations of the controller about the processing of data related to the data subject.⁶

Due to recital 39 (second sentence) 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 (recital 39, third sentence). 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 (recital 39, fourth sentence). Natural persons should be made aware of 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 39, fifth sentence). In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data (recital 39, six sentence).

The principle of transparency does not only include traceability, but also predictability.⁷ The whole context of the processing has to be made transparent: information about the controller (who?), quality and quantity (what?), the time (when?), the reason (why?) and the purpose (for what?).⁸

The principle of transparency runs through the whole regulation (cf. Art. 12-15 GDPR). It is mainly taken into account with the information duties according to Art. 13, 14 GDPR. The information mentioned there must be made available to the data subject.

GDPR does not say in which form the information is to be made available. Therefore paper-based information sheets as well as downloading information from a website or for example providing it via smartphone app come into consideration. In order to ensure that the essential information is available in time, it is recommended to hand it over on paper before the first collection of personal data in the context of the consent process and to keep it accessible online for later retrieval.

A mere mention in a data protection concept will as a rule not satisfy these requirements. Rather, it is recommended to attach the required information sheets in their entirety to the data protection concept in addition to the publication in a data protection declaration. The principle of transparency also

6 Herbst, in: Kühling/Buchner, DS-GVO BDSG, 2. Auflage 2018, Art. 5, marginal 18.

7 cf. Frenzel, in: Paal/Pauly, DS-GVO BDSG, 2. Auflage 2018, DS-GVO, Art. 5, marginal 21.

8 cf. Frenzel, in: Paal/Pauly/Frenzel, DS-GVO BDSG, 2. Auflage 2018, DS-GVO, Art. 5, marginal 21.



implies that certain basic information must be available, in particular before consent is given, in order to be informed. Only informed consent can be legally effective. For this information, it would not be sufficient to refer the consenting party to a website where he could access this information. Rather, this information should be part of a consent form (for the requirements of an informed consent form, see Part I. 2.3.2 “Requirements for an effective declaration of consent” and Part II.5.1 “Informed Consent”).