

# VZBV COMMENTS ON THE ARTICLE 29 WORKING PARTY GUIDELINES ON TRANSPARENCY UNDER THE GDPR

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**Editorial information**

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# I. INTRODUCTION

Verbraucherzentrale Bundesverband (vzbv) welcomes the Article 29 Working Party (WP29) guidelines on transparency under Regulation 2016/679 (GDPR).

The guidelines on transparency laid out by WP29 now are an important step for the interpretation of the GDPR. If some remaining issues are solved, these guidelines will give legal certainty to all market actors, will lead to harmonised enforcement by the data protection authorities all over Europe and help to reach the GDPR's key objectives: to protect the fundamental rights and freedoms of natural persons with regard to the processing of personal data and to ensure the free movement of such data.

## About vzbv

Verbraucherzentrale Bundesverband - vzbv - is a non-governmental organisation acting as an umbrella for 41 German consumer associations. vzbv represents the interests of consumers in public and vis-à-vis legislators, the private sector and civil society. vzbv's goal is to protect and empower consumers by lobbying and campaigning at national and European levels, by taking collective legal action on behalf of consumers and by ensuring that the consumers' voice receives broad media coverage. vzbv also provides professional training for the staff of consumer organisations.

# II. COMMENTS ON THE GUIDELINES IN DETAIL

## 1. INTRODUCTION

(1) No comments provided

## 2. THE MEANING OF TRANSPARENCY

(2) No comments provided

## 3. ELEMENTS OF TRANSPARENCY UNDER THE GDPR

### **“Concise, transparent, intelligible and easily accessible”**

(3) vzbv welcomes WP29's position in paragraph 9 that data controllers should *“separately spell out in unambiguous language what the most important consequences of the processing will be”*. Even if data subjects are informed about the processing of personal data, assessing the possible consequences is very difficult for most consumers. Therefore, a description of the consequences would help many of these data subjects.

(4) In its example in paragraph 10 WP29 states that apps should always include a “data protection option” with privacy policies and that the necessary information should be made available from an online store prior to download.

However, until now, many links to privacy policies in apps or app stores lead to the privacy policies of the websites of the developers. Most of the time these privacy policies only inform about the processing of data in general or in regard to the website but not in regard to the specific apps. For example, when you open the privacy policy of the app "Swiftkey" via the app itself or the Google Play store it just leads you to Microsoft's general privacy policy which does not mention Swiftkey at all.

WP29 should set clear that this practice is not compliant with the transparency obligations of the GDPR.

### **“Clear and plain language”**

(5) vzbv agrees with WP29's view in paragraph 12 that *“a translation in one or more other languages should be provided where the controller targets data subjects speaking those languages”*.

It might be helpful if WP29 provided some examples for situations where a controller targets data subjects. For example, it should be clear that data subjects are targeted when apps or information society services use languages or currencies generally used by these data subjects or offer corresponding country specific options or functions.

### **“Free of charge”**

(6) WP29 is right to point out in paragraph 18 that data controllers cannot charge data subjects for communications and actions taken under Articles 15-22. However, Article 15(3) GDPR stipulates that a controller may charge a reasonable fee for further copies of the personal data undergoing processing requested by the data subject. Therefore, vzbv would welcome a deeper elaboration on the relationship between Article 12(5) and Article 15(3) GDPR.

## **4. INFORMATION TO BE PROVIDED TO THE DATA SUBJECT – ARTICLES 13 & 14**

### **“Appropriate measures”**

(7) In paragraph 22 WP29 stipulates, *“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”*.

vzbv recommends that this requirement should not only relate to the way consumers are informed of changes of privacy statements/ notices (e.g. email/ hard copy letter etc.) but also to the way in which the changes are presented. For example, it might help data subjects to understand the new privacy statements/ notices quickly and easily if these changes are made clear with the help of track changes or diffs.

## Layered privacy statements/ notices

(8) vzbv welcomes the approach of layered privacy statements/ notices and agrees that the first layer of the privacy statement/ notice *“should always contain information on the processing which has the most impact on the data subject and processing which could surprise the data subject”*.

For example, when consumers buy goods in an online shop it is of little interest to them that their data is given to a parcel service to deliver the goods or that other data is processed that is necessary for the performance of a the contract. On the other side, it is much more important to inform them about whether their data is used for advertising purposes, for profiling or if their data is transferred to third parties since this of often not expected by consumers.

(9) A best practice example for layered privacy statements/ notices might be the so called “data protection one-pager” that was developed by a multistakeholder expert group as part of the German “IT-Summit” under the administration of the German Federal Ministry of Justice and Consumer Protection.<sup>1</sup> This “one-pager” is already used by the Federal Ministry of Justice and Consumer Protection itself<sup>2</sup> but also by companies like Deutsche Telekom<sup>3</sup>, the Otto Group<sup>4</sup> or Zalando<sup>5</sup>.

## 5. INFORMATION RELATED TO FURTHER PROCESSING

(10) In paragraphs 38 to 41 WP29 provides good guidelines how data subjects should be informed when a controller intends to further process personal data for a purpose other than that for which the personal data was collected.

In particular, vzbv welcomes WP29’s position in paragraph 40 that data controllers should provide data subjects with further information about how the processing for the other purpose(s) is compatible with the original purpose. As WP29 rightfully explains this gives *“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”*.

## 6. VISUALISATION TOOLS

### Icons

(11) vzbv believes that standardised machine-readable icons, in combination with a multi-layered approach can be an important component in making privacy statements/ notices simpler and easier to understand and therefore enhance transparency. vzbv agrees with the WP29’s remarks in paragraph 45 that the standardisation of these

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<sup>1</sup> BMJV; „One-Pager“ – Muster für transparente Datenschutzhinweise  
[https://www.bmjbv.de/DE/Themen/FokusThemen/OnePager/OnePager\\_node.html](https://www.bmjbv.de/DE/Themen/FokusThemen/OnePager/OnePager_node.html)

<sup>2</sup> [http://www.bmjbv.de/DE/Service/Datenschutz/Datenschutzhinweis/Datenschutzhinweis\\_node.html](http://www.bmjbv.de/DE/Service/Datenschutz/Datenschutzhinweis/Datenschutzhinweis_node.html)

<sup>3</sup> <http://www.telekom.de/datenschutz>

<sup>4</sup> <https://www.otto.de/shoppages/service/about/datenschutzhinweis/aboutprivacynedtoknow>

<sup>5</sup> [https://a1276.ztat.net/lpo/zalando/1\\_cro/2017/02/BIT-129/zalando-onepager.pdf](https://a1276.ztat.net/lpo/zalando/1_cro/2017/02/BIT-129/zalando-onepager.pdf)

icons is essential to achieve these objectives. Otherwise, the icons could lead to more confusion for data subject and therefore cause more harm than good.

However, as the European Commission has not made any efforts in this direction so far vzbv would welcome if WP29 were to prepare an opinion on such standardised icons in due course.

## **7. EXERCISE OF DATA SUBJECTS' RIGHTS**

(12) No comments provided

## **8. EXCEPTIONS TO THE OBLIGATION TO PROVIDE INFORMATION**

(13) No comments provided

## **9. RESTRICTIONS ON DATA SUBJECT RIGHTS UNDER ARTICLE 23**

(14) No comments provided

## **10. TRANSPARENCY AND DATA BREACHES**

(15) No comments provided

## **11. SCHEDULE**

(16) In its schedule on the information that must be provided to a data subject under Article 13 or Article 14, WP29 states that *“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 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”*. vzbv strongly supports this view. However, it might be helpful if WP29 provides more guidance on this point and specifies it in the main text of these guidelines.

(17) WP29 is right to point out in the schedule that, by default, the data controller should inform the data subject not only on the categories of recipients of the personal data but give the name of the actual recipients. Otherwise, it would hinder the data subjects to exercise their rights under Article 15 – 22 vis-à-vis these recipients.